SENATE—*Monday, August 21, 1978*

(Legislative day of Wednesday, May 17, 1978)

The Senate met at 9:30 a.m., on the expiration of the recess, and was called to order by Hon. KANEASTER HODGES, JR., a Senator from the State of Arkansas.

PRAYER

The Reverend Dr. Robert B. Harriman, director, the Presbyterian council for Chaplains and Military Personnel, Washington, D.C., offered the following prayer:

Heavenly Father, we thank Thee for continuingly raising up from among the people those who have dedicated themselves within the halls of government. We pray now for those who serve within this Senate. Grant wisdom to discern Thy will so that they may be wise in all their judgments. Open eyes and minds to see and comprehend that which is right. Grant health and energy for arduous tasks and long hours of deliberation. Give patience and thoroughness in efforts to understand the complex and difficult. Deliver them from words or action which would foster prejudice or encourage division. May desire for the Nation's welfare surpass any self-seeking or narrow-visioned concern for a privileged few. Let no deception destroy trust, but rather may honesty firmly establish confidence. When we are right, keep us from gloating pride. When we are wrong, may our admission be followed by correction.

We pray for all entrusted with the guidance and welfare of the Nation. May those engaged in creating, administering, and judging our laws be so led by Thy wisdom that they shall faithfully lead the people in ways of righteousness and peace. 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., August 21, 1978.

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable KANEASTER HODGES, JR., a Senator from the State of Arkansas, to perform the duties of the Chair.

JAMES O. EASTLAND,
President pro tempore.

Mr. HODGES thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF LEADERSHIP

The ACTING PRESIDENT pro tempore. Under the previous order, the majority leader, the Senator from West Virginia, is recognized.

THE JOURNAL

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Journal of the proceedings be approved to date.

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

THE ARGUMENTS AGAINST A DEEP TAX CUT NOW

Mr. ROBERT C. BYRD. Mr. President, the serious problems that could befall the American economy if a very deep tax cut were enacted in fiscal year 1979 were examined in an article by Seymour Zucker which appeared in the August 7, 1978 issue of Business Week. The author provides data suggesting that a tax cut over the next 3 years on the order of $124 billion would not pay for itself through increasing the tax base. To the contrary: The deficit would soar to $100 billion by 1983, according to one study cited by Mr. Zucker. At the same time, the rate of inflation would be almost 2 percentage points higher with such a cut by 1982. The weight of the economic evidence is against a very deep tax cut at this moment in our economic recovery.

Mr. President, I ask unanimous consent that the article, "The Fallacy of Slashing Taxes Without Cutting Spending," be printed in the RECORD.

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

THE FALLACY OF SLASHING TAXES WITHOUT CUTTING SPENDING

(By Seymour Zucker)

Arthur B. Laffer first drew the curve on a napkin in a Washington restaurant back in 1974. It popped into his head as he was trying to persuade an aide of former President Ford that U.S. tax rates were so high that they were stifling economic growth. Lower tax rates, he maintained, would send employment and investment soaring to the point where tax revenues would actually rise, despite the lower rates. Laffer has been preaching that gospel ever since. And the Laffer curve—which purports to show the perverse effects of a high tax rate on government revenues—is being advanced as the economic rationale for the Kemp-Roth bill, the biggest tax-cut proposal in history.

Riding in the wake of Proposition 13, which cut California property taxes by 60%, Kemp-Roth is picking up strong support, especially among congressional Republicans. No one expects it to pass this year, but it stands a good chance of becoming the key domestic issue in the Republican congressional campaign in November and could also play a role in the Presidential election in 1980. The bill, introduced by Representative Jack Kemp (R.-N.Y.) and Senator William V. Roth Jr. (R.-Del.), would reduce everyone's taxes over the next three years by one-third, thus costing about $124 billion in tax revenues. Its sponsors are pushing the Laffer argument that the tax cut will generate an economic boom of such proportions that in a few years the government will recoup all the initial revenue loss and then some. The reason: The huge tax cut will spark the incentive to work and invest, thus increasing the tax base. The effect is to shrink the deficit without cutting government spending by as much as a nickel.

Elementary. Laffer may have sold some politicians, but not his fellow economists. The economics profession—including some leading Republican economists who support Kemp-Roth—think Laffer would have done well to leave the napkin behind for the waiter to dispose of. They see huge deficits and a rip-roaring inflation if Kemp-Roth is enacted without offsetting cuts into expenditures. To Harvard's Martin Feldstein, the theoretical principal that at some point reducing rates actually increases tax revenues "is something we teach in the first week of the course in public finance." The critical empirical question is to determine when the tax schedule gets into that range, he notes.

"The Laffer curve is more or less a tautology," says conservative economist George J. Stigler of the University of Chicago, where Laffer taught before going to the University of Southern California in 1976. "It has to be right at some level. If enterprise is not discouraged at 95%, then move it to 105% and Laffer would be right by definition." But in Stigler's view, Laffer has failed to show that the current tax structure—where the highest rate on earned income is 50%—has such an adverse effect on incentives that reducing rates would actually increase revenue. "Laffer is no longer a very serious scholar," says Stigler. "He is playing the role of a propagandist, and as such he is performing some service. But I would not base a $125 billion tax cut on his work."

Feldstein and Stigler are not alone in their criticism of Laffer. Alan Greenspan, chairman of the Council of Economic Advisers under President Ford, favors Kemp-Roth—with some changes—because he holds that the only way to cut the growth of government spending is to cut taxes. So he says: "I'm for cutting taxes, but not for Laffer's reasons. I don't know anyone who seriously believes his argument."

Just how far off base is Laffer on the tax-revenue effects of Kemp-Roth? Otto Eckstein, president of Data Resources Inc., has run the Kemp-Roth proposal through DRI's huge computer forecasting model. Assuming that it takes effect in 1979 and that there are no compensatory spending cuts, the DRI model shows that the deficit will grow progressively worse. By 1983, the red ink in the budget—including additional interest payments—will increase to a mind-numbing $100 billion. So rather than recouping the entire tax cut, as Laffer argues, DRI finds that the Treasury gets only about $25 billion of it.

OVERWHELMING EVIDENCE

To be sure, economists agree that a tax cut would increase total demand and national income and thus partly offset the initial revenue loss. But to offset the effect of lower tax rates fully, total income would have to rise by some four times the original amount of the cut. And the evidence is overwhelming that no cut in taxes could generate a rise in spending and income of that size. A $10 billion tax cut, for example, produces roughly an extra $15 billion of gross national product. The current marginal tax rate against total GNP works out to 25%, so the $15 billion creates $3.75 billion in new taxes—thus recovering barely a third of the initial

$10 billion. And under Kemp-Roth, which would cut into the marginal rate itself, the outcome would be worse.

Laffer argues that this kind of calculation greatly underestimates the stimulative effect of the tax cut, because it ignores the impact of the cut on the incentives to work and save. This incentive effect unleashes a sharp increase on the supply side because more people are willing to work, save, and invest. But virtually no one else sees the magic. For example, Herbert Stein, CEA chairman under President Nixon, claims there is no evidence that the supply responses are anywhere near the magnitude necessary to prevent revenues from falling.

Stein's analysis stands in stark contrast to the Laffer contention that the tax revenues will flow back within a few short years. Using the most favorable assumptions about the response of workers and savers to the lower tax rates, he concludes that it would take "about 30 years to regain the revenue level that would have been achieved without the tax cut."

RUNAWAY INFLATION

Laffer also maintains that Kemp-Roth not only will increase real output but should actually have a dampening effect on inflation. "Excessive money growth has long been recognized as a cause of inflation. It is equally true, however, that too few goods will also cause prices to rise." So as the economy booms, more goods will be produced, and this he believes, will result in lower prices.

To be sure, Laffer is correct that Kemp-Roth would increase real output—at least in the short run. Eckstein's model shows that the economy in a few years would be booming, with unemployment falling below 5%. But inflation would be on the march. By 1982, for example, the rate of inflation would be almost 2 percentage points higher than without the cut, he calculates. And even this scenario may be overly optimistic. Econometric models have been notorious for underestimating inflation. More important, the model assumes that monetary policy is neutral even in the face of accelerating inflation. But as the deficit soars and inflation really gets rolling, the monetary authorities will have no choice but to tighten the monetary vise. And that means that capital spending and housing get clobbered, and the economy goes tailspinning into recession. So even the spurt in real growth generated by Kemp-Roth may be short-lived.

Laffer and other proponents of Kemp-Roth point to the Kennedy tax cuts of 1962 and 1964 as examples of how sharp reductions in tax rates can generate sustained bursts of economic growth. But their claims have been dismissed as wildly excessive by none other than Walter W. Heller, CEA chairman under Kennedy and Johnson. Heller fought hard for the Kennedy tax cuts, and he would dearly love to take credit for engineering the above-average economic growth that took place between 1962 and 1967. The beneficial effects of those cuts—about $12 billion, or $36 billion in today's prices—were on the demand side, not on the supply side, he holds. The key difference between the early 1960's and now is that the current inflation rate hovers near the double-digit level, compared with about 1.5% then. A tax cut—even one of only $36 billion—carries with it the danger of fueling an inflation from which the nation will take years to recover.

ENERGY ACCOMPLISHMENTS

Mr. ROBERT C. BYRD. Mr. President, less than 5 years ago the OPEC cartel imposed an oil embargo on our country. Although the serious shortage of oil we experienced ended after 5 months, the energy problems highlighted by the embargo have endured. The OPEC action told the American people in no uncertain terms that our national security as well as our energy supplies could be threatened.

Since the beginning of this decade the Congress has worked to establish a practical energy policy. We have addressed the issue in a methodical manner. Step-by-step, congressional efforts have produced many important laws to contend with the energy problem.

The 95th Congress was not yet a month old on February 2d when it passed the Emergency Natural Gas Act of 1977 (Public Law 95-2). That law gave the President authority to allocate certain natural gas supplies to help alleviate the shortage which occurred during that fearsome winter.

On March 1, 1977, President Carter transmitted to the Congress a proposal for the creation of a Department of Energy. By August, the legislation was on his desk. Congress made clear its intention that the Department would serve as the central instrument through which energy policy would be implemented. Due to the size of the Department itself and the complexity of energy issues, this is a difficult task. Yet it is an absolutely vital job which cannot be shunned.

There has been a great deal of action in the Congress on other energy-related legislation. It is clear from the titles of many of these bills that they address the energy problem directly. But there are other pieces of legislation, such as the Housing Amendments of 1978, which contain energy-related programs of great importance.

I believe these significant pieces of legislation should be recognized.

I, therefore, ask unanimous consent that a list of energy-related legislation that has been enacted by the 95th Congress or is in conference or has passed the Senate, although not having passed the House, be printed in the RECORD.

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

ENERGY MEASURES—95TH CONGRESS

ENACTED

Alcan Pipeline (H.J. Res. 621, P.L. 95-158).
Clean Air (H.R. 6161, P.L. 95-95).
Deepwater Ports Extension (H.R. 6401, P.L. 95-36).
Department of Energy (S. 826, P.L. 95-91).
ERDA Nonnuclear Authorization, 1977 (S. 36, P.L. 95-39).
ERDA Nuclear Authorization (S. 1339, P.L. 95-183).
ERDA Nuclear/Nonnuclear Authorization—Civilian (S. 1340, P.L. 95-238).
Export Control—Arab Boycott (H.R. 5840, P.L. 95-52).
FEA Authorization (S. 1468, P.L. 95-70).
Mine Safety (S. 717, P.L. 95-164).
Natural Gas Emergency (S. 474, P.L. 95-2).
Petroleum Marketing Practices (H.R. 130, P.L. 95-297).
Public Works—Energy Research Appropriation (H.R. 7553, P.L. 95-96).
Radiation Exposure (S. 266, P.L. 95-236).
Small Business Energy Loans (H.R. 11713, P.L. 95-315).
Strategic Petroleum Reserve Plan No. 1 (S. Res. 429-S, agreed to disapprove resolution).
Stripmining (H.R. 2, P.L. 95-87).
Stripmining Program Authorization (S. 2463, P.L. 95-343).
Urgent Power Supplemental Appropriation (H.J. Res. 227, P.L. 95-3).
Nuclear Nonproliferation Act (H.R. 8638, P.L. 95-242).
Emergency Agricultural Act (H.R. 6782, P.L. 95-279)—Gasohol program.

IN CONFERENCE

Coal Conversion (H.R. 5146-S, agreed to July 18, 1978).
Energy Conservation (H.R. 5037).
Energy Taxation (H.R. 5263).
Military Construction Authorization, 1979 (H.R. 12602—Conf. rep. filed).
Natural Gas Pricing (H.R. 5289).
Outer Continental Shelf (S. 9—Conf. rep. filed).
Public Utility Rate Reform (H.R. 4018).
Public Works Energy Research Appropriations, 1979 (H.R. 12928—Conf. rep. filed).
H.U.D. Authorization (S. 3084)—Solar and home insulation programs.
Agriculture Appropriations (H.R. 13125)—Energy conservation programs.
Water Resource Projects—Waterway User Fee—Fuel Use Taxes.
International Development Assistance (H.R. 12222)—Bilateral assistance for energy resource development.
Military Construction Authorization—solar, geothermal, and utilities systems programs.
Interior Appropriation (H.R. 12932)—Energy production, supply, and regulation programs.
Energy and Water Development (Public Works) (H.R. 12928)—Energy research project.

PASSED SENATE, NOT HOUSE

Alaska Pipeline Destruction (S. 1496).
Educational Institution Energy Savings Grants (S. 701—Provisions are now in energy conservation bill).
ERDA Nuclear Authorization—Civilian/Military (S. 1341).
ERDA Synthetic Fuel Loan Guarantee Program (S. 37).
Natural Gas Pipeline Safety (S. 1895).
Oil Shale Commercialization (S. 419).
Pipeline Destruction (S. 1502).
Rate Discrimination (S. 2249).
Endangered Species (S. 2899)—Possible exemptions for certain energy supply projects.

INSPIRATIONAL PORTRAITS

Mr. ROBERT C. BYRD. Mr. President, a portrait of one of our greatest Presidents, Abraham Lincoln, hangs in the Senators' dining room. President Lincoln has achieved a worldwide esteem in the generations since his death. His memory is universally admired. Thus, it is appropriate that his portrait is hanging in the Senators' dining room.

Since Abraham Lincoln was the first Republican President, I know our Republican colleagues take special pride in the presence of his portrait in our dining room. However, an American of Mr. Lincoln's caliber transcends all party labels ultimately. His portrait is a genuine inspiration to all Members of the Senate.

Mr. President, it is appropriate to place the portrait of a Democratic President in the Senators' dining room, as well. He should be, like President Lincoln, a man admired by the members of both parties, who has significantly influenced national and international events through his courageous actions and decisions.

Such a man was President Harry S. Truman. In the few short years since his death, President Truman's renown and prestige have grown enormously. Among

Democrats and Republicans alike, his sagacity, character, decisiveness, and ability have received increasing recognition and acclaim. Abroad, our friends and allies give credit to President Truman for halting the post-World War II advance of communism in Europe that threatened to engulf the entire continent if unchecked; moreover, President Truman's policies helped to restore economic and political health and stability to the war-shattered nations of the non-Communist world. Harry S. Truman is a man in whom all Americans can take pride. In addition, he is a man in whom Senators can take special pride, for he served with notable distinction in the Senate, before becoming Vice President and President of the United States.

Mr. President, a portrait of President Truman will be placed in the Senators' dining room as a source of inspiration and challenge to the members of both of our great and historic political parties represented in the Senate.

ORDER OF BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I have no further need for my time. I ask if the Senator from Wisconsin would like some of it.

Mr. PROXMIRE. I would like it, but I have 15 minutes under an order.

Mr. ROBERT C. BYRD. Would the Senator like my remaining time, also?

Mr. PROXMIRE. I would, if the Senator would like to give it to me.

Mr. ROBERT C. BYRD. Mr. President, how much time do I have left?

The ACTING PRESIDENT pro tempore. Six minutes.

Mr. ROBERT C. BYRD. I yield it to the Senator from Wisconsin if he wishes to use it.

RECOGNITION OF LEADERSHIP

The ACTING PRESIDENT pro tempore. Under the previous order, the Senator from Tennessee is recognized.

Mr. BAKER. Mr. President, I use my time only long enough to say I have no use for my time and no request for time under the standing order. I ask the Senator from Wisconsin if he would like some of it.

Mr. PROXMIRE. I think I shall have enough with that of the majority leader. I thank the distinguished minority leader.

SPECIAL ORDER

The ACTING PRESIDENT pro tempore. Under the previous order, the Senator from Wisconsin is recognized for not to exceed 15 minutes in his own right. He has additional time if needed.

INFLATION—AN UNPRECEDENTED PEACE-TIME PROBLEM—WHY WE SHOULD CUT $25 BILLION FROM THE PRESIDENT'S BUDGET

Mr. PROXMIRE. Mr. President, I rise today to address the Nation's No. 1 problem; namely, rampaging inflation. Somehow, Congress has not gotten the message. We are following policies, especially spending policies, that aggravate inflation. We are doing almost nothing to reduce inflation. And it is our primary, fundamental, elementary, crucial problem.

THE PROBLEM

Inflation is having a devastating effect.

Millions of Americans with fixed incomes or relatively fixed incomes are unable to cope with their economic problems. Their costs for food, shelter, heat, light, clothing, and transportation are going up and have been going up faster than the rise in their incomes. They are therefore suffering from a decline in their living standards in real terms.

Young people are unable to afford to buy a house and must postpone having a family.

Two or more people in many families are now at work just to make ends meet.

Elderly persons are in dire straits as they have to make their fixed incomes cover large costs and thus must either use up their savings, borrow from their children, or get aid from welfare or public sources. To many who have worked hard and have been self-sufficient, this is a demeaning state of affairs. Here they are, at the end of a productive and self-sufficient life, now thrown on welfare or required to borrow when, under ordinary circumstances, the plans they have made and the estates they have built would carry them through in a self-respecting way.

We are seeing the collapse of the dollar abroad, due almost entirely to the doubts raised by our inability to combat inflation.

And what is the Government doing about inflation? Consider: In the past year or the past year and a half, we have seen an explosion of jobs and employment. So, is the Federal Government restraining spending, running a surplus, to stem inflation? No, it is deeply in the red, with a deficit this year in the neighborhood of $50 billion. To those who believe in countercyclical economic policies, this is a great blow to both theory and belief. Many have justified government deficits in times of recession and depression on grounds that we should and would run surpluses in periods of relative prosperity and recovery. But we are now finding that in periods of recovery and high levels of employment the deficits are unprecedented in the history of the country.

John Maynard Keynes, if he walked on the floor, the person some people have blamed for the spending in the thirties and forties, would be aghast at what this Congress is doing. He would not believe it. Here we are, following a policy of big deficits at a time when unemployment is dropping sharply and inflation is worsening.

Men and women employed in our stores, factories, and mines, who ordinarily would be willing to limit their demands for wages and conditions to reasonable levels, are finding that, merely to make up for the inflation of the past, let alone to get an increase in real income, they must make demands which appear to be excessive but which in fact fall short of keeping pace with their costs.

HISTORICAL FIRST

Furthermore, this is an unprecedented situation in the peacetime history of our country. From the Bureau of Labor Statistics and the Joint Economic Committee I have gathered the facts on the rise in consumer prices in our modern history, namely since 1850 or for almost 130 years. It shows nothing like the increase of 100 percent during this 10-year period if it continues at its present rate.

Here is what it shows by decades: in the 1850's, consumer prices rose by a total of 10.6 percent, or slightly more than 1 percent a year.

During the 1860's, a wartime decade, the Civil War, the bloodiest decade in our history, they went up by 47 percent or an average of 4.7 percent a year. Almost all of it was in the period 1862 to 1865. In the last half of that decade, prices actually dropped by over 15 percent, or 3 percent a year.

What did prices do in the 1870's? Did they rise?

In the 1870's, prices dropped 25 percent or 2.5 percent a year.

And in the 1880's, did they rise?

In the 1880's, and the 1890's, prices were down by 3 percent in each decade.

From 1900 to 1910 they rose by 33 percent, or an average of 3.3 percent a year.

During World War I a tremendous war, one of the biggest in our history, they rose 100 percent, but the big push was in the war years and immediate postwar years from 1916 to 1920.

And in the 1920's?

From 1920 to 1930 the year by year declines outpaced the increases by 20 percent.

And in the 1930's?

The decade of the 1930's showed an 18-percent decrease, admittedly the period of the Great Depression offset only by some rises at the end of the decade.

The World War II decade showed a 7.3 percent annual increase, or an average equal to the inflation which we face in peacetime today. This, of course, was at a time when we were pouring as much as 50 percent of our GNP into our war effort, so, of course it was inflationary.

In the 1950's, even with the Korean war, we suffered only a 20-percent increase or an average of 2 percent a year. Today that would be considered a form of heavenly reprieve.

In the 1960's, with Vietnam, there was a 32 percent rise or 3.2 percent per year.

But thus far in the 1970's, we have seen price rises of 58 percent or 8 percent per year.

In summary, we are a country which historically has been a relatively stable price level which, year in and year out, decade by decade, has risen little more than the average statistical margin of error.

Yet this year and in this decade, we are seeing peacetime inflation rates in

excess of those we have faced historically in wartime.

That is the magnitude of the problem.

Mr. President, I might point out that it is getting worse because even our top policy advisers in the administration cannot seem to get a grip on it. In January of this year the Secretary of the Treasury predicted 1978 inflation, 6.1 percent. In July he readjusted it to 7.2 percent. In August, only a week ago, he said it would be 8 percent for this year. Every month, the Secretary of the Treasury has given out a higher estimate of inflation.

NEED DRASTIC ACTION

Mr. President, I proposed that Congress, during its proceedings on the first budgetary resolution to reduce the ceiling on the President's budget by $25 billion.

That is the kind of dramatic and vigorous action which would send a message both to those here at home and abroad that we mean business on the anti-inflation front. We should still do it.

WHY IT IS NECESSARY

Such action is necessary and desirable for a number of reasons.

First, there is no other anti-inflation program in sight. Neither the President nor Congress, business or labor favor wage or price controls. They do not work. They are counterproductive. No one wants them. They are not going to happen.

Second, certain other alternatives are simply not adequate. The move to limit hospital and medical costs, even if started, would not solve the problem. It may be a good step, but it is very limited. An increase in both Government and private productivity is highly desirable but insufficient to stop inflation now. We should make Government more efficient, cut out excessive paperwork, and reduce regulation, but everyone knows that will take a very long time to achieve if it is achieved at all.

Some very able and public spirited and qualified persons are advocating a tax-based incomes policy or TIP under which employers and employees who forego wage and cost increases would be rewarded through the tax system. TIP, however, is complicated. There is yet no concensus supporting it, and it would take far longer both to pass and for its results to occur than the time we have. TIP is a last desperate act. It could be compared to the life jacket or log thrown to a man drowning at sea and surrounded by sharks. It is a frail answer but not to be downgraded at a time of desperation.

VALIANT INDIVIDUAL EFFORTS

Third, some very responsible persons here in Congress have made valiant efforts to deal with the inflation and budgetary problems. But the forces in favor of spending and increases are so overwhelming that they have been fortunate to hold their own.

I want to pay tribute to the Senator from Maine (Mr. MUSKIE) and the Senator from Oklahoma (Mr. BELLMON) who as chairman and ranking minority member of the Senate Budget Committee have not only held the line but reduced the budget level somewhat in face of overwhelming odds. Without them things would indeed be very much worse.

The Senator from Washington (Mr. MAGNUSON), as chairman of the Senate Appropriations Committee, has brought in a series of money bills whose totals are below the requests. That has not been easy.

The Senator from Delaware (Mr. ROTH) has stood on the Senate floor and proposed general cuts time after time in the face of the withering fire of other Senators who wish to preserve the present levels of spending or raise them.

And the Senator from Virginia (Mr. HARRY F. BYRD, JR.) has been our Horatius at the Bridge or the Dutch Boy with his finger in the dike as he has questioned bill after bill to determine if it is within the budget restraints. He has been the watch dog of the Senate on this issue.

In spite of all those efforts, and they are good efforts, and these Senators certainly deserve commendation, nevertheless, this is not the kind of vigorous, effective action to hold down the spending that we need.

We have done little more than to hold our own. It is now time to act and act decisively.

It may seem to be a cruel and callous thing to cut programs—for health, education, food stamps, and other worthy efforts. Some will think such actions lack understanding or are mean and base acts. That might be true except for the crisis we face over these unprecedented rises in prices. They must be brought to a stop. We must act. A $25 billion budget cut is the best way to do it.

WHY A $25 BILLION GENERAL CUT

It will be said, it is one thing to propose a general cut of $25 billion but another thing to be specific.

Let me answer that.

First, when we propose general cuts it is said we should cut the particular. When we propose particular cuts, those favorable to the program rise in its defense. One is criticized for doing it either way.

Second, a $25 billion cut in a $500 billion budget, while a dramatic cut which would send a message to the country, is still only a 5-percent cut. As one who has presided over the hearings for the budget requests of 40 or more departments and agencies of the Government, I do not believe there is a single one which could not be cut 5 percent and have a leaner, better, more efficient program.

Third, while I believe we should first set a ceiling of $475 billion and then force the various committees in Congress and the executive agencies to keep within the overall total, I am delighted to propose areas where cuts could be made. Here is a list as openers.

SPECIFIC LIST

Congress could start out by cutting back or cutting out the third Senate Office Building. We could also put a cap on our employees and actually reduce the number through attrition.

HOW TO SAVE $640 MILLION NOW—ABOLISH LEAA

Attorney General Bell's dramatic reversal of his earlier decision to work for the abolition of the Law Enforcement Assistance Administration (LEAA) dramatizes exactly why Federal spending is on a one-way escalator: up-up-up.

At a time when this administration cries out for some way to hold down spending increases, one of its top leaders throws in the sponge in his fight against what he himself has identified as a wasteful program that should be abolished. This is a great disappointment to me, and, I am sure, to the American taxpayer.

And at a time when the inflation rate is soaring into double digits, Mr. Bell suddenly favors pouring $825 million into the discredited LEAA program rather than saving $640 million through its abolition.

I refer, of course, to the Attorney General's flip-flop at last week's Senate hearing on the fate of LEAA. Instead of fighting to disband this spendthrift and sorry agency, Mr. Bell is caving in to those thousands of law enforcement officials who now have been hooked on the multi-million dollar Federal 'fix' and, rather than kick their wasteful habit, want to squander millions more of the taxpayers' money on LEAA's continued existence.

Last year, Attorney General Bell sent President Carter a memorandum, still not made public, recommending that LEAA be abolished. While not taking a position at that time on the other recommendations in the memo, I strongly urged the President to accept Mr. Bell's recommendation on the abolition of LEAA.

I have long advocated that LEAA be abolished. I was one of only two U.S. Senators to vote against LEAA's reauthorization in 1976.

Why? Because LEAA failed miserably to meet its responsibilities for reducing crime and improving the criminal justice system.

LEAA has spent over $6 billion since its inception in 1969. But over that same time span, according to the latest FBI statistics, the crime rate has increased an alarming 43 percent. Clearly, LEAA has been woefully ineffective in trying to solve the problem of crime and violence in America.

One example can illustrate LEAA's inept and wasteful approach to crime reduction. Earlier this year, I gave LEAA my "Golden Fleece" award for a $2 million prototype police car. Because its load of problems exceeded even its load of gadgets, plans for field testing the model car were halted. But this welcome relief came only after $2 million had been drained from the Federal Treasury to pay for this goldplated disaster.

Unfortunately, LEAA has done no bet-

ter in its efforts to improve the criminal justice system. Consider these facts:

State and local courts, with few exceptions, remain overloaded;

Jails and prisons remain run-down and overcrowded; and

Many legal procedures, including sentencing, probation, and parole, remain sorely in need of reform.

Again, one example can illustrate LEAA's ill-conceived and wild-spending approach to improvement of our criminal justice system. Last year, I gave LEAA another one of my "Golden Fleece" awards, this time for spending nearly $27,000 to determine why inmates want to escape from jail. Since it should be obvious to one and all why someone in jail would want to get out, this expenditure was, in my view, a flagrant waste of the taxpayers' money.

Finally, I should point out that the public's perception of the crime problem has worsened during the life of LEAA.

A Gallup poll earlier this year, for example, found that 20 years ago, less than 1 urban dweller in 20 mentioned crime as the city's most important problem, but today 2 in 10 cite crime as the most important problem, with the proportion rising to 4 in 10 in central city areas of the Nation's largest cities.

What all this adds up to is the plain and simple truth that LEAA has failed in its mission.

LEAA is not the answer to this Nation's crime problem. It has not worked. And it has cost the taxpayers billions of dollars.

In the face of this overwhelming evidence, how can Attorney General Bell possibly support the continuation of LEAA, much less favor a 25-percent increase in its budget?

Mr. Bell was right the first time—LEAA should be abolished.

Instead of increasing the Law Enforcement Assistance Administration (LEAA) by 25 percent as the Attorney General has proposed, we should abolish it as he has previously proposed to the President. He was right to begin with and wrong now. Instead of raising the funds to $825 million we should stop the program and save the $640 million it costs.

We should support the President's veto of the military procurement bill and stop the nuclear attack carrier (CVN–71). That ship will cost $2.4 billion. Its aircraft will add another $1.5 to $1.8 billion. Its nuclear escort ships would add another $8.7 billion. There is then the manpower and operating costs. Over 30 years the full costs of the CVN, not counting its escorts, would be $30 billion in uninflated dollars. Yet as our former colleague, the Senator from Missouri, Mr. Symington, said, sinking a big carrier is like hitting a bull in the butt with a bass fiddle.

There is scarcely an agency which could not be cut. There is the big project foreign aid at the State Department which has been a failure.

The Defense Department is pouring out billions in military aid at a time when it should be cut and when it is often used by one ally to fight another ally instead of using it as a shield against the Russians.

The shipbuilding and ship claims scandal is another area where defense funds could be saved.

We pour out massive subsidies for public works, reclamation projects, mineral stockpiles, sugar and wool, and highways, to name only a few.

At HEW there are massive medicaid excesses, more money than can effectively be used at the Institutes of Health, and inefficiency and waste in welfare. A cut in the budget would force us to come to grips with these problems.

And who is to say that the Post Office is run efficiently? Could we not improve our housing programs through better administration? Why not target the funds we now have to the area of great need and cut back on the money we give to affluent communities and areas through general revenue sharing or the community development program?

NASA's space shuttle is absolutely cost-ineffective. It cannot be justified, but we rush ahead with it in any case.

We all know certain education programs could be cut. Impacted aid is only the first that comes to mind.

The National Endowments for the Arts and Humanities have been given a 20-percent increase in funding this year alone and in the past they have seen 33- and 50-percent increases routinely.

Why should college students from well-to-do families draw food stamps? And they do.

Perhaps these programs could be justified in normal times. But these are not normal times. We suffer from the highest inflation rate in our peacetime history.

We should act. We should cut the ceiling on the President's budget by $25 billion. That action would send a message to both those at home and abroad that finally we mean business.

Mr. President, one of the outstanding economists in the country, Paul McCracken, is also a man who understands Keynesian economics, is at the University of Michigan, and served as President Nixon's Chairman of the Council of Economic Advisers.

Mr. President, I ask unanimous consent that an article from the Wall Street Journal for Friday, August 18, by Mr. Paul McCracken entitled "The Cosmetic War on Inflation," which adds detail and substance to many of the points I have tried to make in general, be printed at this point in the RECORD.

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

THE COSMETIC WAR ON INFLATION
(By Paul W. McCracken)

Barry Bosworth's basic trouble is that he has been right. And the rewards in our Babylon on the Potomac for those who insist on speaking the obvious about such unpleasant matters as inflation are not much different from those in ancient times who were disengaged from their heads for bringing to the King bad news from the wars. In Washington, success in Fighting Inflation apparently consists not in such quaint and straightforward things as reducing inflation but in producing pyrotechnics and cosmetics which will persuade the citizenry that there is progress where none in fact is really occurring. Indeed, the danger is not so much that the citizenry will be confused, having themselves demonstrated a considerable capacity for clearheadedness, as that managers of policy will mislead themselves.

The fact is that we are not gaining ground against inflation. While the monthly figures will bounce one way or the other, and we might have a few good readings now, there are persuasive reasons for expecting the basic rate of inflation to continue rising. For one thing the underlying trend since the beginning of 1976 has been upward. It is, of course, true that speaking about a "trend" during a 2½-year period will make the careful statistician wince, and food prices have given the CPI a bad upward push. But a 2½-year period contains 30 monthly observations, and some subgroup of prices (about half of them, in fact) will always be rising more rapidly than the average.

UPWARD, EVER UPWARD

Moreover, the underlying "trend" in labor costs per unit of output during the last two years has also been upward. Apart from erratic quarter-to-quarter wobbles, the underlying rate of increase in unit labor costs has itself been rising about a half a percent per quarter—a track which would bring us to double digit rates by 1979.

And it is not easy to make a persuasive case that labor costs will be rising less rapidly. For one thing we are not getting anything like the gains in productivity, to offset the impact of wage increases on costs, that the economy has historically delivered. Quarterly gains in output per man hour (annualized) have averaged a 1.6% annual rate in 1976, 1977, and thus far in 1978, and even with the strong second-quarter gain in real output, productivity in the nonfarm private sector rose at the rate of only 0.6% per year. In fact, these sluggish gains in productivity now extend back for a decade, strongly indicating that a fundamentally unfavorable structural problem has emerged in the economy.

If there were reason to expect a moderating trend in the rate of wage increases during the year ahead, that would provide some reason for optimism about the price level. This trend is more apt also to be perverse. Next year will give us a heavy schedule of collective bargaining, and this means a disproportionate share of wage increases will be the large first-year, front-loaded adjustments. And the probability that the average size of the overall packages negotiated will be enlarged further is also uncomfortably high.

All of this might, of course, be consistent with a declining rate of inflation. Some major items that consumers buy might experience a sharp decline in their prices—though if this were food, while one part of government tried to take credit for progress against inflation another part would be busy viewing with alarm the low level of farm prices.

Rising labor costs also might not fully express themselves in the price level if profit margins were to be squeezed further. Reported profits are now double those of a decade ago, and they have increased almost 50% in the last five years. Here is, however, an illustration of the extent to which inflation itself can confuse facts. With a proper accounting for current costs, which conventional procedures fail to do, true profits after taxes are up only one-third from those of a decade ago, which means that in real terms they are down. While some businessmen prefer the comfort of the misleading conventional figures on profits, they

could be expected to keep a short leash on their capital budgets if profit margins were to decline further.

After all of the rhetoric about inflation's being the dominant economic problem, a view which surveys show consumers share emphatically, we are losing ground.

What is the problem?

The problem is that our strategy for reducing the rate of inflation is, to borrow an apt phrase from D. H. Robertson, "a grin without a cat."

While there is plenty for the profession to be humble about when it comes to the economics of inflation, there is one conclusion that is supported both by logic and the facts of historical experience. The rate of inflation will not come down so long as pressures of demand pushing on supplies are strong enough so that higher prices and higher wages have no adverse effect on sales volume and employment. Indeed, holding prices and wages below these market-clearing levels by some sort of brute force or ad hoc process would produce the queue-line economy.

The rate of inflation will embark on a downward trend when the result of posting inflationary price increases or extracting excessive wage increases is a painful loss of sales and employment. Ours is the only major industrial country that has not yet mustered the will to face this basic fact of economic life. And the OECD secretariat now projects the 1978 rise in U.S. labor cost per unit of output in manufacturing to be above the average for the "Big Seven" countries, and significantly lower than the increases projected only for the U.K. and Italy.

That we have not really been willing to bite this bullet is indicated by the demand management (fiscal and monetary) policies that have been deployed. The upward pressure the budget (fiscal policy) exerts on the economy is equal to the rise in expenditures plus the revenue value of any net reduction in tax rates) which indirectly has an expansive effect by increasing after tax incomes). In the period from 1958 to 1965, when the price level was quite stable, this measure of "fiscal pressure" averaged about 1% of GNP. Since 1965 it has been 2% to 3%, and would be close to 3% in 1978–79.

This same fear of facing fundamentals seems to be evident for monetary policy. With the emergence of rates of monetary expansion during the first quarter consistent, if sustained, with more discipline on the price-cost level, nervous protests were heard about the adverse effects on the economy. Those protesting presumably were calling for more rapid rates of monetary expansion (which is the only way the Federal Reserve could relieve pressures on interest rates), which would set the stage for a more rapid and inflationary expansion, which would in the end produce the even higher interest rates that are always the accompaniment of higher rates of inflation.

ANOTHER PART OF THE PROBLEM

A part of our problem is that we have also been reluctant to be realistic about how high the economy's operating rate could be pushed before pressures would begin to build. With the unemployment rate at 6% and the operating rate in manufacturing at only 84% of capacity (according to the Federal Reserve), plenty of slack seemingly remains available to assure that more demand would translate into employment and output rather than higher prices and costs.

This is far too simplistic. After a decade in which the economy's operating rate has been low, the capacity situation and labor markets are uneven, and bottlenecks are bound to develop at lower average operating rates than after a sustained period adjusted to performing closer to overall capacity. This is particularly evident in the labor market, where lack of skilled and experienced labor may impede that expansion of output which would provide jobs to those who are unemployed.

There is empirical evidence that the economy is in the pressure zone now. The proportion of companies reporting slower deliveries is now in the range reached in late 1972, or 1969, or 1965–66. And the incidence of help-wanted advertising is now higher relative to the labor force than at all cyclical peaks during the last decade (including, even 1969).

When we are unwilling to face the fundamental realities of the economy and prefer to deal with symptoms and cosmetics, we should not be surprised that we are losing ground against inflation. Washington should not be confused about this. The citizenry is not.

Mr. PROXMIRE. Mr. President, Dr. McCracken points out in his article:

The upward pressure the budget (fiscal policy) exerts on the economy is equal to the rise in expenditures plus the revenue value of any net reduction in tax rates (which indirectly has an expansive effect by increasing after tax incomes). In the period from 1958 to 1965, when the price level was quite stable, this measure of "fiscal pressure" averaged about 1% of GNP. Since 1965 it has been 2% to 3%, and would be close to 3% in 1978–79.

Dr. McCracken points out that our anti-inflation war is like a "grin without a cat." There is just no substance to it.

THE GENOCIDE CONVENTION AND THE ENDANGERED SPECIES ACT

Mr. PROXMIRE. Mr. President, in one of the more interesting debates of this session, the Senate a few months ago reconsidered the Endangered Species Act. That act was very much in the public eye, because of a recent Supreme Court decision. When it seemed likely that the construction of a certain dam would destroy the habitat of the snail darter and lead to its extinction, the Court ruled, and rightly so, that the construction of the dam be halted.

Mr. President, I have consistently supported legislation to prevent the destruction of animal and plant species, and I am happy to say that Congress has once again shown its concern by reauthorizing the Endangered Species Act. But I cannot help but notice a certain ironic inconsistency in our actions.

Mr. President, is it not ironic that, on the one hand, we have consistently voted to protect the existence of groups of animals and plants, and yet for 30 years we have refused to ratify a treaty that would protect the existence of groups of human beings? That is what the genocide treaty would do. It would prevent the extermination of an entire group of people, the way Hitler tried to exterminate the Jews in Europe and, of course, the way the Cambodians are being exterminated and the Ugandans are being exterminated. Yet, we have not ratified that treaty.

The Genocide Convention has enjoyed the support of every President since Truman. Over the years, it has garnered the signatures of 83 nations. As soon as possible, we should add another signature to that multitude. We should ratify the Genocide Convention.

But ratification is not enough. The convention is written so that each party outlaws genocide within its own state, and then the convention binds it to uphold that law. Once again, is it not a grave inconsistency that, although we have laws to prohibit the genocide of wildlife, there is no domestic law that prohibits the genocide of human beings? Of course, we have laws against murder. But genocide is a crime more insidious than murder. The cold, premeditated destruction of human beings simply because they belong to a national, ethnic, racial, or religious group is an entirely detestable act. Genocide is the gravest crime of which man has shown himself capable.

The route we must take is clear. We must eliminate the inconsistency that allows us to protect wildlife and not human life. We must make it domestic law and international law that genocide is a punishable crime.

CONGRESSMAN OBEY'S MASTERFUL WORK IN THE HOUSE

Mr. PROXMIRE. Mr. President, a bright, young Congressman from Wisconsin has done a superb job in an unpopular cause in the House this year.

I happen to disagree with him on the issue, but that does not dampen my enthusiasm for the remarkably able work he has done. Congressman DAVID OBEY has gone to work on behalf of the President's embattled foreign aid program, and thanks in a big way to him, the program seems headed for success in the House.

Yesterday, the Milwaukee Journal published an article reporting on the astonishing job Congressman Obey has done in this regard, and I ask unanimous consent that it be printed at this point in the RECORD.

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

CARTER LAUDS OBEY FOR VICTORY ON FOREIGN AID

(By Frank A. Aukofer)

WASHINGTON, D.C.—In the humid early morning hours one day last week, Rep. David R. Obey went to Bob Beckel's home for a celebration. Obey had some drinks, played his harmonica and listened to Willie Nelson records.

A few hours later, Beckel went to work at the White House and dropped in to see President Carter. He walked in grinning.

"Dave Obey did a magnificent job on that," the president commented. "We owe him a great deal."

Carter was talking about House approval the previous day of a foreign aid bill totaling nearly $7 billion. It was a hard fought, major victory for the beleaguered administration, and Obey, by all accounts, put it together.

Beckel is a special assistant to the president for congressional relations, specializing in foreign policy.

"He was the single biggest key to our suc-

cess," Beckel said of Obey. "We just never expected to emerge with a bill that was even viable this year, and here we've wound up with the best foreign policy bill to emerge from the Congress in over a decade."

Foreign aid is never popular, especially in an election year. Moreover, Obey—the second ranking Democrat on the foreign operations subcommittee of the House Appropriations Committee—was in the awkward position of bucking his own chairman.

Subcommittee Chairman Clarence Long (D-Md.) wanted to cut $584 million from the bill, but Obey managed to defeat him with a substitute to cut just $25 million.

Earlier, to almost everyone's surprise, administration forces narrowly (203 to 198) beat an amendment that would have prohibited indirect U.S. aid, through international banks, to Cambodia, Uganda, Laos and Vietnam.

Last year, a similar amendment passed 295 to 115, but was later knocked out in conference committee. In defeating the amendment this time, Obey and other administration backers turned around nearly 100 votes.

William P. Dixon, one of two U.S. directors at the World Bank, said the defeat of the amendment was critically important because the bank could not accept money under such restrictions. If it did, he said, every one of the bank's 133 member countries could wind up enacting political restrictions.

DATES TO JANUARY

Dixon, a former Milwaukee lawyer and aide to Rep. Henry Reuss (D-Wis.), ran Carter's Wisconsin campaign in 1976. Along with Carter aides, Dixon worked to drum up support for the foreign aid bill. He, too, called Obey the key to victory.

Obey's involvement dates back to January, when he met with Carter to start planning an approach to the bill.

In February, he produced a memorandum for Vice President Mondale, outlining a strategy and the sort of bill he thought was possible.

"That became the basic document for our strategy," Beckel said. "We met virtually on a weekly basis. He did all the strategy; he led the battle in the subcommittee and the full committee, and then on the House floor."

Obey said the final bill came out about the way he expected, except that the administration—in defeating the restriction on indirect aid to the four countries—won more than he thought it would.

"The administration did a superb job on this one," Obey added. "They pulled in the business groups and unions like the steelworkers and church groups. We were 100 votes down on the bank amendment when we started our count."

SUPPORT IS NEW

The bill did end up with restrictions on indirect aid to Cuba and Vietnam, but Obey said he expected those provisions would be eliminated in conference committee with the Senate.

Obey said this was only the second foreign aid bill he had even voted for, but that this was because foreign aid is changing.

"It used to be fundamentally military aid," he said, "with a big share to military dictatorships. This bill is prudent financially. We made a 20% cut across the board in military training and military credit sales. . . .

"I think it's important to remember that the per capita cost, the cost to every person in the country, is about 57 cents a week—the price of a pack of cigarettes. I think that's a pretty small price to pay for the stability and influence it buys in a world in which 70 million people are starving every year. It's morally essential."

Besides, Obey said, the money does not go directly overseas. He said studies had shown that 80% of it was spent in the U.S. providing jobs for U.S. workers.

WISCONSIN SUPPORT FOR PRESIDENT CARTER

Mr. PROXMIRE. Mr. President, the big political story this year has been the fall in the popularity of President Carter. But in the last few days there has been some interesting evidence of new support for the President.

The Milwaukee Journal, generally considered one of the outstanding papers in the country, published an editorial recently calling for a letup in the carping criticism of the President and pointing to some of his accomplishments.

The Milwaukee Sentinel, which often has been critical of the President, this Sunday led off with an editorial headed "Carter Shows Grit, Astuteness in Veto," in praising the President's veto of the military authorization bill to stop the aircraft carrier.

Mr. President, I ask unanimous consent that both editorials be printed in the RECORD.

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

LET'S GIVE CARTER MORE ELBOW ROOM

A national magazine reports that Washington is beginning to hear talk of a public backlash against criticism of President Carter by congressmen and the media. It's about time.

The president has been subjected to relentless scrutiny and to ridicule far out of proportion to the rebukes he has earned. And he has received scant recognition for the things he has done right. The treatment isn't just crippling him politically. It is also diminishing the office of president, interfering with the passage of needed legislation and impairing America's ability to command respect abroad.

Of course, Carter has made mistakes, as we have noted many times in these columns. But all presidents err and some have made far more serious blunders than has Carter.

He has not led the country into war or even into any foolish foreign adventure. In fact, contrary to the usual criticism of his foreign policy, he hasn't done badly overall in dealing with other nations.

Nor has he precipitated an economic recession. Business expansion has continued and unemployment has dropped sharply since he took office.

No major scandals have marred his administration. Bert Lance's publicized transgressions took place before he became Carter's budget director. Moreover, Lance's banking manipulations were nothing on the order of Spiro Agnew's felonious tax evasion or Richard Nixon's complicity in the obstruction of justice. Carter's chief mistake was to keep defending Lance ("Bert, I'm proud of you") after Lance's actions were obviously indefensible. Yet Carter is not the only president ever to let loyalty to a friend interfere with good judgment.

Moreover, despite all that has been said about broken promises, Carter is still roughly pursuing the course that he charted in his campaign. Changing circumstances have caused him to abandon some goals, but no president should be too inflexible to adapt to change and reality. To be sure, Carter has had limited success getting his programs through Congress, but Congress seems more to blame for that than the president.

Carter is often depicted as incompetent, but the charge is off the mark. Old Washington hands such as Democrat Clark Clifford and Republican Melvin Laird rank Carter as very bright. He masters both essentials and details very quickly and remembers what he has learned. Inexperienced in the ways of Washington? Yes. Too tolerant of a poorly organized staff? Yes, until recently. But incompetent? No.

Yet Carter's approval rating in the public opinion polls have plummeted lower than President Ford's did after his untimely pardon of Nixon. Even Nixon's popularity ratings did not drop below Carter's present ranking until Watergate became very heavy.

Carter's depressed popularity can be partly attributed to a variety of factors—a collection of small and moderate mistakes by the president and his aides; a collapse of voters' exaggerated expectations (which candidate Carter had unduly inflated), general malaise in a public that is not galvanized by any crisis or overriding issue.

These things, however, do not fully explain Carter's image problem. Part of the trouble must be blamed on commentators who pick at him incessantly without mentioning his strong points; on congressmen who won't say a kind word about him even when they agree with his policies; on Washington veterans who still resent his presumptuous capture of the White House without their advice or help.

Of course, some of that friction was inevitable. Carter won by running against the system and could scarcely expect the establishment to flock to him immediately. But he has been in Washington 19 months now. It's time for the regulars to quit freezing him out.

As Lyndon Johnson liked to say of himself, Carter "is the only president you've got." Barring tragedy, he is likely to be the only one until at least January, 1981. Although those who seriously disagree with him on policy are entitled to oppose him, even they should permit him some elbow room. It isn't simply unkind or impolite to subject a president to undeserved derision. It is also foolish.

So far, Carter has been remarkably cool under attack, but sooner or later the unfair needling may get to him. It might even begin to affect his judgment, to push him in dangerous directions.

Even if Carter keeps his composure, the essential stature of his office can be withered by unbalanced criticism. We do not yearn for a revival of the imperial presidency, but the pendulum may have swung so far that presidential authority—a crucial element of leadership—has become too fragile.

In any case, it's certainly time to quit cuffing Carter around just for the heck of it. He deserves better, and the country cannot afford to have another crippled presidency.

CARTER SHOWS GRIT, ASTUTENESS IN VETO

In terms of both policy and politics, President Carter made a smart move in attempting to sink congressional plans for a nuclear powered aircraft carrier which he opposed.

In order to do so, Carter had to take the dramatic step of vetoing the entire $37 billion defense procurement authorization bill. Congress now has the choice of giving in to the president or holding up this substantial part of the defense budget.

It looks as if the president will be a winner in this battle, as well he should be. If Congress tries to hold up other vital defense

funding by insisting on spending an extra $700 million (the approximate difference in cost between the nuclear craft and the conventionally powered carrier Carter preferred) members had better think up some good excuses for the voters before election time.

Some critics are already berating Carter for creating still another confrontation with Congress. That isn't the case. The president worked hard to obtain a compromise on the issue before it came to a vote in the House, advocating the conventionally powered flattop instead of the nuclear ship. Despite his pleas, however, the proposal met defeat by an unexpectedly large margin.

Carter's basic contention is that the supercarrier is too vulnerable and that future Navy policy should involve the use of smaller and more varied vessels. As commander in chief of the armed forces, he should have a strong say on this matter and the veto was his only recourse if his policy was to survive.

The situation, as many have noted, also offers the president an opportunity to come off as a strong chief executive by challenging a belligerent Congress on a major issue.

Congress, with its obstinate refusal to bend to compromise, played right into Carter's hands. And in using the veto as a trump card, in this instance, the president shows not only strength, but a degree of political astuteness which should gain him some congressional respect in the future.

QUORUM CALL

Mr. PROXMIRE. Mr. President, I yield back the remainder of my time, and I yield the floor.

I suggest the absence of a quorum.

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

The assistant legislative clerk proceeded to call the roll.

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

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

COMMITTEE MEETING AUGUST 23

Mr. PROXMIRE. Mr. President, I ask unanimous consent for the Subcommittee on Energy, Nuclear Proliferation and Federal Services to hold a business meeting on Wednesday, August 23, 1978, at 2:30 p.m., for the purpose of marking up S. 3411, S. 3412, and S. 1493.

S. 3411 and S. 3412 deal with the GAO, and S. 1493 deals with energy impact assistance.

I understand that this matter has been OK'd on both sides of the aisle.

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

COMMITTEE MEETING

Mr. PROXMIRE. Mr. President, I ask unanimous consent that the East Asian and Pacific Affairs Subcommittee of the Committee on Foreign Relations be authorized to meet during the session of the Senate today to hold a hearing on the current situation in Indochina.

This matter has been approved on both sides of the aisle.

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

QUORUM CALL

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

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

The assistant legislative clerk proceeded to call the roll.

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

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

REPRESENTATION OF THE DISTRICT OF COLUMBIA IN CONGRESS

The ACTING PRESIDENT pro tempore. Under the previous order, the hour of 10 a.m. having arrived, the Senate will now resume consideration of House Joint Resolution 554, which will be stated by title.

The legislative clerk read as follows:

A joint resolution (H.J. Res. 554) proposing an amendment to the Constitution to provide for representation of the District of Columbia in Congress.

Mr. HATCH. Mr. President, I ask unanimous consent that Dan Livingston, of my staff, have the privilege of the floor during the pendency of this bill and any votes thereon.

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

Mr. KENNEDY. Mr. President, I ask unanimous consent that Tom Southwick be accorded the privileges of the floor.

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

Mr. HATCH. Mr. President, we were privileged last week to hear from the proponents of House Joint Resolution 554, who eloquently spoke of their commitment to "human rights" for the residents of the District of Columbia. I would like to respond to some of the points raised in regard to this important question now facing us.

Many of the proponents of what is, in my view, a poorly drafted amendment, employ the phrase "taxation without representation" to illustrate the injustice which residents of the District supposedly endure. This phrase is obviously intended to cause Americans today to draw a parallel between the conditions in the Colonies at the time of the Revolutionary War and the present situation in Washington. Although a noble battle cry in the struggle for our national independence, for the purpose of this debate it serves to lay yet another blanket of rhetoric upon an issue already obfuscated by emotional slogans.

To compare the status of the American colonies in British Parliament in the 18th century to the status of the District of Columbia today is to sidestep the constitutional problems created by the proposed amendment, the problems which stem from the fact that the District of Columbia simply does not possess the attributes of statehood required by our federal system. Moreover, such an analogy ignores the special provisions which have been made to attend the needs of the people of the District of Columbia. The District is the only city in the United States with a committee of the House of Representatives and a subcommittee of the Senate wholly devoted to its needs. Far from a neglected and oppressed distant land, it is rather the seat of an ever expanding and prospering National Government.

I do not know whether "prospering" is the correct word because we certainly have a Government that is tremendously in debt right now. By September of 1979, we will be in debt $86.9 billion. The interest against that debt is more than the whole Federal budget was back around 1945, just the interest against that debt which today is about $56 billion a year. People think we owe that interest only to ourselves, but of course we owe it to banking institutions and to other lenders all over the world, including many American citizens.

I was just reading today in the Wall Street Journal about how our dollar is indebted throughout the world and how much we owe to foreign banking concerns which have been purchasing our dollars in order to bolster the American dollar because of the profligacy of our Federal Government in this Federal welfare mentality that we have right here in Washington, D.C.

So, as I have said, far from a neglected and oppressed distant land, the District of Columbia is rather the seat of an ever-expanding and, if not prospering, at least money-manufacturing National Government and reaps millions upon millions of dollars in benefits as a result. Many of our Senators and Representatives reside here as well and are thus as acutely aware of the problems of the District as they are of the areas they were elected in.

In terms of per capita spending by the Federal Government, the District received nearly four times that of any other State except Alaska. New York City is the only city to receive more in Federal aid. Clearly, this is a city whose residents have not been ignored by the Government which resides within its boundaries. Thus, the situation which gave rise to the phrase "Taxation without representation" is in no way comparable to the one we are now discussing.

I might also add that, when the early colonists complained about taxation without representation, they were governed by a distant land, governed by people who did not really care for them, governed by an imperialist parliament which literally did not take into consideration their needs and taxed without any representation in that parliament.

Mr. President, I ask unanimous consent that the time under control of Senator SCOTT be transferred to me until he arrives.

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

Mr. HATCH. In fact, this city is one

of the best kept and most well financed cities in the world today as a result of the taxes from people all over this country, certainly not here, because only about 29 cents of the taxes here on every dollar pay for the needs of the District of Columbia.

Those who favor House Joint Resolution 554 have accused opponents of being motivated by fear of the "four toos" that the Senators in the District might be "too liberal, too urban, too black, and too Democratic." Such rhetoric completely ignores the serious constitutional flaws which this amendment contains.

Mr. President, I suggest that attaching motives to your opponents which they do not possess undermines the serious purpose of what I hope will be a meaningful debate.

On the other hand, I think there is no question that this is a Federal enclave and a large percentage of residents within the District of Columbia do receive their income and support either directly or indirectly from the Federal Government and indirectly from taxpayers throughout this country.

The District is the only city in the United States with a committee, as we have said, of the House of Representatives and a subcommittee of the Senate wholly devoted to its needs.

As I have repeatedly stated, I am in favor of giving every American citizen the right to vote. There has been no sentiment expressed on my part or on those of my distinguished colleagues who have risen in opposition to this amendment to the effect that those Americans who live within the Federal enclave should not be allowed to participate in our electoral process. As you know, they do except in the area of electing Senators and a Congressman who can vote. The problem, however, lies in the nature of the amendment that is before us, rather than in the intent. My objections stem entirely from the poorly-drafted provisions of House Joint Resolution 554 and the new problems these poorly drafted provisions would create.

In addition, I have lots of problems with the fact that this amendment attacks the very basic foundation of our Federal Republic.

When our Founding Fathers established this country, they were concerned about the strength of a central form of government. They were concerned about putting too much power in a monarch or too much power in a select few people who might govern us, and so they wanted to diffuse this power by establishing various States, 13 at the beginning of this country, and these various geographical entities would determine, through representatives sent to Washington, the limits of that power in Washington. And if the representatives did not determine and circumscribe the limits of the central form of government, then two other ways we have provided for doing it.

No. 1, the Executive, who himself could circumscribe the central form of government, and a number of Presidents of the United States have done just that by not allowing the Federal Government to expand to such unprecedented dimensions as we have today. A number of them have done just the opposite, and we have had, in essence, 42 of the last 46 years of one-philosophy rule, and that is building bigger and bigger and greater and greater government in Washington, D.C.

That was contrary to the ideals of the early Founding Fathers who were afraid of too central a government, and were reacting against too much monarchial control, and so in addition to the President and Congress, they established the Supreme Court of the United States which itself has been continually expanding the power of the Federal Government but on occasion curtailing that power as it should.

As I have said before, the proposed amendment treats three different kinds of voting procedures—electing Members of Congress, electing the President and Vice President of the United States, and ratifying amendments—as one and the same, allowing residents of the District to participate in direct election of the latter two items, privileges which no Americans now possess, including the residents of the District of Columbia. In other words, the District, unlike the States, has no legislature, and the resolution now before us would seem to give District residents the right to ratify or reject constitutional amendments by direct election or direct ratification.

No other citizen in this country has that right. Although section 2 of this amendment vaguely speaks of "The exercise of the rights and powers by the people of the District and as shall be provided by the Congress," it is not at all clear which politcal body would exercise those powers.

If ratification is determined "by the Congress" the Congress suddenly has new power to ratify the amendments it proposes in direct contradiction to the explicit language of article IV of the Constitution.

Similar problems arise with the question of electoral votes which are always cast in the form of electors chosen by State legislatures. Again the District has no State legislature. Congress does not possess the authority to appoint electors, so we must assume that this proposed amendment would endow District voters with the right to choose the President and Vice President by direct popular vote, which no other State can now do.

There are those in Congress today and in the Senate today who would like to have direct election of the President, in spite of the fact that our electoral college system, our system of electing the President, has worked well ever since the beginning of this country, and there are arguments that can be made for direct election of the President.

But the fact of the matter is that as of right now we do not have that, and I think there are very good reasons why we do not have it. I, for one, hope we never have it, because I do believe that our Founding Fathers, in their infinite wisdom, and I believe they were inspired in formulating the Constitution, but in their infinite wisdom, decided to have the electoral college.

All I can say is that as the Federal Government is the single largest interest group in the District, the Senators representing this city would be little more than spokesmen for that interest. They would not face the competing interests which are found in the States themselves, which must be balanced against the national interest.

I would again like to emphasize the fact that my objection has nothing whatever to do with whether Senators from the District would be "too liberal," "too urban," "too black," or "too Democratic." My objection simply focuses on the fact that this amendment ignores the intent and, I think, the intent was a wise one, of the framers to have the seat of the National Government in a neutral enclave, and it would obviously lead to further overrepresentation of an expanding Federal bureaucracy.

When the Founding Fathers decided we would have a representative form of government rather than a monarchical form of government or a super strong central form of government, which, it seems to me, we are now evolving into, and to which this proposal would give even more impetus, that they did so because they realized that the States themselves are geographical entities with diverse populations, many cities with differing intents and viewpoints, residing in counties with diverse interests such as agricultural, mining, manufacturing, and so forth, and that there would be a diversity of representation from each State rather than a solidarity of representation.

In hardly any State in our country today is there a complete solidarity of viewpoint politically, philosophically, morally, ethically, or otherwise.

So when a Senator comes back here to represent his State and his country, this Senator represents a diversity of interests, and he has to balance those diversities of interests in order to be a good Senators. He has to think of all the problems, not just, if he is liberal, establishing a stronger central form of government, establishing a greater bureaucracy, to interfere with all of our lives which is, of course, the hallmark of those, it seems to me, who are called "liberals" today.

They have been the people who have saddled us with this almighty Federal Government that is telling us what to do, when to breathe, how to act, what to fish for, what kinds of plants to establish, and you can go on and on and on.

The Federal Government has interfered so much that the cost of living has escalated to the point where I wonder how people who live on the average income in our society get by. Sometimes I think there is a dividing line where many people feel it is better to be on welfare, better to be on transfer payments, than it is to get out and work, even though

they can have a job and are capable of working.

Not too long ago I met a man who runs a series of dry cleaning shops in this area. He has his people trained, they are essential to his business. It is a year-round business. It is not just a seasonal business. But every spring about 15 percent of his employees in this area just quit.

Now, ordinarily when you quit a job you are not entitled to transfer payments. You are not entitled to unemployment insurance. You are not entitled to some of these benefits that we so often take for granted today.

But these people get them because nobody is going to reject them. Nobody is going to make them stand up and be counted.

He goes down to the unemployment office and says, "Look, I need all these people, I can give them jobs, I will keep them working, and they will be paid well. Why should they just quit and still go on relief or welfare or unemployment compensation?"

He has received some very deaf responses; deaf ears are turned to him, and that is because of some of the liberal central government mentality that continues to demean many citizens in our society by keeping them on welfare and taking away their responsibilities and their obligations to work, and the self-esteem which comes from it.

I remember not too long ago we were arguing about the minimum wage and what we wanted to do was to have a youth opportunity wage differential to give at that time 42 percent of our young black youth an opportunity to work. What we were going to do was allow employers, as an incentive to hire these young people, pay 85 percent of the prevailing minimum wage which, of course, has been expanded from last year, from $2.30 an hour to $2.65; the first of this year $2.90, then $3.15, and then $3.35 an hour. All it would do would be to give them the right, as an incentive, to hire, to pay 85 percent of the prevailing minimum wage for a 6-month period. That bill was shot down in the United States Senate.

Three years ago I filed a bill called the job opportunity bonus bill. That bill is to give people who are structurally unemployed, basically unemployable people, the opportunity of working. What it would do would be to give any employer, as an incentive, a job opportunity bonus at the end of a year if he will employ the structurally unemployed people for a year or better and train them. At the end of that year the employer would be entitled to a job opportunity bonus of between $2,500 and $4,000.

People say, "Well, are you not using the Federal Government to do that?" That is right. But the fact is it will not cost us a dime because we will be taking these people off unemployment rolls, these people who are formerly unemployable, and giving them opportunities to get out and work, and giving them opportunities that they otherwise would not have because, as you know, when a young person is unemployed for 2 years he then becomes unemployable.

You know I am finding that the liberals here in the Congress are not interested in this type of solution because they owe an obligation and fealty, it seems to me, to certain special interest groups that want to keep the marketplace, as they want to keep the employment marketplace, completely monopolized by their particular groups, and not allow the competition that can arise in a free enterprise system, in a free economic system, that is allowed to work as this system should be allowed to work.

Well, I do support the idea of the District of Columbia residents having the right to vote for representation. I do not think that is the issue that needs to be debated. I think they ought to have that right.

But, on the other hand, I notice that some of the liberals here in Congress who know darned well that this amendment has almost no chance at all of being ratified by 38 States—it will be ratified by a number of States, but I think almost anybody would admit it has a very difficult time being ratified by 38 States. It is a good political issue, I suppose, if you can convince people that the four "too's" really are accurate.

I suppose that instead of solving the problem as it could be solved by either retrocessing to Maryland and allowing Maryland to make that decision—I suspect that Maryland would make the decision. I suspect the people would be glad to have these citizens paying taxes into Maryland and participating in Maryland. But nobody will know until they are given the opportunity, which could occur in a matter of a few years rather than the 7 years it would take here, if at all, and the odds are it will not be at all.

So for all the liberality, for all of the desire to give District citizens a right to vote, this simply is not the way to do it. It is a nice political approach, but it is not the way to do it.

I suggested that if you do not like the retrocession idea then why do we not consider allowing the residents of the District of Columbia voting anywhere they want to? They can vote in the State of their choice or if we think that is unconstitutional or unsound let us give District of Columbia citizens the right to vote in the State of their last residence or the residence of their ancestors.

Mr. President, these are issues that I think could be resolved. I think we could have them resolved in a very short period of time, rather than in the lengthy period of time, probably without success, that this approach involved.

Nevertheless, as I say, there is a seeming lack of interest among the liberals to have a short term, good approach that would solve these representation problems for the residents of the District of Columbia.

I think it is pretty important to note that Washington, D.C., is steadily decreasing in population. As a matter of fact, it appears that the number of blacks is decreasing, in proportion to the number of whites, to the point where some are indicating that the proportions will be about 50–50, blacks and whites, probably by the year 1990, certainly by the year 2000. I do not know whether that is true or not, but there is an argument which can be made along those lines.

I think it is important for people to realize that Congress has, through its committees, the committee in the House and the subcommittee in the Senate, made great clinical efforts to keep the District of Columbia in line from a spending standpoint, especially since this Government spends about a billion dollars a year for the District of Columbia, for Washington, D.C.

Let me give you some illustrations. Actually to be appropriated for fiscal year 1979 for the District of Columbia, the appropriations bill demands $1,364,781,500. That is what it is going to take. We have a temporary commission on financial oversight of the District of Columbia that costs us $3 million a year. We have a $238 million Federal payment to the District of Columbia, $10,300,000 for payment in lieu of reimbursement for water and sanitary sewer services furnished the facilities of the U.S. Government; $9,900,000 for repayment of RFK Stadium bonds, added by the Senate committee. As to the division of the money, it has provided for payments such as $1,287,291,500 for general operating expenses, including $265,961,200 for public safety, $283,605,400 for education, $18 million for recreation, $283 million for human resources, $78 million for transportation, $72 million for environmental services, $69 million for personal services, $323,000 for settlement of claims and suits, $120 million for repayment of loans and interest, and $77 million for capital outlays.

The provisions of oversight which Congress has exercised on the District of Columbia are as follows:

First. All vouchers covering expenditures of paid by check issued by designated disbursing official; second, when amount is specified for particular purpose, amount to be considered maximum amount for that purpose; third, funds, when authorized or approved by Mayor, to be used for privately owned conveyances used on official business at 13 cents per mile (but not to exceed $45 per month) for automobiles and at 8 cents per mile (but not to exceed $30 per month) for motorcycle, except that 113 (including 18 for veneral disease investigators) such automobile allowances at not more than $715 per year.

Fourth, funds to be used for travel expenses and dues to organizations concerned with District of Columbia Government work when authorized by Mayor; fifth, no funds to be used in any way with regulation or order of Public Service Commission regarding installation of meters in taxicabs, and so forth; sixth, no funds to be used for payment of rates for electricity for street lighting in excess of 2 cents per kilowatt-hour.

Seventh, funds to be used for payment of any judgment entered by any court against District of Columbia Government except requiring payment for electricity for street lighting at rates in excess of 2 cents per kilowatt-hour; eighth, funds to be used for public assistance from District of Columbia; ninth, funds available for obligation only in fiscal year 1979; tenth, no funds to be used to pay for chauffeur or driver for any District of Columbia officer or employee, except for Mayor, chief of police, and fire chief with $12,000 per year limit on such payment.

Eleventh, pay for overtime or temporary positions may not exceed 4.5 percent of total funds; twelfth limit on authorized travel and per diem costs outside District of Columbia, Maryland, and Virginia to be $225,000; thirteenth, sets personnel ceilings as follows: (a) 37,239 full-time employees appointed to permanent, authorized positions and (b) temporary or part-time employees limited by month to same so employed in same month last fiscal year; fourteenth, no funds to be used for partisan political activities, except school buildings may be used by any community group during nonschool hours; fifteenth, provide annual District of Columbia budget for fiscal year 1980 to be sent to Congress by February 1, 1979; sixteenth, no funds to pay employees whose names and salaries are not available for public inspection.

Seventeenth, no funds to be used for publicity or propaganda, and so forth, dealing with lobbying legislation before Congress or any State legislature; eighteenth, no funds to be used to supplement salary of CETA employee if effect is to provide salary in excess of GS–9, step 1, level (added by Senate committee); nineteenth, no funds to be used to supplement salary of CETA employee if that employee has been CETA employee for total period in excess of 24 months (added by Senate Committee).

Twentieth, no funds to be used to supplement salary of CETA employee who works for an elected official or who works on city council committee staff (added by Senate committee); twenty-first, no funds to be used to supplement salary of CETA employee hired subsequent to passage of bill if that CETA employee is to be assigned to any agency of city government that already has CETA employees in number in excess of 10 percent of its appropriated employment base, except not applicable to agencies with 10 or fewer employees (added by Senate committee); and, twenty-second, provide last four provisions dealing with CETA employees to become inoperative on date of enactment of CETA Amendments of 1978.

This is an incredible degree of control which Congress, both the Senate and the House of Representatives, exercises over the District of Columbia. Why have they wanted to do this? Is it because Congress is vicious, and just wants to mistreat D.C. citizens?

The reason that Congress keeps all these controls is that it has got to. But where do the controls go when you have two Senators and a Representative from a city?

The Founding Fathers never intended cities to become States. They never intended a city to have two Senators. As a matter of fact, the reason why we have Senators is so that they can represent geographical areas with diversity of interests, and represent the whole country as well, so that we have a chance of having people of diverse philosophical interests here in the Senate, and it is not all one point of view, so that we will have true and effective debate in the U.S. Senate. Not cities. It is ludicrous to say that New York will now have a right to argue that it should have Senators. My goodness, why is that so ludicrous? There are 8 million people in New York, or approximately that many, better than 10 times the number of people in this city. I am sure a lot of their boys got shot up in the wars, also.

Why should New York City not have Senators so its citizens can have their interests represented? It is ludicrous to argue that, and yet is it, in light of this amendment? If the Founding Fathers intended cities to have Senators, they would have provided for that. They did not intend them to have Senators; they intended geographical States, with diversity of interests, to have Senators, so that we would have diversity of interests in the U.S. Senate.

That is a tremendous difference.

Some have said here on the floor of the Senate that those who argue against ratifying this amendment giving the District representation in the Congress do so out of a fear that the new Senators may be black. I, for one, would like to see more black Senators here. I do not think it would hurt this body one bit. As a matter of fact, it would be a good thing for this country. Those fears are without justification. Besides, there is no certainty that D.C. Senators will always be nonwhite. Even if blacks are elected, there is no reason to believe that they would not represent the District's white population, which is increasing.

Granting voting representation to the District would demonstrate, it seems to me, this Nation's commitment to equality in human rights. And yet, if the District were to have two voting Senators, without, at the same time, having the attributes of statehood, I think it would be a denigration of the rights of the sovereign States throughout this country. That is something to think about.

It would be contrary to the intent of the framers of the Constitution, as it was the intent of our Founding Fathers, that the seat of the National Government be located in a special area, set aside for that purpose only, outside the jurisdiction of any State, secure from harassment and free of entangling interests. Accordingly, they made provision for the establishment of a Federal district over which the Congress would have exclusive legislative authority and plenary power.

Clause 17 of article I, section 8, was referred to by James Madison in Federalist No. 43 as follows:

> The indispensable necessity of complete authority at the seat of government carries its own evidence with it. It is a power exercised by every legislature of the Union, I might say of the world, by virtue of its general supremacy. Without it not only the public authority might be insulted and its proceedings interrupted with impunity, but a dependence of the members of the general government on the State comprehending the seat of the government for protection in the exercise of their duty might bring on the national councils an imputation of awe or influence equally dishonorable to the government and dissatisfactory to the other members of the Confederacy. This consideration has the more weight as the gradual accumulation of public improvements at the stationary residence of the government would be both too great a public pledge to be left in the hands of a single State. . . .

It is apparent that the District was not intended by the framers to be a "State" in the same as sense as the members of the Union. This would have created another sovereign power in the Nation's Capital which might come in conflict with the Federal Government on some issues. Those elected to represent the residents of the District would place the needs and concerns of Washington, D.C., paramount to the national interest. Giving to District residents the voting leverage in the Congress would enable them to put undue pressure on the Congress.

Because of the framers' notion that the Federal Government should have exclusive jurisdiction over the District, they did not consider the need for representation in the Congress for the residents of the Nation's Capital. Their failure to provide for representation once the District was established as the seat of government was not entirely an accident of history. It was anticipated that the people of Washington could have what Madison in Federalist No. 43 termed "a municipal legislature for local purposes, derived from their own suffrages." On the other hand, representation in the Congress was a privilege exclusively reserved to the States. Had they thought of representation in the Congress the Founding Fathers would probably have rejected it, to prevent the kind of local influence, control and conflict that they wished to avoid in a National Capital.

GRANTING THE DISTRICT FULL REPRESENTATION "AS THOUGH IT WERE A STATE" WOULD VIOLATE THE CONSTITUTION AND WORK A QUALITATIVE CHANGE UPON OUR FEDERAL SYSTEM

The provisions of the Constitution dealing with the Congress and the electoral system make clear that only States can have full representation in the National Legislature. Article I and the 17th amendment use the word "State" in reference to membership in the Senate and the House of Representatives. There is no language to suggest that the District or any political entity other than a State would qualify for voting representation in either Chamber.

The courts have held that the District is a "State" for some purposes and not

for others. No less a constitutional expert than Chief Justice John Marshall held that the term "State" as used in the first and second articles of the Constitution referred only to members of the Union and did not include the District. Subsequent Supreme Court decisions have not overruled that view.

For purposes of representation in the Congress, the District cannot be considered a "State" since it lacks the powers common to States. It is totally unlike these distinct political entities which are independent and sovereign members of the United States.

Under article I, section 8, clause 17, the Congress has the power of "exclusive legislation" over the affairs of the District. Congressional authority over the District is equivalent to that of a State legislature over a State. The Congress can exercise all the police and regulatory powers which a State or municipal government possesses. Even though the District, under home rule, exercises many of the powers of a State—for instance, it can tax and spend, legislate and execute laws, prosecute criminals, administer justice, and the like—it is completely dependent upon the Congress for many things, including its budget and appropriations for the operation of the city. The Congress can, for instance, veto the decisions of the city council. It could even abolish the city government altogether, if it so desired, as it did in the 1870's after some 50 years of home rule. So long as clause 17 of article I, section 8, is in effect and the District remains the seat of the Federal Government, the people of the District will not have the complete right to structure their own government as they like or to legislate on purely internal affairs as they see fit.

Therefore, the District lacks the necessary indicia of sovereignty which would make it a "State" within the meaning of the Constitution. To give it full representation in the Congress and treat it "as though it were a State" would not make it so. The proposed amendment would merely introduce a new political entity within the federal system, a unique creature having rights heretofore accorded only to a State, and, in fact, as we pointed out, rights in addition to those that citizens of States have.

To allow the District to elect a U.S. Representative and two Senators without also elevating its status to that of a State is to treat as a State an area which lacks the essential elements of a sovereign State. To create a "pseudo-State" or "quasi-State" and grant it full representation would do violence to the Constitution and undermine the nature of the federal system in our Republic.

It should be noted that, except for the 13 original States, the only areas which have achieved voting representation in Congress have done so by becoming States pursuant to the congressional power to create new States under article IV, section 3, clause 1 of the Constitution.

I could go on and on, but, Mr. President, I ask unanimous consent that we have a quorum call, with the time proportionately divided between the two parties.

Mr. KENNEDY. I object.

The ACTING PRESIDENT pro tempore. The objection is noted.

Mr. HATCH. I suggest the absence of a quorum.

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

The legislative clerk proceeded to call the roll.

Mr. HATCH. I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. HATCH. I ask unanimous consent that we have a quorum call, with the time to be divided proportionately.

Mr. KENNEDY. Well, it is 1 to 3 in terms of the time.

Mr. HATCH. Then it would be 1 to 3.

Mr. KENNEDY. I should certainly agree to that tomorrow, but just today, with 2 hours versus the 6 hours——

Mr. HATCH. Is it 1 to 3 both days?

Mr. KENNEDY. Yes. I should be glad to do it tomorrow, but we can get to a de minimis situation where the other side has hours and we are changing off minutes.

Mr. HATCH. Let us divide it proportionately, but in any event, I ask unanimous consent that the proponents of the amendment not be reduced below an hour, an hour total time today. In other words, we shall charge it proportionately right now and——

The ACTING PRESIDENT pro tempore. Is there objection?

Mr. MELCHER. Will the Senator inform me on what amendment it is?

Mr. HATCH. What we are going to do is have a quorum call. I have asked unanimous consent to have a quorum call divided proportionately, but that, in any event, the time of the proponents of the amendment not go below an hour on this quorum call.

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

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. MELCHER. 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.

Mr. MELCHER. Mr. President, would the manager grant me some time?

Mr. HATCH. I yield 20 minutes to the distinguished Senator from Montana. If he needs more, I will give it to him.

The ACTING PRESIDENT pro tempore. The Senator from Montana.

Mr. MELCHER. I thank the Senator for yielding me the time.

Mr. President, as I said Thursday, I think there is a paramount issue here that is so basic that there should not be much argument over it. That paramount issue is whether or not some citizens of this country can be denied the right of voting for representation in both the House and the Senate.

I have long felt that the framers of the Constitution erred, made a grievous mistake, in requiring that residents of the District not be allowed to vote. It seems a very profound contradiction of many fine concepts on individual liberty, individual justice, and individual citizen's rights we find throughout the Constitution.

So I am very much in favor of ending that wrong. However, it occurs to me there are a number of ways to correct it that have always been available to the Congress, to correct a contitutional flaw, and I consider this a rather grevious constitutional flaw.

I wonder if the Senator from Massachusetts would accommodate me by expressing his opinion on a point or two concerning the historic aspects of this constitutional requirement, or constitutional prohibition, against citizens of the District voting.

Would the Senator yield to me for answering some questions?

Mr. KENNEDY. I am delighted, to the best of my ability.

What I would like to do is yield, though, on the time of either the Senator from Montana or the Senator from Virginia, since there is a three-to-one time differential. Otherwise, if we are going to get into a dialog or discussion, I would be restrained just to respond briefly.

The ACTING PRESIDENT pro tempore. All time on colloquy is being charged to the Senator from Montana's 20 minutes.

Mr. MELCHER. I thank the Chair and I thank the Senator from Massachusetts for agreeing to the colloquy.

Would the Senator agree with me that the Constitution as drawn and accepted had this basic flaw: the prohibition against residents of the District being able to vote for representation in the Congress?

Mr. KENNEDY. The Senator is correct, but it is more an oversight than a prohibition.

Mr. MELCHER. I thank the Senator.

If the framers of the Constitution had not made that error, what would have been the outcome if the District of Columbia had been treated in the Constitution fairly and without that prohibition? What would be the consequence right now?

Mr. KENNEDY. Where would they have voted?

Mr. MELCHER. No. If the Constitution had not prohibited the residents of the District from electing Representatives to the House and operating in the procedure then provided in the Constitution for election of Senators, what would have been the effect precisely? Where would somebody that lived on the other side of the Potomac be voting on now, and where would the resident of the District on this side of the Potomac be voting for House members and Senators?

Mr. KENNEDY. That has to be answered in the context of the history of the period.

The history of the District of Columbia, as I pointed out in the debate last week, began with the Philadelphia

mutiny in 1783, when soldiers from the Continental Army besieged the Continental Congress in Philadelphia. Later at the Constitutional Convention in 1787, the Founding Fathers decided to create a separate Federal district, under the exclusive control of Congress, in order to protect the seat of government.

In the First Congress in 1790, the geographical site was discussed. There was a debate over whether the site was going to be in the northern part of the country or in the South. An accommodation was made under which a southern site was chosen, in return for the agreement of the southern States to allow the Federal Government to take over the debts owed by the States from the Revolutionary War. As a result, Maryland and Virginia ceded certain lands to the Federal Government, from which the site of the District of Columbia was chosen. The two portions are shown on the map at the back of the Senate Chamber.

If we were asking about the understanding at the time Article I was written, there was no understanding, since no site for the capitol had been chosen.

The founders simply did not address the question of whether or not the residents of the capital area would have a vote in the House or Senate. It was an oversight.

The question was asked earlier whether there was a flaw in the Constitution. I would say, "yes," but I believe it was more in the context of a historical oversight. Now, 200 years later, we are dealing with a completely different situation.

Mr. SCOTT. Mr. President, will the distinguished Senator from Montana yield briefly?

Mr. MELCHER. I will yield briefly after making this comment, then perhaps the Senator will want to comment with us.

That does not seem to answer the question I asked: What if there were no prohibition in the Constitution of residents voting for representation in the Congress.

Now I yield to the Senator from Virginia because I suspect he would like to discuss this.

Mr. SCOTT. Mr. President, I want to clarify the allocation of time. If this were a compromise arrived at in which the sponsors of the bill have 5½ hours, if the distinguished Senator from Massachusetts responds to questions I would expect them to be charged against his time because he willingly entered into this agreement, and, to me, if we decide the time we have with the distinguished Senator from Massachusetts, when we had only 5½ hours at the beginning of today's session, for 2 days, we will not have the time we need for the opposition to speak.

So that was the understanding.

Mr. MELCHER. Mr. President, if the Senator will allow me to inform him of what transpired prior to his walking onto the floor, I asked the Senator from Massachusetts whether he would be willing to answer these questions because I think they are pertinent to the whole debate.

I also asked for time, was given 20 minutes, and additional time if I felt it were necessary.

Mr. SCOTT. Mr. President, of course, the distinguished Senator from Montana can use his 20 minutes as he sees fit. After the lapse of 20 minutes, I would ask that the Chair allocate the time in the manner that was agreed upon.

Mr. MELCHER. Mr. President, if I am going to participate in this debate, I would just as soon participate in it on my own terms. I think it is very appropriate that the Senator from Massachusetts, who only has one-third the amount of time that the opposition has, be able to reserve his time. I prefer to use this time on my own, in drawing out what I think are some pertinent points and the basic point that should be debated on this issue. The Senator from Massachusetts has been very kind in agreeing to this.

(Mr. ZORINSKY assumed the chair.)

Mr. KENNEDY. The Senator from Montana, who has followed this debate and has discussed it with enormous interest and with great seriousness, wanted to enter into a dialog. I indicated that I could respond to his questions, but a fuller examination, which I think the Senator from Montana deserves, would take additional time.

We can do it in whatever way the Senator desires, and I will be glad to proceed now to respond to any questions.

Mr. MELCHER. I thank the Senator.

My question is this: If there were not a prohibition in the Constitution against the residents of the District voting for representation, what precisely would be the case with respect to their voting today?

Mr. KENNEDY. The Senator asks a very hypothetical question. He asks, if the Founding Fathers had not created a Federal district, what would they have done instead? I do not know. Perhaps the Capital could have been located in Philadelphia or now as it was for temporary periods at the beginning.

If the Senator is going to ask what else might have been in the minds of the Founding Fathers at the time they did the drafting, he will have to answer me as to whether at that time they anticipated the Capital was going to be somewhere else, in Philadelphia or in New York.

Mr. MELCHER. I will be delighted to answer.

Mr. KENNEDY. Let me complete my question.

If the answer is that it was going to be located in Philadelphia or New York City or Boston, then I imagine that the people who lived in that area would be represented in the House of Representatives and in the Senate of the United States. But it is impossible to determine what else might have been in the minds of the Founding Fathers, if they had not created a Federal district. I suspect that, if they had picked on very populated location, the people in the Capital area would have been given the right to representation in the House and Senate. But that is just a guess. In fact, they left the site open, for Congress to decide a few years later.

Mr. MELCHER. My answer to it—and I invite the Senator to respond to my answer if he disagrees—is this: The Senator says, "What if it had been Philadelphia for the Capital?" My answer is that whether New York, Philadelphia, or the District became the Capital, if there were not a constitutional prohibition against those residents voting for House Members and for Senate Members, they would be voting just exactly the way the people of New York and Philadelphia are voting today; and that is the way they would be voting today in the District of Columbia if there had not been a constitutional prohibition.

Does the Senator disagree with that?

Mr. KENNEDY. It is all speculative. We do not know who they thought would have been representing the people in the Louisiana Purchase area. Would they have been represented in the Congress of the United States? Who is going to be able to say today, looking back to then, how many States actually would have been developed in that area, or how congressional representation would have been worked out. It had to be developed over the years.

What we are talking about is the evolution and development of a federal system. We cannot take the relationship as it exists today, and relate it back to 1787. We cannot say that in their magnificent wisdom, the Founding Fathers—who drafted the greatest document for the protection of individual rights and liberties ever known—intended that the 700,000 people in the District of Columbia in 1978 were not going to vote. We cannot say that, therefore, we should not be overriding their decision. They simply did not, and could not, foresee what 200 years were to bring. As I understand the Senator's question, it is a hypothetical question, and it can only be answered with additional questions.

Mr. MELCHER. I still go back to the same point: It is a prohibition against the residents of the Capital City voting. If such a prohibition had not been in the Constitution—and the Senator from Massachusetts has agreed with me that such a prohibition was wrong at the time and should not have been in there—if the Constitution were silent, rather than the prohibition, obviously wherever the Capital City was, wherever the Federal city was, the residents would be voting, as they do in other cities, for their Representatives and their Senators.

Does the Senator not agree with me?

Mr. KENNEDY. As I have said, it was basically an oversight. The Founding Fathers, at the time they drafted the Constitution, did not understand what the nature of the district was going to be. There was no decision, at the time of the drafting of this, about where the Capital was going to be. It was only several years afterward that the States of Virginia and Maryland actually ceded the land.

And even in the period 1790 to 1800, when the District was being set up as the seat of government, the citizens continued to vote in Maryland and Virginia elections. They voted in that manner in the Presidential election of 1800. But on the date specified for the Federal takeover in the 1790 act—the first Monday in December, 1800—they lost their status as citizens of the States of Maryland or Virginia, and they lost their right of representation. In 1801, there was an immediate outcry by the people against this loss of rights. But they were only two small communities—Georgetown and Alexandria, with populations of about 5,000 each—far too small to be a State or even a congressional district. Their protests were of no avail. But the historical point is that it was not until 1800 that they actually lost out as their right to representation, long after the Constitution was ratified.

At the time of this oversight in 1787, the intent of the Founding Fathers was to deal with the issue presented in Philadelphia, in 1783, when dissident soldiers invaded the Continential Congress and demanded payment. They were attempting to deal with the issue of the right of Congress to protect itself and to protect the capital.

We cannot stretch that point, or suggest they foresaw the fact that, at some time farther down the road, years later, land would be added and rights would be lost.

Mr. MELCHER. The Senator uses this word "oversight" in connection with the Constitution and this prohibition against the residents of the District voting.

Why does the Senator want to use the term "oversight"? "Oversight" would mean something you forgot, something you did not think of.

Mr. KENNEDY. That is correct.

Mr. MELCHER. As I read it, it is explicit, it is a prohibition against those residents voting. That is not forgetting something. That is being firm and saying, "We envision that they are not going to vote."

Does the Senator read the Constitution differently than I do on that point?

Mr. KENNEDY. No. I think any reading of the debates at the Constitutional Convention would not support the Senator's point. There is no specific prohibition. The prohibition arises indirectly, because the Constitution said that States were to be represented by the House and Senate.

Mr. MELCHER. I do not want to go into the debates. I want to go into the principle in the Constitution that we have to live with.

Mr. KENNEDY. The Senator is asking me what the Founding Fathers were thinking. It is my position that it was an oversight. There was no District of Columbia, no large city, no 700,000 people. There is nothing in the constitutional debates or discussions that would indicate anything other than that. There is nothing in there that said, "Look, we will prohibit people who live in the District from participating in the affairs of our country." There is absolutely nothing to indicate that. As a matter of fact, there are important statements to the contrary.

In Federalist 43, Madison refers to the District in this way: He speaks of the fact that the people "will have had their voice in the election of the government which is to exercise authority over them." That is consistent with the view that they should be represented in Congress.

That is what the Founding Fathers were talking about.

. . . as they will have had their voice in the election of the government which is to exercise authority over them; . . . .

Mr. MELCHER. Meaning in the District.

Mr. KENNEDY. Meaning in the Congress and Senate of the United States. That is what those words mean, I say to the Senator. It is a government over them if you can draft them and send them to Vietnam and can make them pay their taxes. These Founding Fathers had been out fighting a revolution. Madison uses the words " * * * as they will have had their voice in the election of the government which is to exercise authority over them; * * *" which suggests a right to be represented.

Mr. MELCHER. I agree completely with the Senator from Massachusetts.

Mr. KENNEDY. That is good.

Mr. MELCHER. We are in agreement on that.

Does the Senator not read a prohibition against that very thing in the Constitution as it was drafted and adopted and is before us today?

Mr. KENNEDY. There is no specific prohibition. They never even thought about this aspect of the District. It was too remote in the future. They were settling the immediate problems.

Mr. MELCHER. In relationship to the seat of the Government where the Federal enclave was and those residents were not to be allowed to vote.

Mr. KENNEDY. No. I do not agree.

Mr. MELCHER. If the Senator does not read it that way why do we want to amend the Constitution?

Mr. KENNEDY. They were talking about the functions of the Government, the institutions of the House and the Senate of the United States, the building of the Capital and their security. We are talking now about the 700,000 people who have bakery shops, supermarkets, and mom and pop stores. Through the accident of being born here or living here and paying taxes here and sending their sons and daughters to war. They should be entitled to vote.

Mr. MELCHER. I agree.

Mr. KENNEDY. That was never foreseen.

The PRESIDING OFFICER. The 20 minutes yielded to the Senator from Montana have expired.

Mr. KENNEDY. It was never foreseen.

Mr. MELCHER. I ask the Senator to yield me another 15 minutes.

Mr. SCOTT. I am glad to yield an additional 5 minutes to the distinguished Senator and regret due to the limitation of time not being able to yield more at this time.

The PRESIDING OFFICER. The Senator from Montana has 5 additional minutes.

Mr. MELCHER. I thank the Senator.

What the Senator states is in perfect agreement with what I espoused, that the people regardless of where the district was going to be, regardless of what you call it, should have the right to vote. Who knows? What if the capital had been in Philadelphia or New York? They would never sell the idea that some enclave within that city would not be allowed to vote. The same is true here in these circumstances in this enclave.

We talk about ceding the land from Virginia to the District and from Maryland to the District. That part that was ceded from Virginia went back to Virginia and those people, of course, have their full voting rights. That part that was ceded from Maryland for the District is still separate. But it would not make any difference if there were not a prohibition within the Constitution. Those people would be voting just the way the rest of the people in Maryland are voting today and they would have been voting in Maryland throughout all the time since the creation of the District.

The Senator from Massachusetts and I do not disagree on the basic concept, but what the Senator from Massachusetts does not agree on is that having that historic background, if the Constitution had not had the prohibition in there, these citizens in the District would be voting in Maryland today as they should have been all during this time. The Senator from Massachusetts agrees with me. There is a flaw in the way the Constitution was drafted. He agrees with me on that point. But what he cannot conceive is that if that flaw had not existed—and to waltz around the point as this being something no one had thought of, no one had conceived there would be so many people living around the Nation's Capital at this time when they drafted the Constitution, that does not mean anything—if that prohibition had not been written into the Constitution, they would have been voting.

We are amending the Constitution because of that prohibition. If it were necessary just to correct some flaw that Congress had made, we would correct that by law by changing the statute. But we are amending the Constitution because it is a constitutional prohibition. I say that the proposition should never have started. The people were denied the right to vote. I say that the correction should be made. Part of the correction was made when part of the District was ceded back.

I now say that a complete correction of that law in the Constitution could be made as if it had never begun in the first place, as if there had never been a constitutional prohibition against those people living here to vote. They would have been voting in Maryland all that time. That correction can be made now.

Does the Senator find fault with that argument?

Mr. KENNEDY. I will respond.

I do find fault with the argument to be very specific.

Mr. MELCHER. I reserve the remainder of my time because I deeply want to listen to the fault of the argument.

The PRESIDING OFFICER. The Senator has 1 minute remaining.

The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, the argument which is made by my friend and colleague from Montana is basically the retrocession argument, which we debated during the past several days. The Founding Fathers established a Federal district. It is quite clear from a reading of the Constitution, as well as the circumstances of the time, that they did not anticipate where the district would be located, what the population of the district would be, or any other factor.

The fact of the matter is that the site of the Nation's Capital was originally swampland and marshland. That was 200 years ago. The argument of the Senator from Montana is, "Well, because it was Maryland swampland and marshland 200 years ago, now we should give it back to Maryland," even though the Maryland Senators and Maryland legislators, the Maryland people, say that this is an unacceptable situation. They understand that the country has changed after 200 years. There has been the development and the fashioning here of an entirely unique and separate entity, a community of 700,000 people, which is no more associated today with Maryland than it is with Virginia, or Montana, or any other State.

The Senator's point is an entirely different thing from the historical background of the retrocession to Virginia in 1846. That was accomplished with the consent of Virginia. There had been no Federal buildings located there. Partly, that fact is attributable to the embarrassment felt by George Washington who had gone outside the scope of the 1790 Act to locate the site of the Capital near Mount Vernon. So he decides not to use Virginia for any functions of the Federal Government. The Virginia retrocession was also involved in the creation of the State of West Virginia. The slaveholding eastern part of the State needed the votes of Alexandria to offset the abolitionist western part of the State. But the retrocession made no difference—in 1863 after the Civil War had begun, West Virginia entered the Union as a separate State.

The retrocession of Virginia is an entirely different historical development.

It is not a precedent in 1978. The lack of congressional representation for the District was an oversight in 1787, and that oversight should be remedied by separate congressional representation for the District now, not by trying to fit the District back into Maryland.

In addition, of course, the concept of political participation has changed a great deal over the years. Women could not vote in 1787. Slavery still existed, and slaves could not vote. So it is hardly surprising that no thought was given to the possible future representation of the District. Probably, if you had asked the Founding Fathers, they would have said, "Let us wait and see how the capital develops."

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

Mr. KENNEDY. If I may finish briefly. On this issue, clearly the action of the founders was an oversight. For almost 200 years, they have been denied what Madison felt, at least from his writings, was their rightful voice in the election of the Government which was to exercise authority over them.

They could not have known what this place where we meet today would have actually looked like. Who knows whether it would have become farm and agricultural land? Who knows whether it would have been a community of 50,000 or 500,000? But the reality is that, 200 years later, it is 700,000 people, who are denied their effective voice in the House and Senate of the United States.

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

Mr. KENNEDY. I withhold the remainder of my time. Yes, I yield.

The PRESIDING OFFICER. Who yields time? Does the Senator wish to use the remaining 1 minute of his time?

Mr. MELCHER. No, the Senator yielded to me on his own time.

Mr. KENNEDY. I withheld the remainder of my time.

Mr. SCOTT. I will yield 4 minutes to the Senator, and the Senator has 1 minute, so he has 5 minutes.

Mr. MELCHER. The Senator uses the term "oversight" with respect to women not being able to vote in the Constitution as if that were an oversight. That was very deliberate. Slaves could not vote. There was no oversight. That was very deliberate. They were prohibited from voting.

Abigail Adams, I think, wrote to her esteemed husband, who came from a very auspicious State, something which the Senator from Massachusetts shares——

Mr. KENNEDY. The Senator is quite incorrect. That is not what the Constitution provided. It left the qualifications for voting to the States. That was an issue for the States to decide.

Mr. MELCHER. To which point is the Senator referring?

Mr. KENNEDY. The right of slaves to vote.

Mr. MELCHER. Slavery.

Mr. KENNEDY. And the right of women to vote.

Mr. MELCHER. Women, correct. It would not permit them to vote by constitutional mandate, by saying the States cannot deny that right. The Constitution was deliberate on that, and said that the Federal Government is not of a nature to enforce the right of voting for women, for slaves and, thirdly, for those people who live in what became the District of Columbia, the seat of Government.

It is not an oversight, it was a deliberate act, a prohibition.

The question of retrocession is not the argument that I am making. I am not asking for retrocession. Retrocession involves land. I do not think that is practical to give the District back or to force Maryland to accept the District back. What I am talking about is the question which we have had come up in other areas of Federal ownership.

If you live out here at Andrews in the State of Maryland, an Air Force base, the Federal Government owns it. It is there and they run it. If your residency is there, that is where you claim residency, you vote in Maryland.

What this Federal enclave is is not, however, the same as other Federal enclaves of any nature. This is a prohibition against voting for those people who reside in this particular Federal enclave.

The Senator from Massachusetts dares to treat that deliberate prohibition as some sort of an oversight. It was a deliberate prohibition. I happen to think it was wrong at the time and still wrong now. If that mistake had not been made in the Constitution, the people within the District would be voting in Maryland just as the people in Andrews, which is in Maryland, just outside the District line, a Federal ownership, where they vote in Maryland if that is their residency.

I think this correction should be made, but I do not think that we owe it to the people of the District to give them such power, with two Senators, which they would not have had if we had not had that prohibition in the Constitution. I know of other areas that would like to have a Senator of their own.

I have often thought that Exxon probably would love to have one of their own Senators. But we have never found favor with that sort of concept.

I think we ought to make a correction to this historic flaw in the Constitution without overdoing it and to recognize that if that prohibition had not existed from the adoption of, the time of the adoption of, the Constitution, regardless of where the land was ceded for this Federal enclave for the purpose of the seat of the Government, regardless of where it occurred, the people in there, who live in that area, would be voting in the State in which they lived.

It is perfectly fair and proper that the District should have its own representatives in the House of Representatives, and it follows that it is also perfectly fair that the residents of the District be treated just like the residents anywhere else in this country, where they live on Federal property, that they have the right of residency, the right of voting for Senators in that particular State.

I think it is pretty simple.

The PRESIDING OFFICER. The Senator's 5 minutes have expired.

Mr. MELCHER. I thank the Chair and I thank the Senator from Massachusetts for engaging in colloquy, and I thank the Senator from Virginia for granting me the time.

Mr. SCOTT. Mr. President, I regret the necessity of having to limit the allocation of time to the distinguished Senator from Montana. In fact, we have 5½ hours for both today and tomorrow, and in the event that we use the entire 5½ hours today, or use 5 hours, we would have little or no time to utilize tomorrow.

The agreement which was worked out, however, whereby other Senate business has intervened between the debates on

the proposed constitutional amendment to provide full congressional representation for the District of Columbia, has afforded an opportunity over the weekend to probe more deeply into history.

During the Constitutional Convention there were suggestions that there be proportional representation in both Houses of the Congress but the smaller States were dissatisfied with this suggestion and a 5-to-5 deadlock developed between the States. Therefore, the problem was referred to a committee of 11 to effect a compromise. This compromise resulted in the recommendation that each State should have equal representation in the Senate with representation in the House based upon population.

We turn, therefore, to article I, section 3 of the Constitution which provides "the Senate of the United States shall be composed of two Senators from each State, chosen by the legislature thereof, for 6 years; and each Senator shall have one vote." This was subsequently changed in 1913 upon ratification of the 17th amendment to provide for the direct election of Senators.

We should recall, Mr. President, that ours is a Federal Government, composed of the several States, that only States are represented in the Senate, each having two Members, that in order for the District of Columbia, under our system, to have representation in the Senate, it would have to either be a State or be treated as a State.

Just as States are represented in the Senate, people of the States are represented in the House. It would be as equally violative of the Federal principle to admit voting representation in the House from political entities which are not States as to admit nonstate membership in the Senate. Argument could be made that since no State may be deprived without its consent of its equal suffrage in the Senate, an amendment providing for Senators from the District of Columbia could not be made effective without ratification by all 50 States. The contention is that the admission of two Senators from the District would dilute the power of a State. But this dilution would affect all of the States equally, so that none would be deprived of its equal Senate suffrage.

It would appear that admission of Senators from the District would no more deprive a State of equal suffrage in the Senate than would the admission of any new State into the Union.

We might consider, however, the position of our two most recently admitted States. Both Alaska and Hawaii were territories of the United States and as territories they did not have representation in the Senate.

Today, not only does the District of Columbia have a nonvoting delegate in the House but so does Guam, Puerto Rico, and the Virgin Islands. In the event the District of Columbia was given two Senators could not an argument be made that Guam, Puerto Rico, and the Virgin Islands are equally entitled to have two Senators to represent them in the Congress?

Every Senator is aware that during the 19th and 20th centuries, American citizens left the States of their residence and migrated into new lands, which were subject to the jurisdiction of the United States but were not States.

As migration into these areas increased, they were organized into territories, but at no time did the American citizens residing in the territories elect voting members of the Congress; not until the territory was admitted as a State did it have that representation.

As residents of territories the most representation any enjoyed was that of a single territorial delegate who had no vote. Yet, I am not aware of any widespread belief that the people of the territory were discriminated against because they had no direct voting representation in Congress.

In large part they had left the States where they enjoyed direct voting representation in Congress, willingly surrendering the right of direct voting representation for other advantages they sought in the West. By analogy, the large majority of the residents of the District of Columbia are not native Washingtonians but citizens who willingly left their States in order to live at the seat of Government, surrendering the advantages of direct voting representation for other advantages considered by them to be important.

Some, of course who have retained a legal domicile elsewhere vote by absentee ballot in the States from which they came. Be that as it may, direct representation in the Congress by a voting Member has never been a right of U.S. citizenship. Instead the right to be so represented has been the right of citizens of the States. The design of the Federal Union is a union of States.

No power is conferred upon the Congress, Mr. President, more important than that of proposing amendments to the Constitution. None should be exercised with greater care or vision. Inasmuch as the Constitution is the foundation upon which our Federal Government rests, it would appear that deference should be given to the existing structure of Government and it should not be changed unless there is a compelling reason for the change. The Constitution is a declaration of broad governmental powers and should not be utilized, in my judgment, to meet temporary situations.

Our present system is buttressed on our faith in federalism—independent States join together as a union. This system has served us well and should be altered only for the most persuasive of reasons. If the District of Columbia were given two Senators it would be in a position not afforded any other city in the Union. It would also be in a position not afforded any territory of the United States. So, perhaps we should look once again at the District of Columbia while it was once known as the territory of Columbia, its official designation long ago was changed to the District of Columbia.

The District is unique. It is unlike a territory in its status and characteristics in that it is not an ephemeral subdivision of the outlying dominion of the United States, nor is its government temporarily transitory or impermanent, but rather it is a selected area set apart for the enduring purpose of the Federal Government and it is the capital and permanent seat of the Government of the United States, wherein all of the supreme departments of the Government permanently abide and in which all offices attached to the seat of Government are required to be exercised except as otherwise provided by law.

In article I, section 8 of the Constitution, it is provided that—

> The Congress shall have power . . . to exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square), as may, by cession of particular States, and acceptance of Congress become the seat of Government of the United States . . .

The Founding Fathers' insistence on having as the seat of Government a place over which the Congress would have exclusive jurisdiction and control as you know was due in part to a soldiers' mutiny which threatened the Continental Congress meeting in Philadelphia and the failure of either the city or State to protect the Members. The District of Columbia was choseen as the permanent seat of Government so decisions affecting the entire Nation could be made free from undue influence of any State and immume from harassment or political entanglement.

Mr. President, a few minutes ago during the dialog between the distinguished Senators from Montana and Massachusetts, the question of Madison's remarks was brought up. The distinguished Senator from Massachusetts referred to No. 43 of the Federalist Papers prepared by Madison. Let me just read the paragraph in question in its entirety.

> The indispensable necessity of complete authority at the seat of government carries its own evidence with it. It is power exercised by every legislature of the Union, I might say of the world, by virtue of its general supremacy. Without it not only the public authority might be insulted and its proceedings interrupted with impunity, but a dependence of the members of the general government on the State comprehending the seat of the government for protection in the exercise of their duty might bring on the national councils an imputation of awe or influence equally dishonorable to the government and dissatisfactory to the other members of the Confederacy. This consideration has the more weight as the gradual accumulation of public improvements at the stationary residence of the government would be both too great a public pledge to be left in the hands of a single State, and would create so many obstacles to a removal of the government, as still further to abridge its necessary independence. The extent of this federal district is sufficiently circumscribed to satisfy every jealousy of an opposite nature. And as it is to be appropriated to this use with the consent of the State ceding it; as the State will no doubt provide in the compact for the rights and the consent of the citizens inhabiting it; as the inhabitants will find sufficient inducements of interest to become willing parties to the cession; as they will have had their voice in the election of the government which is to exercise authority over them; as a municipal legislature for local purposes, derived from their own suffrages, will of course be allowed them; and as the authority of the legislature of the State, and of the inhabitants of the ceded part of it, to concur in the cession will be derived from the whole people of the State in their adop-

tion of the Constitution, every imaginable objection seems to be obviated.

Mr. President, I did feel that rather than just to recite a portion of this, the entire paragraph should be read.

Washingtonians are undoubtedly in a far superior position than any territory of the United States. They have authority to elect their own school board, their city council, mayor, participate in Presidential elections, and have a nonvoting delegate in the House of Representatives. Citizens of the District of Columbia in fiscal year 1977 contributed $275.9 million toward Federal grants and received $942.1 million in return. The Library of Congress has confirmed that the Federal Treasury collected only 29 cents for every dollar it provided the city. The per capita income is the second highest in the Nation. The Federal Government employs almost 40 percent of the work force on the city of Washington and an additional 25 percent work in industries servicing the Government. It would appear to be comparable to a "company town" with virtually everyone dependent upon Government for his or her livelihood.

If this proposed resolution were passed and ratified by three-fourths of the States, it would insure the election of Senators sympathetic to the desires and concerns of big Government; Senators who would promote the welfare of Government agencies; Senators who would be under no compulsion to consider the needs of any competing interest such as farmers, miners, manufacturers, or other business and industrial activities as exist throughout the various States. I wonder if the Congress saw fit to move the seat of Government to a more central geographic location if States in the Middle West would not be glad to cede territory for a Federal City with all the benefits that accrue to the city and if the people of the District of Columbia would not raise a hue and cry against moving the capital to another location.

It seems unreasonable, Mr. President, to provide the benefits of statehood to the people of the District of Columbia without corresponding liabilities. Washington even today is a city with decreasing population, a city of less than 700,000 people at the present time but with a news media espousing the views of city residents and Members of Congress being dependent upon the Washington media as a major source of knowledge of events and developments.

Mr. President, I think this has been illustrated in the last few days by the views that have been in the media.

In the event there were two Senators from the District of Columbia, would it not be reasonable to assume that their thoughts and actions would permeate the news most readily available for consumption by the Congress. Two Senators for the city of Washington, in my judgment, would not be in the national interest and would inevitably lead to the kinds of pressure that the framers of the Constitution wanted to avoid when they provided for a Federal City.

Washington is not a State but a city, exceeded in population by 10 other American cities. There is no basis under the Federal concept of government for electing Senators from the District of Columbia. Senators are representatives of their States and the city of Washington is not a State.

Of course, all of us are concerned for the welfare of the people of the Nation's Capital, all of us want a capital city of which we can be proud; all of us represent the people of the District of Columbia, as well as the people of our constituent States.

But our concern for the welfare of the people of the city should not detract from the realization that the welfare of the entire Nation is paramount, and it was concern for the general welfare of the country that caused the Constitutional Convention in 1787 to adopt the Federal City concept. It was a wise decision made by our Founding Fathers. It has served us well for almost 200 years. I see no pressing reason to depart from it now.

In reviewing the House Joint Resolution 554—and that is the resolution before us, Mr. President, because we bypassed the Senate Judiciary Committee, where a Senate bill was pending. We have done this at a time when the chairman of the Senate Judiciary Committee is out of the country. But from looking at the House resolution, it appears there is no provision for the filling of vacancies in the event the proposal should be adopted and the District of Columbia should become entitled to two Members of the Senate. The 17th amendment to the Constitution, providing for the direct election of Senators, provides that the legislature of any State may empower the executive thereof to make temporary appointments until the people fill the vacancy by election as the legislature may direct. Of course, the Congress has exclusive legislative jurisdiction over the District of Columbia and we might well assume that the Congress would have authority to authorize the executive to make temporary appointments but, once again, Washington is a city, not a State, with an elected city council, an elected chairman of the council and an elected mayor. Would the city council authorize the mayor to appoint a Senator or would the Senate authorize the mayor of a city to appoint a Senator? It would appear that the latter would be true or the Senate itself could, acting in its capacity as the legislature for the District of Columbia, appoint someone from the District to serve in the Senate until such time as the people of the District of Columbia could elect a Senator. This adds some confusion to the proposal to provide for two Senators for a city that is not ordinarily present under our constitutional concept of having Senators represent States rather than cities.

The resolution also provides, both in the preamble and in the body of the resolution, that the proposed amendment to the Constitution shall only be valid when ratified by the legislatures of three-fourths of the several States within 7 years from the date of submission by the Congress. The equal rights amendment had a similar provision but a proposal to extend it for an additional period is now upon the Senate Calendar. Almost everyone in the country believes in equality between the sexes, but many have reservations as to the practical effect of ratification of the equal rights amendment and, not knowing its full ramifications, are fearful to vote for ratification. I submit, Mr. President, that in the event the proposal before us were adopted by the Senate, there would be many handicaps to obtaining ratification by the necessary three-fourths of the States. State legislatures are not likely to favor the expansion of the size of the Senate to allow a city to have the same voting strength in both the House and Senate possessed by sovereign States.

Taxpayers could well oppose giving residents of the District, many of them Government employees—and I speak, Mr. President, as one who has been a Government employee for 38 years—preferential treatment to that afforded other cities. Indeed, the city of Washington is a unique city. It is the seat of Government, its business is government. The question would naturally arise as to whether the present membership of the House of Representatives would remain at 435 or whether an additional two House Members would be added for the benefit of the city of Washington. State legislatures would question having 102 Senators and whether this would, in fact, diminish the effectiveness of the Senators from their own States. Opposition would arise from concerns about a number of constitutional provisions.

I believe, Mr. President, it will serve the national interest for the Senate to reject this proposal and not ask the States to resolve this matter, imposing even greater division among the States than presently exists over the equal rights amendment. Mr. President, I should like to review some of the proposed amendments, including two of my own, but I see that the distinguished Senator from North Carolina is presently on the floor and I shall forgo that at the present time and just take a minute or so to conclude my remarks.

At this time, Mr. President, I am not sure whether to bring up two printed amendments that I have. One would permit the States, under their police power, to pass upon the whole question of abortions, as has been the case in the past, under a State's police power, under its right to regulate the health and morals of the people, or whether to bring up the proposed amendment in which tenure would be provided for Federal judges, rather than lifetime appointments that they now enjoy.

We speak of serving during good behavior, but for practical effect, that is lifetime tenure. This can be decided later today or perhaps tomorrow. Nevertheless, with the restriction on time, let me yield the floor at this time so that other Senators will have an opportunity to discuss the pending issue. To me, the issue is so important to the States we represent that every Member of the Senate should have an opportunity to comment on the resolution if he so desires.

Mr. President, I yield such time as he may consume, not exceeding 20 minutes, to the distinguished Senator from North Carolina.

Mr. HELMS. Mr. President, I thank the able Senator from Virginia for yielding and I thank the Chair for recognizing the Senator from North Carolina.

Mr. President, we are assembled in a virtually empty Chamber. If I count correctly, there are five Senators in this Chamber, one of whom is presiding, on a Monday morning, 1 minute before noon, to discuss what surely is one of the most obvious political charades in recent years.

The political boat is loaded with Presidential candidates seeking the support of black citizens on this issue. I am speaking candidly, Mr. President, but I do not want to speak harshly. Still, the facts deserve to be laid out for what they are. I dare say that there is not a Senator in or out of this Chamber who really believes that this constitutional amendment will be ratified by the requisite number of States. Last week, I was talking to my able former colleague from North Carolina, the distinguished Sam Ervin, Jr., about this proposition. The Senator chuckled and said, "Well, Jesse, I guess it is good politics for anybody running for President."

That is precisely what it is—politics. Whether it is good politics or whether it is bad, I shall not attempt to pass judgment. But I say again, Mr. President, there is not a Member of the Senate who, deep in his heart, really believes that this proposed constitutional amendment will be ratified by the requisite number of States.

(Mr. HATHAWAY assumed the chair.)

Mr. HELMS. So what are we doing? The Senate is conducting a charade. There is no way the Senator from North Carolina—or any Senator—can cast a completely intellectually honest vote on this proposition. If he votes for it, he is voting for something that is not wise. If he votes against it, he risks falling prey to the false predicate that was laid down in the beginning of this debate. The assumption is that if we do not support this proposition we are against blacks, we are against liberals, we are against Democrats, and probably against apple pie.

Let me say again, Mr. President, this is a charade. If it were not a charade, this proposal would have gone through the normal processes of the Senate. But instead of going through the committees, it was virtually bludgeoned onto the Calendar. This maneuver ought to be regarded for what it is. The black citizens of the District of Columbia and the black citizens across America should not be deluded by this bit of gamesmanship. Everyone knows that this amendment is not going to be ratified by the requisite number of States.

Of course whether I will be proved right or whether I will be proved wrong will occur far in the distant future—7 years from now. But I say again, I do not believe that one Member of the U.S. Senate today, deep in his heart, feels that this proposed amendment will, indeed, be ratified by the requisite number of States.

The Senate had an opportunity last week to assure representation for the people of the District of Columbia. The distinguished Senator from Montana (Mr. MELCHER) proposed an amendment that made sense. I supported that amendment because I favor the concept of District of Columbia representation.

I think any Senator who is truly worried about the civil rights of the residents of the District of Columbia should have been an enthusiastic supporter of that Melcher amendment, which was defeated last week.

Mr. President, if we examine House Joint Resolution 554, we can see that it is deeply—deeply—flawed in both concept and execution. House Joint Resolution 554, as it stands, distorts the meaning and purpose of Senate representation. In fact, it dilutes the guarantee of article V to the Constitution, which is supposed to protect the equal suffrage of each State in the Senate.

It is obvious that if the 50 States have equal representation, the adding of two more Senators who do not represent a State cheapens the representation and dignity of the States themselves. We all know the inflation that results for the dollar when we expend the money supply to pay the Federal deficit. This proposal is inflation of the vote in the Senate.

Indeed, article V says specifically that "no State without its consent shall be deprived of its equal suffrage in the Senate" as a result of the amendment process.

Now, this being the case, Mr. President, the prospects of this proposed amendment, as it stands, of ever being approved by ratification by the requisite 38 States is remote, to say the least.

In the first place, I reiterate that three-fourths of the States will never approve the dilution of their constitutional rights. We could well end up with another ERA situation. As a matter of fact, Mr. President, if anybody thinks that the battleground across this country today in connection with the equal rights amendment has been heated, just wait until this amendment comes up in the State legislatures around the country. The ERA battle will have been a cakewalk compared to this one, and I think every Senator knows that.

So what are we doing? Are we advancing Presidential campaigns? I say again: The political boat is getting mighty loaded with candidates who are obviously or reportedly running for President in 1980.

Mr. President, we ought to level with the citizens of the District of Columbia and those citizens across the country who view this as a vote against or for their race. We ought to be intellectually honest enough to tell them, "This is not going to do it because this proposed amendment will not be ratified by the requisite number of States."

I am hearing from people all over this country who resent this proposition's having been converted into a racial issue. It is not a racial issue.

Mr. SCOTT. Will the Senator yield briefly at that point?

Mr. HELMS. I am delighted to yield to my friend from Virginia.

Mr. SCOTT. Mr. President, when the provision for the District of Columbia to be the seat of government or for a Federal city concept was developed, as I recall the black situation, it was later determined by the Dred Scott decision, that blacks were not citizens and, therefore, could not vote.

There was no black problem.

Then the suggestion has been made that the city is too urban. The city was not urban at the time that the Founding Fathers at the Constitutional Convention made this decision, or that three-fourths of the States ratified the Constitution.

Then, it was not too liberal at that time. As I recall, George Washington was elected by all of the people, not by any political party.

There is a fourth issue that has been raised, too Democratic.

Well, there were no political parties at that time in this country, as I recall again, the first President being elected by all of the people, and only later that the question of partisan politics arose.

So I rise to agree with the statement of the distinguished Senator from North Carolina. This decision was made, without these factors being considered, and I believe it is a false issue to be raised at this time.

Mr. HELMS. I thank the Senator.

Obviously, it is a charade. That is why the Senator from North Carolina came to this floor this morning because, frankly, I have heard enough of the pious pretense that proponents are doing something to protect the "human rights" of the residents of the District of Columbia. It is time to identify this political charade for what it is.

I mentioned the ERA a moment ago. As the distinguished occupant of the Chair knows, there is an issue looming in the Senate to extend the period of ratification for the equal rights amendment.

At the end of the 7-year period designated for this amendment, House Joint Resolution 554, we can bet our boots there will be an effort to extend that period for ratification, also, because nobody believes that this constitutional amendment will be ratified by the States.

The proponents of the amendment will be back here in 6 or 7 years, asking for an extension; and this process is going to drag on, in agony. It is going to deny the hope to the black citizens who have been assured that, yes, we are going to do this for you.

However, let us assume that all that were not so and that the Senate went along and approved this seriously flawed House Joint Resolution 554. Where would the next pressure come from? Puerto Rico? Guam? The Virgin Islands? The Pacific Trust Territories? You can count on it, Mr. President.

This resolution has so many defects of a constitutional nature that its enactment and ratification will invite unending litigation because of the serious omissions in this legislation—omissions that show clearly that it was drafted without thought as to all the constitutional implications.

Then, too, the proponents of this measure talk about the 700,000 population of the District of Columbia. But I do not recall that anybody has been able to

identify the untold thousands of residents of the District who maintain their legal residencies and vote in various States. Are we really talking about two Senators from 700,000 population, or are we talking about two Senators for 600,000 population, or are we talking about two Senators for 500,000 population? What are we really talking about? The answer to that is that nobody seems to know or care what we are talking about. There is just a mad scramble for political advantage. That is what it boils down to.

If this amendment were approved, any State could challenge—and I jolly well expect that many will challenge—the constitutionality of the process in the Supreme Court of the United States. Article V says that no State, without its consent, shall be deprived of equal suffrage. If one State withholds its consent, that State will have grounds to challenge the adoption of the amendment in the court. And we might as well count on it.

So the constitutional ramifications of this amendment are so complicated and so unjust and so improper that surely we have to realize the fact that this amendment has little chance of ratification by the required 38 States.

I do not like to be in the position of having to come here to say these things this morning. I would much have preferred to stay out of it. But I have read and I have listened to specious arguments to the point that I have had my fill. Somebody needs to speak out. Whether or not I am heeded, I want it on the record that I said this morning, Monday, August 21, 1978, that this amendment is not going to be ratified by the requisite number of States, and that the proponents of this amendment know it.

Mr. President, it is very clear to the Senator from North Carolina that any Senator who is sincere about the voting rights of the residents of the District of Columbia should have supported the Melcher amendment. There was the Senate's opportunity to show good faith to the residents of the District of Columbia. Then was when we had the chance to do something. But the Melcher amendment was tabled, Mr. President. Every Senator who voted to table that amendment was voting against realistic and fair representation for the people of the District of Columbia.

Mr. President, I ask unanimous consent that the rollcall vote on the tabling of the Melcher amendment be printed at this point in the RECORD, so that it will be clear in the future which Senators voted affirmatively to table the Melcher amendment, and kill hope for a realistic constitutional amendment.

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

ROLLCALL VOTE NO. 329 LEGISLATIVE

YEAS—52

Bayh, Bellmon, Bumpers, Robert C. Byrd, Case, Chafee, Chiles, Church, Clark, Cranston, Culver, Danforth, Dole, Durkin, Eagleton, Glenn, Griffin, Hart, Haskell, Hathaway, Heinz, Hodges, Hollings, Huddleston, Humphrey, Inouye, Javits, Kennedy, Leahy, Magnuson, Mathias, Matsunaga, McGovern, Metzenbaum, Morgan, Muskie, Nelson, Packwood, Ribicoff, Riegle, Sarbanes, Sasser, Schmitt, Schweiker, Sparkman, Stafford, Stevenson, Stone, Talmadge, Thurmond, Weicker, and Williams.

NAYS—33

Allen, Bartlett, Bentsen, Burdick, Harry F. Byrd, Jr., Cannon, Curtis, DeConcini, Domenici, Ford, Garn, Gravel, Hansen, Hatch, Paul G. Hatfield, Hayakawa, Helms, Jackson, Laxalt, Long, Lugar, McClure, Melcher, Nunn, Pell, Proxmire, Randolph, Roth, Scott, Stevens, Tower, Wallop, and Zorinsky.

NOT VOTING—15

Abourezk, Anderson, Baker, Biden, Brooke, Eastland, Goldwater, Mark O. Hatfield, Johnston, McIntyre, Moynihan, Pearson, Percy, Stennis, and Young.

So the motion to lay on the table UP amendment No. 1664 was agreed to.

Mr. HELMS. Mr. President, the Melcher amendment, for the first time would have given full representation in the House of Representatives to the people of the District of Columbia. Furthermore, it would have given senatorial representation to the people of the District of Columbia by allowing them to vote in the State of Maryland for two senatorial candidates—that is all those except the undetermined number of residents of the District of Columbia who maintain their official residences in the various States of the Union.

I repeat: This proposition, Mr. President, is a charade. It is misleading the black citizens—not only of the District of Columbia but also the black citizens of North Carolina and all other States. That is why I am here speaking this morning, because I want it a matter of record that they were put on notice as to what is going on.

The Melcher amendment, which was rejected by the Senate last week, would have given senatorial representation to the people of the District of Columbia. It would have allowed them to vote in the State of Maryland for senatorial candidates. But more important than that, it would not have diluted the representation of the 50 States by giving representation to an entity that is not a State.

So we go back to the question of who is next if the Senate makes the mistake of approving this proposed constitutional amendment. Guam? Puerto Rico? How much further would the proponents go in diluting the representation of the existing 50 States? I say again that the Melcher amendment, which was defeated last week by this body, would not—would not—have diluted the representation of the 50 States by giving representation to an entity that is not a State. No State could claim under article V of the U.S. Constitution that its right to equal suffrage had been diluted, had the Melcher amendment been approved.

The PRESIDING OFFICER. The Senator's time has expired. Who yields time?

Mr. SCOTT. Mr. President, I am glad to yield an additional 5 minutes to the distinguished Senator from North Carolina.

The PRESIDING OFFICER. The Senator is recognized for 5 minutes.

Mr. HELMS. I thank the Senator.

Mr. President, had the Melcher amendment been approved, no precedent would have been set for further dilution by granting representation in the Senate to the Virgin Islands or Guam, or any other entity.

In addition, the Melcher amendment would have made it possible for the District of Columbia to be truly self-governing with respect to these rights and these powers.

Finally, the Melcher proposal would have based the District's vote in the electoral college upon population, based upon the number of Representatives. It is plain, therefore, that the Melcher amendment would have gone much further to restore civil rights to the people of the District of Columbia than the original proposal that is now before us.

As the vote was proceeding last week on the Melcher amendment, I found myself wondering, where are the Senators who are so worried about civil rights of the residents of the District of Columbia? Why were they not rushing forward to support the substitute of the Senator from Montana? Why did they not support a proposal that could reasonably be expected to be ratified by the requisite number of States? Why did they support the preposterous idea that entities which are not States should be entitled to the privileges of States?

Mr. President, I thank the able Senator from Virginia for yielding time to me.

Let me say, in conclusion, that I have not intended to reflect unkindly upon any Senator who disagrees with me, but I think that, in the rush of the politics-as-usual process, there has been a little slippage in terms of intellectual integrity. My point here is: At least let us level with the residents of the District of Columbia who believe or who have been led to believe that, if the Senate approves this measure, the citizens of the District of Columbia will be well on their way to obtaining representation in the Senate.

I say again that I cannot believe there is one Senator who belongs to this body today who truly believes that the requisite number of States will ratify this amendment.

I thank the Senator from Virginia.

Mr. SCOTT. Mr. President, the distinguished Senator from Idaho (Mr. MCCLURE) is on his way to the Chamber.

I suggest the absence of a quorum and ask unanimous consent that time not be charged against either side.

The PRESIDING OFFICER. Is there objection.

Mr. KENNEDY. I object.

The PRESIDING OFFICER. Objection is heard.

Who yields time?

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

The PRESIDING OFFICER. On whose time?

Mr. SCOTT. On my time.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

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

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

Mr. SCOTT. Mr. President, we have a number of amendments to the joint resolution presently before us, and there is

one that I was thinking about that has not been put in writing, but I have asked that it be drafted. That would be an addition to section 2, and it would eliminate some uncertainty as to who would appoint a Senator from the District of Columba in the event that a vacancy should occur.

We know that under the Constitution the Governor, the chief executive of the State, may make an appointment if he is authorized by the State legislature to make an appointment. And certainly if he is not authorized why he cannot do it.

The question arises, then, what is the legislature of the District of Columbia?

We have in article I, section 8 of the Constitution that exclusive legislative jurisdiction resides in the Congress of the United States. That would mean both Houses of Congress. So, both Houses of Congress under the Constitution will have to decide whether or not the mayor of the District of Columbia would have the authority to make an appointment to the Senate from the District of Columbia in the event a vacancy should occur. In the absence of some provision in this proposed constitutional amendment, it could well be argued that the City Council for the District of Columbia, being comparable to the State legislature, could decide who should be appointed or whether or not the Mayor should have the power to make appointments to the Senate in the event of a vacancy.

So I am having an amendment prepared that would clarify this.

I hope that the distinguished Senator from Massachusetts might give consideration to this and perhaps we could agree to accept an amendment for the purpose of clarification.

We have a number of other amendments, Mr. President, and I believe that some of them are good amendments. I know that the distinguished Senator from Idaho (Mr. McCLURE), who I am told is on his way to the Chamber, has 21 different amendments. He does not propose to offer all of these amendments, but, as I understand, he intends to propose some of the amendments and certainly it is a question for him to decide how many, if any, of the amendments he will offer.

He has time under the bill to take 20 minutes for each of seven amendments that he indicated, during the compromise we worked out, he would offer.

This amendment that I spoke of a few minutes ago that I have is with regard to the abortion question. This abortion question is something that has taken an awful lot of time of the Senate. We have debated it pro and con. The Senate has been fairly evenly divided. Frankly, I voted on both sides, on one side on most occasions and on the opposite side on another occasion.

Now, I did that just to resolve the question so that we could terminate the debate that was taking up so much time in the Senate.

I can see some merit on both sides of the abortion question. But my proposed amendment would not address this bill to the merits of this question. It provides this, after the preface:

The power to regulate the circumstances under which pregnancy may or may not be terminated is reserved to the respective States and territories of the United States.

That is where it did reside prior to a Supreme Court decision of a few years ago.

I believe this is an appropriate amendment, Mr. President. Under our dual system of sovereignty, the Federal Government, being a Government of limited power, has only the power that is expressly given to it or may reasonably be implied from the powers expressly given, and the powers not given to the Federal Government are reserved to the States and to the people.

It is under this concept that those things that are closest to the people, the question of marriage and divorce, the question of property rights, there are so many things that under the police power of the States are reserved to the people of the respective States.

AMENDMENT NO. 3467

(Purpose: To propose an amendment to the Constitution relating to the termination of pregnancy)

Mr. SCOTT. Mr. President, I call up my amendment No. 3467 and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Virginia (Mr. SCOTT) proposes an amendment numbered 3467.

The amendment is as follows:

At the end of the joint resolution, add the following:

SEC. 2. The following article is proposed as an amendment to the Constitution of the United States, to be valid only if ratified by the legislatures of three-fourths of the several States within seven years after the date of final passage of this joint resolution:

"ARTICLE —

"The power to regulate the circumstances under which pregnancy may or may not be terminated is reserved to the respective States and territories of the United States.".

Amend the title so as to read: "Joint resolution proposing amendments to the Constitution to provide for representation of the District of Columbia in the Congress, and to reserve to the States the power to regulate the circumstances under which pregnancy may or may not be terminated.".

Mr. SCOTT. Mr. President, I ask for the yeas and nays on this amendment.

The PRESIDING OFFICER. Is there a sufficient second? There is not a sufficient second.

Mr. SCOTT. Mr. President, since there is not a quorum, I ask that time not be charged against either side and I suggest the absence of a quorum until we can get a sufficient number of Senators on the floor.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

The clerk will call the roll.

Mr. KENNEDY. Reserving the right——

Mr. SCOTT. Mr. President, I renew my request.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. SCOTT. Mr. President, I have no desire to prolong the debate on this amendment. I do not know whether the distinguished Senator from Massachusetts desires to discuss it or not. I am ready to vote on it.

Mr. KENNEDY. Mr. President, I ask unanimous consent that it be in order to have the yeas and nays on a tabling motion in just a minute.

The PRESIDING OFFICER. Is there objection? The Chair hears none and it is so ordered.

Mr. KENNEDY. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. KENNEDY. Mr. President, this amendment would kill the District of Columbia representation amendment. I think the Members of this body, as we have seen from past votes, are divided as to what the proper policy on this issue should be. This amendment is really not appropriate as an add-on amendment.

As I mentioned previously, the only time that any constitution amendments were ever considered en bloc was at the time of the submission of the Bill of Rights to the States. Since that time, historically, amendments have been considered individually, one at a time, and it seems to me to be a sound historical precedent.

If the Senator wishes to address this issue, he ought to do so in and of itself. For the reasons I have mentioned here I will move to table his amendment.

Mr. SCOTT. Mr. President, will the Senator withhold his motion temporarily?

Mr. KENNEDY. I will withhold it, reserving the right to the floor. I will yield for a brief comment from the Senator.

Mr. SCOTT. Mr. President, this is an amendment that was considered by the subcommittee of the Senate Judiciary Committee. It failed to carry by an equal vote. The members of the subcommittee were equally divided. So it is a matter that has been under consideration. It was during the 94th Congress that it was considered in the Judiciary Committee.

The matter we have before us today we have had no vote on in the Judiciary Committee. So I think there is more credence to the offering of this amendment than to the amendment that is presently before us, which is a House version of a joint resolution rather than a Senate resolution.

I appreciate the distinguished Senator's delaying his motion to table so that I might have time to speak on this.

Mr. KENNEDY addressed the Chair.

Mr. THURMOND. Mr. President, will the Senator yield me just 2 or 3 minutes?

Mr. KENNEDY. I yield 3 minutes to the Senator from South Carolina.

Mr. THURMOND. Mr. President, I rise in opposition to this amendment being considered at this time and would favor a tabling motion for this reason: I agree with the able and distinguished Senator from Virginia concerning the merits of this amendment. I think he has put his finger right on the question concerning

the solving of the abortion matter from the Federal standpoint.

His amendment reads this way:

The power to regulate the circumstances under which pregnancy may or may not be terminated is reserved to the respective States and territories of the United States.

Mr. President, I was disappointed when the Supreme Court handed down a decision on this question. I was disappointed that they took jurisdiction of this question. The word "abortion" is not even found in the Constitution of the United States. Therefore, the Federal Government really had no jurisdiction in this field, because the Constitution is clear that matters not specifically delegated to the Federal Government are reserved to the States.

Abortion has not been so delegated. Therefore, it is reserved to the States. But since the Supreme Court entered this field anyway, then I feel we should pass an amendment to turn it back to the States. I thoroughly agree with the merits of this amendment as proposed by the distinguished Senator from Virginia.

However, Mr. President, this is a very important question. It is one that ought to stand on its own merits. It is one that should be considered separately, and I am not too sure whether it is offered here to stop the proposed amendment or to be considered on its own merits.

At any rate, whatever the purpose is, I agree with the distinguished Senator from Virginia on this amendment, but I do not think this is the place to offer it. I think he ought to offer it separately and let it be considered separately. I would support it if that is the case. I will vote to table it because I think the amendment is being offered at the wrong time.

Mr. KENNEDY. Mr. President, I thank the Senator from South Carolina for his comments.

As the Senator from Virginia pointed out, the vote was evenly divided in the Subcommittee on The Constitution. I think the issue also divides the Senate.

This amendment for D.C. representation has been overwhelmingly accepted by the House of Representatives. This is the next-to-final action that has to be taken on that issue. If it is approved by the Senate, it goes to the States for ratification.

Therefore, because of the reasons I mentioned earlier, I renew my motion to table the amendment of Mr. SCOTT.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Massachusetts to lay on the table the amendment of the Senator from Virginia.

The yeas and nays have been ordered and the clerk will call the roll.

The legislative clerk called the roll.

(Mr. GLENN assumed the chair.)

Mr. ROBERT C. BYRD. I announce that the Senator from South Dakota (Mr. ABOUREZK), the Senator from Alabama (Mrs. ALLEN), the Senator from Minnesota (Mrs. HUMPHREY), the Senator from Minnesota (Mr. ANDERSON), the Senator from Indiana (Mr. BAYH), the Senator from Arkansas (Mr. BUMPERS), the Senator from North Dakota (Mr. BURDICK), the Senator from California (Mr. CRANSTON), the Senator from Iowa (Mr. CULVER), the Senator from Arizona (Mr. DECONCINI), the Senator from Mississippi (Mr. EASTLAND), the Senator from Montana (Mr. HATFIELD), the Senator from Hawaii (Mr. INOUYE), the Senator from Louisiana (Mr. JOHNSTON), the Senator from New Hampshire (Mr. MCINTYRE), the Senator from Rhode Island (Mr. PELL), the Senator from Maryland (Mr. SARBANES), the Senator from Tennessee (Mr. SASSER), the Senator from Illinois (Mr. STEVENSON), and the Senator from Georgia (Mr. TALMADGE) are necessarily absent.

I also announce that the Senator from New Hampshire (Mr. DURKIN) is absent on official business.

I further announce that, if present and voting, the Senator from Minnesota (Mrs. HUMPHREY) would vote "yea."

Mr. BAKER. I announce that the Senator from Oklahoma (Mr. BELLMON), the Senator from Rhode Island (Mr. CHAFEE), the Senator from Kansas (Mr. DOLE), the Senator from New Mexico (Mr. DOMENICI), the Senator from Utah (Mr. GARN), the Senator from Michigan (Mr. GRIFFIN), the Senator from Oregon (Mr. HATFIELD), the Senator from Pennsylvania (Mr. HEINZ), the Senator from Maryland (Mr. MATHIAS), the Senator from Illinois (Mr. PERCY), the Senator from Vermont (Mr. STAFFORD), and the Senator from Alaska (Mr. STEVENS), are necessarily absent.

I further announce that, if present and voting, the Senator from Oregon (Mr. HATFIELD), would vote "yea."

The result was announced—yeas 48, nays 19, as follows:

[Rollcall Vote No. 332 Leg.]

YEAS—48

Bentsen	Hollings	Nunn
Brooke	Huddleston	Packwood
Byrd, Robert C.	Jackson	Pearson
Cannon	Javits	Proxmire
Case	Kennedy	Randolph
Chiles	Leahy	Ribicoff
Clark	Long	Riegle
Danforth	Lugar	Schmitt
Ford	Magnuson	Sparkman
Glenn	Matsunaga	Stennis
Gravel	McGovern	Thurmond
Hart	Melcher	Wallop
Haskell	Metzenbaum	Weicker
Hathaway	Morgan	Williams
Hayakawa	Moynihan	Young
Hodges	Muskie	Zorinsky

NAYS—19

Baker	Eagleton	Nelson
Bartlett	Goldwater	Roth
Biden	Hansen	Schweiker
Byrd, Harry F., Jr.	Hatch	Scott
	Helms	Stone
Church	Laxalt	Tower
Curtis	McClure	

NOT VOTING—33

Abourezk	Domenici	Johnston
Allen	Durkin	Mathias
Anderson	Eastland	McIntyre
Bayh	Garn	Pell
Bellmon	Griffin	Percy
Bumpers	Hatfield, Mark O.	Sarbanes
Burdick	Hatfield, Paul G.	Sasser
Chafee	Heinz	Stafford
Cranston	Humphrey	Stevens
Culver	Inouye	Stevenson
DeConcini		Talmadge
Dole		

So the motion to lay on the table amendment No. 3467 was agreed to.

(Later the following proceedings occurred:)

Mr. EAGLETON. Mr. President, I ask unanimous consent that on vote No. 332, amendment No. 3467, my vote be recorded as being "no" rather than "aye."

Mr. ROBERT C. BYRD. Reserving the right to object, the Senator knows I am not going to object, but for the record, the Senator has stated that this would not change the outcome. He did vote and, under the rule, the Senator can change his vote, if he has voted.

So, I have no objection.

The PRESIDING OFFICER. Without objection, it so ordered.

(The above rollcall vote reflects the foregoing order.)

Mr. KENNEDY. Mr. President, I move to reconsider the vote by which the motion to lay on the table was agreed to.

Mr. METZENBAUM. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. Who yields time?

UP AMENDMENT NO. 1691

(Purpose: To authorize a State to rescind its ratification prior to adoption of the proposed constitutional amendment)

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

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Idaho (Mr. McCLURE) proposes an unprinted amendment No. 1691.

Mr. McCLURE. Mr. President, I wonder if we can have order so that Members can hear the amendment?

The PRESIDING OFFICER. May we have order in the Senate? Will the people wishing to converse please retire to the cloakrooms or the lobbies? The Senator's point is well taken. Will all those not conversing please take their seats or retire to the cloakrooms?

The clerk will state the amendment.

The assistant legislative clerk read as follows:

On page 1, line 9, after "Congress" insert "(but no such ratification by a legislature shall continue to be effective or counted toward the necessary number of ratifications on and after the date of a rescission by the legislature of that ratification, unless this article of amendment has been adopted prior to the date of that rescission)".

On page 2, line 16, after "submission" insert "(but no such ratification by a legislature shall continue to be effective or counted toward the necessary number of ratifications on and after the date of a rescission by the legislature of that ratification, unless this article of amendment has been adopted prior to the date of that rescission)".

UP AMENDMENT NO. 1692

Purpose: To prohibit a State from rescinding its ratification of the proposed constitutional amendment.

Mr. McCLURE. Mr. President, I ask unanimous consent to withdraw that amendment and submit another amendment which I now send to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. Is there objection?

Will the Senator please use his microphone?

Mr. McCLURE. I ask unanimous consent to withdraw that amendment and submit another amendment which I have sent to the desk and ask the clerk to report.

The PRESIDING OFFICER. Is there objection? Without objection it is so ordered. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Idaho (Mr. McCLURE) proposes an unprinted amendment numbered 1692.

On page 1, line 9, after "Congress" insert "(but no such ratification once made by a State legislature shall be subject to rescission)".

On page 2, line 16, after "submission" insert "(and no such ratification once made by a State legislature shall be subject to rescission)".

Mr. McCLURE. Mr. President, I presented the amendment in that manner so that the Senate could see the alternative that might be presented to us for consideration. As you know, Mr. President, we are involved at this moment in a nationwide debate with respect to the equal rights amendment. One of the debates concerning that equal rights amendment is whether or not a State legislature, once having ratified the proposed amendment, has the right to rescind that ratification, and if they have taken the action to rescind the ratification which they had earlier made, will that be honored by the Congress in the computation of whether or not there have been a sufficient number of States ratifying the amendment.

The first amendment which I offered and then withdrew said very clearly that the States would have the right to consider the second time and change their mind by rescinding a prior ratification. I have withdrawn that amendment.

Mr. SCOTT. Will the distinguished Senator yield for a unanimous-consent request?

Mr. McCLURE. I am very happy to yield to my distinguished friend.

Mr. SCOTT. Mr. President, I am advised that under the previous unanimous-consent agreement, the time allotted to me, only a few minutes remains of that time. I have talked with the distinguished majority leader and the distinguished Senator from Massachusetts, the floor manager of this proposal. I ask unanimous consent, as to 30 minutes of the time that is allocated to me for tomorrow, that I be permitted to utilize it today. Also, Mr. President, I ask unanimous consent that the distinguished Senator from Massachusetts yield 10 minutes to the Senator from Montana (Mr. MELCHER) and I would yield 20 minutes to Mr. MELCHER of the time that is allotted to us respectively so that Senator MELCHER would have a total of 30 minutes.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. SCOTT. I thank the distinguished Senator.

Mr. McCLURE. Mr. President, after having withdrawn the amendment which would have clearly stated that the States had the right to rescind a prior ratification of this amendment, I submitted the amendment that says the alternative, that says the States do not have the right to rescind. People to whom I have been talking and with whom I have discussed the matters pending on this bill are afraid that the submission of either of these amendments will inevitably get involved in the debate over the equal rights amendment, and it is not my purpose to do that.

I know that in discussing the question of rescission, it is inevitably involved in our thinking and we certainly cannot avoid some consideration of this other issue. But I think, as we prepare to submit a constitutional amendment to the people of the United States for action by the State legislatures, that we ought to be as clear as we can be about what we intend at the time we submit it to the State legislatures. We should not wait until a period of time has expired and we are confronted with a specific case as to whether it will aid or prejudice the passage of an amendment or whether it will put more or less pressure upon a given State legislature. We ought to make the decision now as to what it is that we intend to do. What is it that we, as the Congress of the United States, have in mind? What are the rules under which we will determine whether or not that amendment has been ratified?

It is my judgment, Mr. President, that one of the issues which must be considered as we go through this proposed amendment is whether or not we will recognize the right of a State to take a second look. The arguments must inevitably follow the following line: Those who do not wish a State to have that right must inevitably say that, the States once having acted, the Constitution provides that they have the right to act to approve a constitutional amendment, but the Constitution does not specifically say that they have the right to remove that approval.

The argument on the other side of that issue is one of equity and fairness, as well as a construction of the Constitution which says that, certainly, if a legislature can consider and reject an amendment and then reconsider and reject an amendment, and reconsider and reject an amendment, and reconsider and then ratify it and that stops the reconsiderations, it is a one-way street. People who believe in equity and fairness, as well as a proper construction of the Constitution, will say that the State legislatures cannot be constrained in their opportunity to consider, reconsider, and reconsider whatever actions they may wish to take during the time limited by the submission to them and up until the time that the ratification has been certified as having been adopted by the total number of States required by the Constitution to ratify a proposed amendment to the Constitution.

Mr. President, my purpose in offering the amendment is to give the Senate the opportunity to go on record now as to what they desire to do with respect to the question of rescission as it relates to this specific amendment. It is not my deside to try to prejudice the debate over whether or not rescission should be allowed in the equal rights amendment. Every amendment is submitted separately to the people of the United States. Each one is submitted under the rules and subject to the considerations in each individual proposal.

The equal rights amendment was submitted under one resolution; this proposal is being submitted under another. It is not necessary, under the Constitution, that what we decide on this particular proposal is necessarily binding upon the other proposals. It certainly, however, will have some effect upon the considerations by future Congresses and, perhaps, by the courts with respect to the right of the States to reconsider not just the actions that they took in rejecting a proposed amendment, but also the right to reconsider the action taken by a State legislature in supporting the proposed amendment.

Mr. President, I reserve the remainder of my time.

Mr. KENNEDY. Mr. President, as I understand it, we are under the previous time agreement. Am I correct? Twenty minutes for the proponents of the amendment, 10 minutes for the opposition?

The PRESIDING OFFICER. That is correct.

Mr. KENNEDY. I yield myself 5 minutes.

Mr. President, I am at somewhat of a loss to understand the reasoning of the Senator from Idaho. First of all, he has an amendment that permits the rescission; then he withdraws that and submits an amendment to prohibit rescission. He is the sponsor of both amendments, so I am really not quite sure what the strategy is on an issue of very great importance to the Constitution, as well as to the intent of the Founding Fathers.

If we are serious about this particular amendment, and I am sure the Senator is, I think that any fair interpretation of the constitutional and legal history would indicate that the language reflects the law of the land at the present time. I am satisfied to that effect, having given it study as a member of the Committee on the Judiciary. We reviewed the issues and the constitutional arguments that were made to the committee on the issue of rescission. Of course, the issue of rescission as it applies to this amendment is quite a bit different from the same issue as it applies to the equal rights amendment.

Nonetheless, I believe, Mr. President, most of the testimony that the Committee on the Judiciary has heard on this issue would be that the language of this amendment currently is the law of the land. Since it is the law of the land, it does not seem to me that this particular amendment is required to be included. Another reason, of course, would be that its acceptence by us it would require acceptance by the House of Representatives or a conference, and from what we have seen over the period of the last few days, perhaps an extended comment by Members of the Senate if a conference report were to be voted upon.

I feel, Mr. President, that this amendment is merely a restatement of the current law. I do not think it is necessary,

nor do I think it is desirable, so I shall oppose the amendment and, at the appropriate time, make a motion to lay it on the table. I do not know whether the Senator wants additional time to speak on it. I do not want to foreclose that opportunity. If he does not, I intend, at an appropriate time, to make such a request.

Mr. McCLURE. I had hoped the Senator would not offer a motion to table, although I recognize that he has the right, under the rules of the Senate, to do so. Aside from his own sense of strategy, I could appeal to his sense of fairness in allowing us to have a vote on the issue, rather than a vote on the motion to table.

Unlike the Senator from Massachusetts, however, I do not believe that the law of the land is set on this issue. I think any careful reading of the precedents that apply would indicate that the issue is in doubt. The courts have not been clear on that issue. They have not ever ruled in clear fashion on that issue, and it will undoubtedly be the subject of court challenges if, as a matter of fact, there is a rescission that is not recognized by the Congress unless the Congress at this time, as a part of this submission, says it cannot be rescinded, which I think would lay to rest the possibility of court challenges.

But it is my understanding of the law that it is not well set, that in all likelihood the courts would be asked to rule as they have not clearly ruled in the past and that they might again be pushed back into the Congress for decision, which I would view as the most likely result under the current precedents and current rulings of the Supreme Court and the inferior courts of the land.

It is my purpose to avoid having it bounced back to the Congress at some future date, at a time when we would be not involved purely with the constitutional issue of whether or not rescission should be permitted.

But we get involved in all kinds of side and extraneous issues that deal with which States have rescinded, which are likely to, which legislatures can be called upon to reverse their actions in favor of or against a particular amendment.

I think as a matter of policy we ought to state what it is we intend to do.

Mr. President, I do not desire to prolong the debate. But it is my intent to ask for the yeas and nays on the amendment. There are not a sufficient number of Senators on the floor at the moment. I wonder if the Senator from Massachusetts would join with me in getting a sufficient number on the floor that we might get the yeas and nays on the amendment.

Mr. KENNEDY. Yes, but I would just like to make a final comment.

Mr. President, on the question of rescission, which the Judiciary Committee has examined in some considerable detail, I was hopeful my colleague would withdraw this amendment, and the chairman of the Constitutional Rights Subcommittee would be able to join us on the floor at this time, but he is unable to do so.

Nevertheless, the overwhelming opinion of leading constitutional authorities on the issue of rescission is that the issue of rescission is resolved in article V of the Constitution.

The issue of rescission is clearly resolved in article V. If we are going to alter and change article V to any extent, then I think we ought to follow the constitutional process that has been established. We will then have an opportunity in the committees of both the House and the Senate to address that issue.

If this amendment is a restatement of the existing law, it is really unnecessary. I have studied the issue of rescission, and this is my own personal view.

So I do suspect we will probably see this issue presented to us in a different form in several minutes, and the argument will be on that issue again.

For those reasons, Mr. President, I can understand a Senator introducing both sides of the amendment, figuring there must be a majority on one side or the other and, if it is on one side or the other, it may very well be the death of the amendment. I do not conclude that is the motivation of the Senator from Idaho, although I do think if we end up with a complete 180 degrees on the next amendment, that there may be those who feel that way.

But I intend to make a motion to table.

Mr. President, I ask for the yeas and nays on a motion to table.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent it be in order to order the yeas and nays on the motion to table.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. KENNEDY. I ask for the yeas and nays on the motion to table.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. KENNEDY. Mr. President, I move to lay on the table UP amendment No. 1692 of the Senator from Idaho.

Mr. McCLURE. I yield back the remainder of my time.

Mr. KENNEDY. I yield back the remainder of my time.

The PRESIDING OFFICER. All time having been yielded back, the question is on agreeing to the motion to lay on the table UP amendment No. 1692 of the Senator from Idaho.

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 South Dakota (Mr. ABOUREZK), the Senator from Alabama (Mr. ALLEN), the Senator from Minnesota (Mr. ANDERSON), the Senator from Arkansas (Mr. BUMPERS), the Senator from North Dakota (Mr. BURDICK), the Senator from California (Mr. CRANSTON), the Senator from Iowa (Mr. CULVER), the Senator from Arizona (Mr. DECONCINI), the Senator from Mississippi (Mr. EASTLAND), the Senator from Montana (Mr. HATFIELD), the Senator from Minnesota (Mrs. HUMPHREY), the Senator from Louisiana (Mr. JOHNSTON), the Senator from New Hampshire (Mr. McINTYRE), the Senator from Maryland (Mr. SARBANES), the Senator from Alabama (Mr. SPARKMAN), the Senator from Georgia (Mr. TALMADGE), and the Senator from Indiana (Mr. BAYH) are necessarily absent.

I also announce that the Senator from New Hampshire (Mr. DURKIN) is absent on official business.

I further announce that, if present and voting, the Senator from Minnesota (Mrs. HUMPHREY) would vote "yea."

Mr. STEVENS. I announce that the Senator from Oklahoma (Mr. BELLMON), the Senator from Rhode Island (Mr. CHAFEE), the Senator from Kansas (Mr. DOLE), the Senator from Utah (Mr. GARN), the Senator from Michigan (Mr. GRIFFIN), the Senator from Oregon (Mr. HATFIELD), the Senator from Pennsylvania (Mr. HEINZ), the Senator from Maryland (Mr. MATHIAS), the Senator from Illinois (Mr. PERCY), and the Senator from Vermont (Mr. STAFFORD) are necessarily absent.

The result was announced—yeas 67, nays 5, as follows:

[Rollcall Vote No. 333 Leg.]

YEAS—67

Baker	Haskell	Nelson
Bartlett	Hatch	Nunn
Bentsen	Hathaway	Packwood
Biden	Hayakawa	Pearson
Brooke	Hodges	Pell
Byrd, Harry F., Jr.	Hollings	Proxmire
Byrd, Robert C.	Huddleston	Randolph
Cannon	Inouye	Ribicoff
Case	Jackson	Riegle
Chiles	Javits	Roth
Church	Kennedy	Sasser
Clark	Laxalt	Schmitt
Curtis	Leahy	Schweiker
Danforth	Long	Stevenson
Domenici	Lugar	Stone
Eagleton	Magnuson	Thurmond
Ford	Matsunaga	Tower
Glenn	McGovern	Wallop
Goldwater	Melcher	Weicker
Gravel	Metzenbaum	Williams
Hansen	Morgan	Young
Hart	Moynihan	Zorinsky
	Muskie	

NAYS—5

Helms	Scott	Stevens
McClure	Stennis	

NOT VOTING—28

Abourezk	DeConcini	Heinz
Allen	Dole	Humphrey
Anderson	Durkin	Johnston
Bayh	Eastland	Mathias
Bellmon	Garn	McIntyre
Bumpers	Griffin	Percy
Burdick	Hatfield, Mark O.	Sarbanes
Chafee	Hatfield, Paul G.	Sparkman
Cranston		Stafford
Culver		Talmadge

So the motion to table the amendment (UP No. 1692) was agreed to.

Mr. KENNEDY. Mr. President, I move to reconsider the vote by which the motion to lay on the table UP amendment No. 1692 was agreed to.

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

The motion to lay on the table was agreed to.

UP AMENDMENT NO. 1693

(Purpose: To grant to the people of the District authority to decide how the rights and powers conferred shall be exercised)

Mr. McCLURE. Mr. President, I have

an amendment which I send to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Idaho (Mr. McCLURE) proposes an unprinted amendment numbered 1693.

On page 2, line 9, beginning with the comma, strike out all through "Congress." in line 10 and insert a period and the following: "The Congress shall grant to the people of the District the power and authority to establish a mechanism by which the people shall exercise those rights and powers.".

Mr. McCLURE. Mr. President, the purpose of this amendment is to provide clarification and eliminate ambiguities in section 2 of House Joint Resolution 554.

Mr. KENNEDY. Mr. President, does the Senator have an extra copy of the amendment?

Mr. McCLURE. Yes.

Mr. KENNEDY. I thank the Senator.

Mr. McCLURE. I might just mention parenthetically to the Senator from Massachusetts that I talked with him last week and said I would try to get copies of all of these amendments printed in the RECORD. I do apologize to him for failing to have done that on Friday of last week. But we were somewhat involved in a little matter known as the natural gas deregulation bill and the President had a greater call on my time.

The purpose of the amendment is to provide clarification and to eliminate the ambiguity in section 2 of House Joint Resolution 554, in accordance with the intention of the framers of the joint resolution.

The House Judiciary Committee report on this resolution states, and I quote from that report:

Section 2 provides that the people of the District shall exercise the rights and powers conferred by the article and that the Congress, consistent with its power of exclusive legislation (art. I, sec. 8, cl. 17), shall determine the mechanism by which the people of the District exercise those rights and powers. The language of section 2 was chosen to insure that, for example, Congress itself would not ratify constitutional amendments on behalf of the District, set district lines, fill vacancies or choose electors for the offices of President and Vice President; such decisions would be made by the people of the District, but consistent with its article I power the Congress would determine the structure by which those determinations would be made.

The last phrase of section 2—

and as shall be provided by the Congress—

Read together with the first part of the sentence, implies that the exercise of the foregoing "rights and powers" must be made jointly with the "people of the District" and Congress, each holding veto power over the other. The effect of this language might be, for example, that Congress would be required to vote twice on the ratification of a constitutional amendment, first in discharging its constitutional role under article V in proposing an amendment and a second time as a sort of legislative body—since the District lacks a State legislature—endorsing the action taken by the "people of the District" under the proposed amendment.

I think it is obvious that it would be ridiculous to expect ratification of an amendment that starts out with one affirmative vote, because Congress having voted to submit it also votes to affirm it on behalf of the people of the District.

The intent of section 2 was apparently to provide that Congress may enforce the proposed article by appropriate legislation as has been provided in other constitutional amendments.

The intent of section 2 was apparently to provide that the Congress may enforce the proposed article by appropriate legislation, as has been provided in other constitutional amendments. However, the language of House Joint Resolution 554 is unclear on this point and is so ambiguous that it does not accomplish its intended purpose. Such poor draftmanship and ambiguity do not belong in a proposed amendment to the Constitution.

My amendment would prevent confusion in interpretation and assist in the proper execution of the amendment if it is adopted. It would enable Congress to adopt future enabling legislation to provide the District with the necessary authority and power to carry out the purposes of the amendment.

Mr. President, I think it is obvious that the amendment is needed to clarify what the House of Representatives in its report said was the intention of the amendment but which the amendment does not on its face accomplish.

Mr. President, I urge the adoption of the amendment and urge the managers of the proposed legislation to consider seriously the issue that has been raised, and I hope that they will agree with the amendment.

Mr. President, I reserve the remainder of my time.

Mr. President, I ask unanimous consent that it be in order to ask for the yeas and nays at this time.

The PRESIDING OFFICER. The yeas and nays on what?

Mr. McCLURE. On this amendment.

Mr. KENNEDY. On this amendment, and I also ask that it be in order that the yeas and nays be in order for a tabling motion as well.

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

Mr. McCLURE. Mr. President, I ask for the yeas and nays on the amendment.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. Is there a sufficient second on the motion to table? There is a sufficient second.

The yeas and nays were ordered.

Mr. KENNEDY. Mr. President, the amendment of the Senator from Idaho, as I understand it, would provide that Congress shall grant to the District the power and authority to establish the mechanism by which the people shall exercise their rights and powers under the amendment.

In effect, what he is doing is to give the District the power to implement the provisions of the amendment. For example, the District would divide the boundaries of the various congressional districts, the filling of vacancies, and other matters that would be related to representation in Congress and other issues under the amendment. House Joint Resolution 554 gives Congress the power to decide these questions in future legislation.

Under the language in the current amendment, the power over these matters is retained in the Congress of the United States. The language of section 2 states:

The exercise of the rights and powers conferred under this article shall be by the people of the District constituting the seat of government and as shall be provided by the Congress.

The intent of the section is to require all such issues to be resolved by future legislation enacted by Congress. Such legislation is to provide for appropriate participation of the people of the District. But within that general mandate, the power of Congress would be plenary, by contrast, the Senator's amendment would confer this power on the District itself, and eliminate the oversight of Congress.

That is an unwise step to take in the amendment. What the Senator seeks could be accomplished by statute, later, after the amendment is adopted. For the purpose of this amendment, it would be wise to retain that authority and that power in the Congress of the United States.

I welcome the confidence that the Senator from Idaho has in the ability of the people of the District to make these judgments. By the amendment, he suggests that the people in this community ought to be able to make the regulations and rules implementing the amendment. In effect, the Senator's amendment is a proposal for home rule.

But it does seem, because of the particular nature of the Federal district, to be desirable at this time to retain the final authority in the Congress of the United States, and to decide these questions in the future by legislation, rather than turn over blanket authority in advance.

So, Mr. President, I will offer a motion to table after the Senator from Idaho has made whatever additional comments he would like to make.

Mr. McCLURE. Mr. President, I understand what the Senator from Massachusetts is saying. I hope people will understand that the junior Senator from Idaho, who has been trying to say all along throughout all of this debate and the comments that have been made outside of this Chamber with respect to the pending resolution, that I want the people of the District of Columbia to have full voting representation in the Congress of the United States. That is what the people on the other side of the issue have been saying, too.

Now, curiously enough, when I offer an amendment that says that we are really going to make it full voting representation, these sponsors of the resolution say:

Oh, but we don't trust them quite that much. We have to control what they do

under this amendment. We cannot let them have full rights under this amendment. We have to retain in the Congress the right to direct how they exercise their voting rights.

That seems to me to be so totally absurd as to be beyond the realm of intelligent debate. If we really want to give the people of the District of Columbia full voting rights that other people in this country enjoy, as the junior Senator from Idaho does want to give them, then we should not condition that upon saying, "All right, but we in Congress are going to continue to control how you do it." I do not think that is what the people of the District want. That is certainly not what the junior Senator from Idaho wants.

If we are going to give them a full right to vote, they ought to have the full control over the way in which they vote. I do not believe Congress ought to retain that right, on the one hand, while, on the other hand, saying, "We are giving you the same representation, the same right to vote, as everyone else in the United States has."

I think on the face of it the resolution as submitted to us by the House of Representatives is ambiguous because it does imply that Congress can retain, if it wishes, unto itself the right to do what other citizens throughout the country can do on their own behalf. What an absurdity it would be if, as a matter of fact, Congress should submit an amendment to a resolution for an amendment to the Constitution of the United States and, at the same time, say, "We are retaining the rights on behalf of the people of the District of Columbia to determine whether or not it will be approved."

That is exactly what I understand the import of the argument against the amendment to be.

I do not think that is what the resolution is intended to say. It is clear from the House report that the managers on the part of the House did not intend to say that. They intended to say the opposite. They realized they had not said it clearly in the language of the amendment, so they went to the trouble of writing in the report what it was they meant.

All I am trying to do is on the face of the resolution and the amendment what is clearly the intention of the House of Representatives and what is clearly the intention of the junior Senator from Idaho, and what I believe to be clearly the intention and desire of the people of the District of Columbia.

I am sorry that the managers of the bill have not seen fit to adopt the amendment. While I understand, if indeed they do not wish to, the motion to table will be made, I assume, that as things have been going, the motion to table will probably be agreed to. I hope not.

Mr. President, if the Senator is prepared to offer the motion to table I will be prepared to yield back the remainder of my time.

Mr. KENNEDY. I just want to make a brief comment. If the Senator from Idaho will refer to the Constitution, if he looks at the 18-year-old vote amendment, the XXVI amendment. The amendment states:

> The right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age.

Section 2 says:

> The Congress shall have power to enforce this article by appropriate legislation.

Or, take the XV amendment which says:

> The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

Section 2 says:

> The Congress shall have power to enforce this article by appropriate legislation.

Then in the XIX amendment, giving the women the right to vote, it says the same thing. The fact of the matter is in instance after instance, that has been the basic boilerplate language of constitutional amendments. Congress is given the power to enforce the new constitutional rights. There might never have been a voting rights act if Congress had not been given the power to enforce the XV amendment. Unless Congress retained that kind of authority and power, the job could not be done. It is boilerplate language which has been accepted time and again to secure the effective implementation of constitutional rights. It has been the case in instance after instance in the approval of various constitutional amendments to insure that what has been supported by two-thirds of the Members of Congress and three-quarters of the States, will actually be implemented. Congress has retained this authority, and it has properly done so.

That is the reason for it. There will always be the opportunity to turn those powers back at any time in the future. But in terms of the fashioning and shaping of this particular constitutional amendment, we have accepted what has been boilerplate language in past constitutional amendments. The language is not identical to the language used before, but that is the clear intent.

Mr. McCLURE. Mr. President, I do not mean to prolong the debate, but I must respond to my friend from Massachusetts by pointing out that the language he has referred to in other amendments is not the language which appears in this joint resolution. The language that he quotes is different from the language in the joint resolution.

The second thing that must be pointed out is that the power he was talking about is not the right to write the statute on behalf of the people, but the right of Congress to enforce the provisions. There is a vast difference between enforcing the provisions and actually doing it for them on their behalf.

If, as a matter of fact, it had been simply the desire of the framers of the resolution to enforce the provisions, they would have said so. But, curiously, they did not do that, and I have to assume that that difference was not casual or inadvertent if, as a matter of fact, it is being argued now that my amendment is inappropriate. Because there seems to be a conscious desire to withhold from the people of the District the right to vote the way they want to vote, or the right to set the lines the way they want to set them.

It seems to me that was not the intention of the people in the House of Representatives, who went to very great pains in committee to write in their report precisely the opposite. As a matter of fact, then, there is a difference between the language in the joint resolution as before the Senate and the language of other ratifications of other amendments, that contain the enforcement provision which this one does not contain, but this one contains, rather curiously, the lack of either that language, and apparently the intention on the part of some, though certainly not this Senator and I think not the House of Representatives, to imply that Congress has the right to retain to itself the power to tell the people of the District of Columbia how it will come out, and the power in the Congress of the United States to vote on behalf of the District of Columbia on constitutional amendments.

Mr. President, if the Senator is prepared to make his motion to table, I would be prepared to yield back the remainder of my time.

Mr. KENNEDY. Just this further point, Mr. President——

Mr. McCLURE. I then reserve the remainder of my time.

Mr. KENNEDY. Mr. President, section 2 of this amendment reads as follows:

> The exercise of the rights and powers conferred under this article shall be by the people of the District constituting the seat of government, and as shall be provided by the Congress.

The word "and," which is the eighth word from the end, means "in such manner." As a matter of drafting expertise, I think "in such manner" might have been preferable to the word "and"; but, this is the clear intent, and it was also the intent of the House of Representatives in approving the amendment.

In response to the merits of the argument of the Senator from Idaho, the Senator is quite correct that the language is different from the language I read about retention of the power by Congress to enforce the various other constitutional amendments; but the sum and substance of the language in the joint resolution is the same. It should be interpreted in the same way. It retains authority in Congress to insure that the rights conferred by the amendment are actually implemented in the way they should be. By contrast, the Senator's amendment would turn over all such power to the District.

Congress could act by statute to carry out the Senator's amendment. Congress could delegate all its powers of implementation to the District. But we should not lock such a rule into the amendment itself. Previous constitutional amendments have retained the final authority over implementation for Congress. It is desirable in this case also.

Mr. BAYH. Mr. President, will the Senator permit one observation?

Mr. KENNEDY. I yield——

Mr. BAYH. A couple of minutes would be fine.

The PRESIDING OFFICER. The Senator from Massachusetts has 1 minute remaining.

Mr. KENNEDY. I yield 3 minutes on the bill.

The PRESIDING OFFICER. Time cannot be taken off the bill on these amendments.

Mr. BAYH. I do not think anything I want to say is of great importance, anyway.

Mr. KENNEDY. I ask unanimous consent to yield 3 minutes on the bill.

The PRESIDING OFFICER. Is there objection? Without objection, the Senator from Indiana is recognized for 3 minutes on the bill.

Mr. BAYH. I would just like to point out to our distinguished colleague from Idaho, that I think the thrust of the argument of the Senator from Massachusetts is absolutely on square with everything we have heard in the hearings process over a rather lengthy period of time.

This matter is not a new one to come before Congress; however, it is a new one to actually reach the floor with this degree of legislative history behind us.

The thrust of this is to understand that on this partcular kind of process, the mechanisms of the process must rest with the District. Like all other constitutional amendments, if indeed the State or the District refuses to exercise what is the reasonable intent of the amendment in question, then Congress has the opportunity to have the final word.

By the implementation of this, the election process and all matters of that nature, as the distinguished Senator from Massachusetts has pointed out, shall stay with the District.

Mr. KENNEDY. Mr. President, if I have any further time, I am prepared to yield it back.

Mr. McCLURE. I yield back the remainder of my time.

Mr. KENNEDY. Mr. President, I move that the amendment be laid on the table.

The PRESIDING OFFICER. The question is on the motion to lay on the table the amendment (No. UP 1693) of the Senator from Idaho (Mr. McCLURE). The yeas and nays have previously been ordered, and the clerk will call the roll.

The second assistant legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from South Dakota (Mr. ABOUREZK), the Senator from Alabama (Mrs. ALLEN), the Senator from Minnesota (Mr. ANDERSON), the Senator from Arkansas (Mr. BUMPERS), the Senator from North Dakota (Mr. BURDICK), the Senator from California (Mr. CRANSTON), the Senator from Arizona (Mr. DECONCINI), the Senator from Mississippi (Mr. EASTLAND), the Senator from Montana (Mr. HATFIELD), the Senator from Minnesota (Mrs. HUMPHREY), the Senator from Louisiana (Mr. JOHNSTON), the Senator from New Hampshire (Mr. MCINTYRE), the Senator from Mississippi (Mr. STENNIS), and the Senator from Georgia (Mr. TALMADGE) are necessarily absent.

I further announce that the Senator from New Hampshire (Mr. DURKIN) is absent on official business.

I further announce that, if present and voting, the Senator from Minnesota (Mrs. HUMPHREY) would vote "yea."

Mr. STEVENS. I announce that the Senator from Rhode Island (Mr. CHAFEE), the Senator from Kansas (Mr. DOLE), the Senator from Michigan (Mr. GRIFFIN), the Senator from Oregon (Mr. HATFIELD), the Senator from Pennsylvania (Mr. HEINZ), the Senator from Maryland (Mr. MATHIAS), and the Senator from Illinois (Mr. PERCY) are necessarily absent.

I further announce that, if present and voting, the Senator from Oregon (Mr. HATFIELD) would vote "yea."

The result was announced—yeas 50, nays 28, as follows:

[Rollcall Vote No. 334 Leg.]

YEAS—50

Bayh	Hathaway	Nunn
Bentsen	Hodges	Pell
Biden	Hollings	Proxmire
Brooke	Huddleston	Randolph
Byrd, Robert C.	Inouye	Ribicoff
Case	Jackson	Riegle
Chiles	Javits	Sarbanes
Church	Kennedy	Sasser
Clark	Leahy	Sparkman
Culver	Magnuson	Stafford
Danforth	Matsunaga	Stevenson
Eagleton	McGovern	Stone
Ford	Metzenbaum	Thurmond
Glenn	Morgan	Weicker
Gravel	Moynihan	Williams
Hart	Muskie	Zorinsky
Haskell	Nelson	

NAYS—28

Baker	Hansen	Pearson
Bartlett	Hatch	Roth
Bellmon	Hayakawa	Schmitt
Byrd, Harry F., Jr.	Helms	Schweiker
Cannon	Laxalt	Scott
Curtis	Long	Stevens
Domenici	Lugar	Tower
Garn	McClure	Wallop
Goldwater	Melcher	Young
	Packwood	

NOT VOTING—22

Abourezk	Dole	Heinz
Allen	Durkin	Humphrey
Anderson	Eastland	Johnston
Bumpers	Griffin	Mathias
Burdick	Hatfield, Mark O.	McIntyre
Chafee		Percy
Cranston	Hatfield, Paul G.	Stennis
DeConcini		Talmadge

So the motion to lay on the table UP amendment No. 1693 was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the amendment was laid on the table.

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

The motion to lay on the table was agreed to.

UP AMENDMENT NO. 1694

(Purpose: To retrocede the District of Columbia to the State of Maryland, except for lands owned by the United States)

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

The PRESIDING OFFICER (Mr. MOYNIHAN). The amendment will be stated.

The second assistant legislative clerk read as follows:

The Senator from Idaho (Mr. McCLURE) proposes unprinted amendment No. 1694.

On page 2, strike out lines 2 through 10 and insert the following:

"SECTION 1. Except as provided in section 2, the lands comprising the District constituting the seat of the government of the United States on the day before the day on which this article is ratified are retroceded to the State of Maryland.

"SEC. 2. Section 1 shall not apply to lands owned by the United States on the day before the day on which this article is ratified and such lands shall, on and after the day on which this article is ratified, comprise the District constituting the seat of the Government of the United States.

Amend the title so as to read: "Joint Resolution proposing an amendment to the Constitution to retrocede to the State of Maryland all lands within the District of Columbia except lands owned by the United States.".

Mr. McCLURE. Mr. President, this amendment would provide for full retrocession. We touched on this discussion of the retrocession and part of its aspects in the Melcher amendment, but this would provide a complete and full retrocession of all of the area within the District to the State of Maryland except for a small Federal enclave for the seat of the Federal Government.

Mr. President, I offer an amendment which would provide for full retrocession. This proposal would cede back to the State of Maryland the entire District except for a small Federal enclave for the seat of the Federal Government.

The precedent for such action was the District's prior retrocession of lands originally granted by Virginia, constituting the area around the modern city of Alexandria, to the Commonwealth in 1846. That was accomplished by statute; this retrocession would be made by constitutional amendment, thereby requiring the ratification of three-fourths of the State legislatures and avoiding the problems, constitutional or otherwise, inherent in other proposals such as House Joint Resolution 554.

Returning the populated portion of the District to Maryland would afford the residents of the District full voting representation in the Congress through the election of U.S. Representatives and Senators from the State of Maryland.

Retaining a "Federal enclave" would satisfy the provisions of the Constitution and the intention of the framers concerning the seat of government.

Residents of the retroceded area would be able to vote for a Governor, members of the State legislature, and local government officials on the same basis as other residents of Maryland.

Residents of the District would attain, through full retrocession, the full political rights enjoyed by all other citizens of the United States.

Full retrocession can be accomplished without violating the spirit of the Constitution or impairing the Federal system.

The mere fact that the people of the District and Maryland have expressed no interest in this approach is no argument against it. Attention has focused on other constitutional amendments primarily. It is not surprising that District politicians would prefer to have their own U.S. Representatives and Senators. The Constitution should not be arbitrarily amended for every purpose, however questionable. Retrocession is a more reasonable ap-

proach which should be thoroughly examined and discussed before an attempt is made to radically change the Constitution, as House Joint Resolution 554 would do.

Mr. President, I see my colleague from Maryland on the floor and he is on his feet. I assume he will have some comments he wishes to make. Rather than continue my discussion of the amendment at this point, Mr. President, I reserve the remainder of my time.

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

Mr. SARBANES. Mr. President, let me say at the outset that it is gratifying to the people of the State of Maryland that some Members of the Senate now seem so anxious to retrocede one or another part of the District of Columbia, one way or another to the State of Maryland. This has all occurred now that we are confronted with the issue of whether the people of the District of Columbia ought to be given direct representation in the House of Representatives and the Senate of the United States. These proposals have not heretofore been advanced as positive propositions viewed as a reasonable or desirable thing to do. They appear on the scene as a negative diversion; to seek in effect to preclude giving voter representation to the residents of the District of Columbia.

I must say that it is in this perspective that I see this proposal, as I do other similar proposals which have been made. The Members are going to have to face this representation issue squarely. There are reasonable arguments for having a Federal district for the National Capital; in fact if it were proposed to do away with the Federal district altogether, we would then, perhaps, be hearing, from the same people that are putting forward the limited retrocession proposals, the arguments why a National Capital district is desirable and ought not to be completely done away with. The proposals we have had, none of which is complete retrocession, all carry with them inherent problems. This one, which would exclude from retrocession, all land owned by the Federal Government—which I understand amounts to about 40 percent of the present District of Columbia, involves exclusive property that is not contiguous, that is interspersed with private or other public property throughout the District—this proposal would result in an absolute hodge-podge of alternating geographical areas which would result in an impossible situation in terms of trying to make government work.

Very frankly, I think we ought to face squarely the representation issue. If Senators do not want residents of the District of Columbia to be represented in the National Legislature and want them to continue to be disenfranchised, then they ought to put forward the underlying arguments for that position, not divisionary proposals, and let that basic position be accepted or rejected.

But the various retrocession proposals are but a diversion to try and shift the focus and the attention of Members of this body from the central underlying issue.

This amendment does not really move away from that diversionary approach. The exception which it contains for federally owned property is, of course, one that makes the whole proposition utterly unworkable.

The only logical proposition, which would be to retrocede all of the territory, then carries with it problems involving the arguments, reasonable arguments, which can be made as to why there ought to be a Federal district.

I just think Members ought to face that situation and face what is at stake in House Joint Resolution 554, which is to enfranchise 700,000 of our citizens who have been denied representation in the National Legislature of our country, even though they have, of course, been given representation with respect to the choice of the national Executive.

The PRESIDING OFFICER. Who yields time?

Mr. McCLURE. Mr. President, I know how troubling this is to elected representatives in the State of Maryland, not just the Senators from the State of Maryland, but the other Congressmen, the Governor, and, indeed, the political structure of both parties within the State of Maryland.

But, it seems to me, if we are talking about establishing for the people of the District of Columbia their full civil rights, we ought to be attempting to do exactly that when we have the opportunity to do so.

The proposal before the Senate in the form of the House resolution does not do that. It does not grant them the same rights that every other citizen of the United States exercises. It grants them some of the rights that other citizens of the United States exercise. Only by retrocession or by the creation of the 51st State could we give the people of the District of Columbia the same voting rights, the same civil rights, that every other citizen of the United States enjoys.

I know that it is troubling to people who are more concerned about the political structure of the State of Maryland than they are the civil rights of the residents of the District to accept that change. But the fact remains that if they are to get the same right to vote for Senators and Representatives, a Governor, a State legislature, that every other citizen of the United States enjoys, it must be either by statehood or by retrocession.

Mr. SCOTT. Will the Senator yield?

Mr. McCLURE. I am happy to yield to the Senator from Virginia.

Mr. SCOTT. Mr. President, I certainly support the amendment by my distinguished colleague from Idaho. But I would point out, and I know he is aware of this, that there are other American citizens who do not have representation in the Senate.

Only States have representation. There is Puerto Rico. The people of Puerto Rico are citizens of the United States. They do not have a Senator. They have a Delegate. The people from the Virgin Islands, from Guam, have a nonvoting Delegate. The incorporated territories of the United States have this.

The question would logically follow, if we give two Senators to the District of Columbia and we want to be fair to all American citizens, would it not, that we should have two Senators from Puerto Rico, two Senators from the Virgin Islands, and two Senators from Guam?

It seems logical to the Senator from Virginia that we would increase this body by eight Senators rather than two.

Mr. McCLURE. I thank the Senator from Virginia for pointing out that additional argument that can be made with regard to fairness to all people who are under the umbrella of U.S. citizenship.

But, Mr. President, the argument can be even more pointedly focused on the people of the District of Columbia and on the political system in the State of Maryland because I am told very often by various people that we cannot do this because the State of Maryland does not want it.

It was hinted early in the debates on this measure that those of us who were opposed to it are somehow racist. I think my colleague from Massachusetts said that we do not want them to be voting because they are too black and too liberal.

Well, I can tell my friend that I have never opposed voting rights on the basis of either, although I certainly do oppose people who are liberal on their policies. But I have never opposed anybody on the basis of his race, and I shall not do so.

But if, as a matter of fact, there is a resistance to full civil rights for the people of the District of Columbia, if there is any racism in that argument, the racism lies in the political structure of the State of Maryland, not in those who are opposed to investing the people of the District of Columbia with some right which no one else in the United States enjoys.

Mr. SARBANES addressed the Chair.

Mr. McCLURE. Then denying them other rights which every other citizen of the United States presently enjoys.

Mr. SARBANES. Will the Senator yield?

Mr. McCLURE. I will yield briefly.

Mr. SARBANES. I do not think the Senator, because of a sensitivity which he seems to have to the criticisms which have been made, apparently, of him, and perhaps others who oppose this amendment, should then seek to ascribe to the people of the State of Maryland or its political leaders motives completely absent and not present.

The Senator may speak as to his own motivation, but I do not think, out of some sense of apparent resentment on that matter, he should seek to ascribe to the people and the leaders of my State a motivation which is completely absent.

Mr. McCLURE. I understand what the Senator is saying. But I did not see the Senator on his feet when those other suggestions were being made about the motivations of other people.

I understand what he is saying. I just want to get the motivation question, this issue question, in the proper context.

Those who may oppose——

Mr. SARBANES. That is exactly the reason I rose, in an effort to get it into the proper context.

Mr. McCLURE. I understand.

Mr. SARBANES. I appreciate the Senator now seeking to do that and I would hope he would do that.

Mr. McCLURE. I understand what the Senator is saying.

Mr. SARBANES. Has the Senator from Maryland made any charge about either the Senator from Idaho's motivation or that of the people of the State of Idaho?

Mr. McCLURE. I cannot answer that question. I have not heard it myself.

Mr. SARBANES. Certainly, speaking for this Senator, there has been no such charge, and I would be prepared to assert, knowing the character and the quality of my distinguished colleague from the State of Maryland, that there has been no such charge in his instance, either.

Mr. McCLURE. I thank the Senator for his contribution and I understand his concern about the remarks I have made.

I make those remarks out of the strong conviction that people who have tried to inject race as the motivation on either side in these issues ought to have that pointed out, that they are appealing to the emotions and not to the intellect of the voters of this country and of this body.

Mr. SARBANES. If the Senator has that sensitivity, it seems to me the reasonable way to have approached it would have been to deny the presence of such motivation in his instance, if that allegation were made, but not to go beyond that and cast a similar aspersion on the people of my State and on the political leaders of my State. There is no basis for the Senator undertaking to do that.

Mr. McCLURE. Mr. President, I understand the concern of my friend from Maryland.

I am not going to yield further to him at this time on my time to beat that dead horse.

I do want to reiterate that if we are going to invest the people of the District of Columbia with their full civil rights, in absolute equality with every other citizen of this country, we cannot do it and do not do it under the resolution which has been brought to the floor. But we can and would do it under the amendment which the Senator from Idaho has offered. The fact that, for whatever reason, it may be disturbing to the people of Maryland should not be the overriding concern of the Members of this body. If, as a matter of fact, the overriding is concerned, as I think it should be, with the rights of the individual residents of the District of Columbia, then let us address that squarely. Let us not slide around the issue by injecting other issues, such as denial of due process, denial of voting rights, denial of the fact that racism may be a quotient in the arguments and the emotions in this debate.

The Senator from Idaho is as dedicated as any other to the notion that the exclusion of the voting rights of the people of the District is an anachronism from an earlier age, that the reasons it may have existed and may have been valid at an earlier time no longer exist, that the people who vote in the District of Columbia and reside in the District of Columbia do not universally and uniformly work for the Federal Government.

As a matter of fact, I suspect there is a higher number who live in Maryland and in Virginia who work for the Federal Government than the residents of the District itself. Those patterns have shifted over the years. But certainly that, as a major motivation, is no longer reason to deny to the people who live here the full rights of citizenship.

The pending resolution, brought to the floor of the Senate not through the regular processes of the committees in the Senate but directly from the House and directly to the floor of the Senate, would deny the people of the District of Columbia full voting rights, full civil rights—and I think they should have them. There is no reason why the Senate cannot redress that wrong, rather than create two other wrongs by passing the pending resolution.

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

Mr. McCLURE. Mr. President, before yielding, how much time do I have remaining?

The PRESIDING OFFICER. The Senator has 7 minutes remaining.

Mr. McCLURE. I yield briefly to the Senator from Indiana.

Mr. BAYH. Has the Senator given consideration to how the citizens of the District would be treated in the area of reapportionment as provided under the Constitution? Would their numbers be added to the numbers of the people of Maryland in the reapportionment after the next census?

Mr. McCLURE. Under the amendment I have suggested, the desire of the people of the District as to their separate representation would be accomplished by granting them representation in the House of Representatives as though they were a State, granting them the right to have their Senators voted upon statewide, as all other citizens of this country have their Senators voted upon.

Mr. BAYH. I thought the Senator's amendment just struck section 2, lines 2 through 10.

Mr. McCLURE. This simply corrects an error in the resolution, from my viewpoint.

Mr. BAYH. The Senator is familiar with the fact that the language in the constitution talks in terms of reapportionment within the bounds of the given States. Does the Senator suggest that he is creating some sort of non-State entity, which would not qualify them, under the present language, for reapportionment?

Mr. McCLURE. The Senator is correct. But this would not conform exactly in that respect to the treatment in other areas of the country. It would preserve the identity of the District for the reapportionment and the representation in the House of Representatives.

Mr. BAYH. I thank the Senator.

Mr. President, is there additional time?

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

The PRESIDING OFFICER. The Senator from Massachusetts has 6 minutes.

Mr. McCLURE. Mr. President, I reserve the remainder of my time.

Mr. KENNEDY. I will take 2 or 3 minutes. I will be glad to yield to the Senator, and then I would like to make a concluding comment. I yield 3 minutes to the Senator.

Mr. BAYH. Mr. President, I have two basic concerns about this kind of resolution.

One is a set of constitutional concerns as to the reapportionment question, which I just raised. The other is the question of qualification, that is, how the qualifications for voters would be established for the House of Representatives, when the Constitution says that the qualifications must be the same as the qualifications for the most numerous branch of the State legislature?

That concern puts the District of Columbia in a no man's land. Would that mean that Annapolis would establish the criteria for the voters in the District? What about where a candidate should come from? Would it be possible for someone who lived in the District of Columbia to serve in the House of Representatives? Suppose Annapolis said you had to live in Maryland, as a right to qualify voters?

I say this because it seems to me that we are establishing a rule here in which we would put into the Constitution something that would create a very confusing situation.

In addition, I think a good case could be made relative to article 4, section 3, and the only precedent we have is retrocession to Virginia, when it was ruled at that time that the State had to determine, under the Constitution, whether or not they could accept that property.

I say to my colleagues that I look at it a little differently from the way the Senator from Idaho looks at it. I think he is giving away part of my property in Indiana. In Indiana we have 5.5 million people who feel that the District of Columbia is part of their Capital; and they want us to find a way in which the people who live here can vote without, in essence, giving away the city. I guess I feel he is doing that. I know he does not.

I hope we will turn this down and support the resolution which is ably supported by the Senator from Massachusetts and the Senator from Maryland.

Mr. MELCHER. Mr. President, will the Senator from Idaho yield?

Mr. McCLURE. I yield to the Senator from Montana.

Mr. MELCHER. I thank the Senator for yielding.

I hardly think this poses the problem that the Senator from Indiana conjectures. The question of voting within a State on a Federal enclave has been addressed many times. A person who lives at Andrews Air Force Base, in the State of Maryland, is not denied his voting rights. In many other instances where one lives on Federal property, he is eligible to vote in that State, and it has been found by the courts that he is eligible to vote in that State.

So we are not really going into unplowed ground or some never-never land that has not been tried and tested before.

The Senator from Idaho, as I understand, would leave the city as it is for that purpose, to exercise those functions, and would allow the residents within the ceded portion of the District to have the opportunity to participate in the procedures granted to other citizens of Maryland.

I would rather that the debate on the Senate floor would be factual as to the case and factual as to what has happened before in a similar instance. It certainly has happened before in similar instances.

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

Mr. McCLURE. I yield briefly.

Mr. BAYH. I hope the Senator from Montana does not suggest that just because one disagrees with him, one uses the wrong facts.

I ask this of the Senator from Idaho: Who does he think would prescribe the qualifications for people who vote in the District of Columbia when the Constitution says "the most numerous branch of the State Legislature"? Would it be possible for the legislature in Annapolis to prescribe residency qualifications that, in essence, state you could not vote unless you lived in the State in question, which the Constitution says you have the right to do?

That means they could establish residency provisions to vote in Maryland in order to serve in the Senate or in the House, which would deny anybody who lived in the District the chance to do that.

That is the concern I have. I do not know where you would finally come down on that, but I point out that those requirements exist in the Constitution today; they are factual in the Constitution today.

Mr. McCLURE. Mr. President, there is no doubt that the pending resolution before the Senate—not my amendment—contains virtually the same list of uncertainties and ambiguities which my friend has mentioned. I sought to cure some of that ambiguity by the amendment I offered just before this one, which was rejected when a tabling motion by the Senator from Massachusetts was approved by the Senate.

The Senate did not want to resolve those ambiguities. The Senate wanted to leave it within the power of Congress to deal with those ambiguities, and that is where it resides now.

So my friend from Indiana may raise the question of uncertainty, but the question of uncertainty resides in the language of the resolution, not the language of the amendment of the Senator from Idaho.

Mr. President, again we have two choices if we really want to give the residents of the District of Columbia their full civil rights. We must choose either statehood for the District or allow them to vote in a State which does exist because the ambiguities to which the Senator makes reference, the other constitutional provisions that make references to State control and State authority in certain instances over voting by the residents of the State apply equally to the pending resolution.

To simply allow them to have a Senator and a Representative does not lay to rest the other issues which the Senator from Indiana has raised.

Do I understand from the faint tapping at the desk that my time may have expired?

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

Mr. McCLURE. I thank the Chair.

Mr. KENNEDY. Mr. President, I yield myself 3 minutes.

Mr. President, it seems to me that the argument of the Senator from Idaho would have some consistency if he were suggesting that we substitute a statehood proposal that would effectively conform with what I gather to be his desire at least presented here in the Senate this afternoon. But the fact of the matter is——

Mr. McCLURE. Mr. President, will the Senator yield on that point?

Mr. KENNEDY. I only have 3 minutes.

Mr. McCLURE. Will the Senator yield only briefly?

Mr. KENNEDY. I yield for 15 seconds.

Mr. McCLURE. I have that amendment. If this one is defeated I will offer it.

Mr. KENNEDY. Fine.

Mr. McCLURE. And I hope the Senator will support it.

Mr. KENNEDY. Then we will have a chance to debate and I will not make it now.

Mr. President, home rule and representation for the District of Columbia in Congress have moved along two tracks over the history of our Nation. We should not confuse these two different concepts.

The Senator from Idaho says that we are not doing all the things that we could do for a State. Therefore, he says, the more limited step of providing the citizens of the District of Columbia with the right to elect their own Members of the House and the Senate should not be accepted. That is effectively what his amendment would do, and it is for those reasons that I move to table it.

Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Does the Senator yield back his time?

Mr. KENNEDY. I yield back the remainder of my time.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion to lay on the table UP amendment No. 1694 of the Senator from Idaho.

On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The second assistant legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from South Dakota (Mr. ABOUREZK), the Senator from Alabama (Mrs. ALLEN), the Senator from Minnesota (Mr. ANDERSON), the Senator from Arkansas (Mr. BUMPERS), the Senator from California (Mr. CRANSTON), the Senator from Arizona (Mr. DECONCINI), the Senator from Mississippi (Mr. EASTLAND), the Senator from Montana (Mr. HATFIELD), the Senator from Minnesota (Mrs. HUMPHREY), the Senator from Louisiana (Mr. JOHNSTON), the Senator from New Hampshire (Mr. MCINTYRE), and the Senator from Georgia (Mr. TALMADGE) are necessarily absent.

I further announce that the Senator from New Hampshire (Mr. DURKIN) is absent on official business.

I further announce that, if present and voting, the Senator from Minnesota (Mrs. HUMPHREY) would vote "yea."

Mr. STEVENS. I announce that the Senator from Kansas (Mr. DOLE), the Senator from Michigan (Mr. GRIFFIN), the Senator from Oregon (Mr. HATFIELD), the Senator from Maryland (Mr. MATHIAS), and the Senator from Illinois (Mr. PERCY) are necessary absent.

The result was announced—yeas 47, nays 35, as follows:

[Rollcall Vote No. 335 Leg.]

YEAS—47

Bayh	Haskell	Muskie
Bentsen	Hathaway	Nelson
Biden	Heinz	Pearson
Brooke	Hodges	Randolph
Byrd, Robert C.	Hollings	Ribicoff
Case	Huddleston	Riegle
Chafee	Inouye	Sarbanes
Chiles	Jackson	Sasser
Church	Javits	Sparkman
Clark	Kennedy	Stafford
Culver	Leahy	Stevenson
Danforth	Magnuson	Stone
Eagleton	Matsunaga	Thurmond
Ford	McGovern	Weicker
Glenn	Metzenbaum	Williams
Hart	Moynihan	

NAYS—35

Baker	Hansen	Pell
Bartlett	Hatch	Proxmire
Bellmon	Hayakawa	Roth
Burdick	Helms	Schmitt
Byrd, Harry F., Jr.	Laxalt	Schweiker
	Long	Scott
Cannon	Lugar	Stennis
Curtis	McClure	Stevens
Domenici	Melcher	Tower
Garn	Morgan	Wallop
Goldwater	Nunn	Young
Gravel	Packwood	Zorinsky

NOT VOTING—18

Abourezk	Durkin	Humphrey
Allen	Eastland	Johnston
Anderson	Griffin	Mathias
Bumpers	Hatfield, Mark O.	McIntyre
Cranston		Percy
DeConcini	Hatfield, Paul G.	Talmadge
Dole		

So the motion to lay on the table UP amendment No. 1694 was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the motion was agreed to.

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

The motion to lay on the table was agreed to.

ORDER OF PROCEDURE

Mr. ROBERT C. BYRD. Mr. President, under the order entered last week, the Senate was to have turned to the Federal aid highways bill today at no later than 3 o'clock p.m. I ask unanimous consent——

The PRESIDING OFFICER. Will the Senator kindly suspend? The majority

leader has the floor; will the Senate please be in order?

The Senator from West Virginia will kindly proceed.

Mr. ROBERT C. BYRD. I thank the Chair.

Mr. President, I ask unanimous consent that the resumption of debate on the highway bill be delayed temporarily, that the Senate proceed to the consideration of one more amendment by Mr. McCLURE, and the Senator from Virginia (Mr. HARRY F. BYRD, JR.), I think, wants 5 minutes on the D.C. Representation Act, and Mr. MELCHER wishes to speak also this afternoon.

Mr. MELCHER. I would take 10 minutes for my allotment.

Mr. SCOTT. Mr. President, will the Senator yield briefly?

Mr. ROBERT C. BYRD. Yes.

Mr. SCOTT. I have two amendments that I would like to take 5 minutes on, not to offer them, but so that the Senate would know of the two amendments I intend to offer tomorrow.

Mr. ROBERT C. BYRD. Very well. Mr. President, I ask unanimous consent that Senator McCLURE be recognized to offer his amendment.

Mr. McCLURE. Mr. President, did I understand that the Senator from Virginia (Mr. HARRY F. BYRD, JR.) wishes to present his statement at this time?

Mr. ROBERT C. BYRD. Very well.

Mr. McCLURE. And that I would then be recognized to offer my amendment?

Mr. ROBERT C. BYRD. Very well. I ask unanimous consent that after the Senator from Virginia (Mr. HARRY F. BYRD, JR.) is recognized to make his statement, the Senator from Idaho (Mr. McCLURE) be recognized to offer his amendment, that Mr. MELCHER then be recognized for his statement, and that Mr. SCOTT then be recognized for his statement, after which the Senate turn to the consideration of the military construction conference report, on which there be 10 minutes to be equally divided between Mr. HUDDLESTON and Mr. STEVENS, and that after the conference report, the Senate return to the consideration of the highway bill.

Mr. McCLURE. Mr. President, the amendment I shall offer will be one which would grant statehood to the District of Columbia.

Mr. ROBERT C. BYRD. That would require a rollcall vote.

Mr. McCLURE. That would probably require a rollcall vote.

Mr. ROBERT C. BYRD. I ask unanimous consent that it be in order to order the yeas and nays on the amendment of the Senator from Idaho.

The PRESIDING OFFICER. Without objection, it is so ordered. The yeas and nays are not mandatory, unless requested.

Mr. ROBERT C. BYRD. Does Senator McCLURE wish for the yeas and nays on his amendment?

Mr. McCLURE. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. KENNEDY. Mr. President, I ask unanimous consent that it be in order at this time to order the yeas and nays on a motion to table the McClure amendment.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. KENNEDY. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. ROBERT C. BYRD. Now, Mr. President, I renew my unanimous-consent request.

The PRESIDING OFFICER. Is there objection?

Mr. RANDOLPH. Mr. President, reserving the right to object, and I shall not object, it is a little difficult for me to put together the time frame here as to when the highway bill will be resumed for debate and, hopefully, passage.

Mr. ROBERT C. BYRD. Mr. President, that would probably be, if all time is taken on Mr. McCLURE's amendment, in approximately 1 hour and 10 minutes.

Mr. MELCHER. Mr. President, reserving the right to object——

Mr. ROBERT C. BYRD. No, I beg the Senator's pardon. It would be 1 hour and 35 minutes.

Mr. RANDOLPH. Very well. I thank the Senator.

Mr. MORGAN. Mr. President, I wonder if we could have an agreement that it not be before 4:30.

Mr. ROBERT C. BYRD. That would be perfectly agreeable. It will work out that way anyway, but I will include that in the request.

Mr. BAKER. Mr. President, reserving the right to object, I wonder if the majority leader could give us some idea on how long we may stay on the highway bill after we turn to that later today, and at what time might we expect to adjourn or recess for the night.

Mr. ROBERT C. BYRD. I cannot accurately assess that situation, may I say to my distinguished friend the minority leader. I would hope we would be prepared to stay in late, however, so we might finish the highway bill tonight.

Mr. BAKER. It is the majority leader's intention to finish the highway, if possible?

Mr. ROBERT C. BYRD. I would hope so. I would hope we could finish with it, because we have a very full day tomorrow, with the D.C. representation amendment, so that Senators would not have to be in next Monday or Tuesday. As Senators will recall, when the original schedule was announced earlier this year, the holiday was to begin at the close of business next Tuesday. That will probably mean we will have to be in late every day this week, with the likelihood of a Saturday session, but if we accomplish our work that we have targeted, we will not have to be in next Monday and Tuesday.

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

Mr. ROBERT C. BYRD. Mr. President, was the request granted?

The PRESIDING OFFICER. Is there objection to the request of the Senator from West Virginia? Without objection, it is so ordered.

Mr. HUDDLESTON. Will the Senator yield?

Mr. ROBERT C. BYRD. I yield the floor.

Mr. HUDDLESTON. Mr. President, I ask unanimous consent that Tim Dudgeon, of my staff, be accorded the privilege of the floor during the consideration of the highway bill, when called up.

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

Mr. KENNEDY. Mr. President, I make the same request for Mr. Conley, of Senator NELSON'S staff, during the consideration of the D.C. representation measure.

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

The Senate will be in order.

The Senator from Virginia (Mr. SCOTT) is recognized.

Mr. SCOTT. Mr. President, I yield 5 minutes to my distinguished colleague from Virginia.

Mr. HARRY F. BYRD, JR. Mr. President, may we have order?

The PRESIDING OFFICER. The Senate will be in order.

Mr. HARRY F. BYRD, JR. Mr. President, Washington, D.C., is a city. It is a Federal city. Its interest, its economics, its future are tied to the Federal Government.

It has none of the characteristics of a State. It is not a State, nor was it ever meant to be.

It was planned as the seat of the Federal Government, and for nearly 200 years it has served that purpose well.

In area, only two States of the 50 have less than 5,000 square miles. Rhode Island, being the smallest, has approximately 1,200 square miles.

Washington, D.C., has an area of 67 square miles.

Under the Constitution, Members of the House of Representatives represent people divided into congressional districts, with each congressional district at the present time representing roughly 500,000 persons.

But in the Senate, Senators represent States. California with 22 million population has two Senators; Wyoming with 400,000 population has two Senators.

Under the Constitution, only States are permitted to have Senators. Although New York City has a population of 8 million, 10 times greater than Washington, it is not entitled to a Senator.

I see no justification for the pending legislation which would give Washington, D.C., two representatives in the U.S. Senate. This legislation would not confer statehood on Washington, D.C., but would grant it representation in the Senate if it were a State.

I think the pending legislation is wrong in principle and dangerous in precedent.

Will this lead, as it well could, for a demand for two Senators for Puerto Rico whose residents are citizens of the United States? Or Senators for Guam and for the Virgin Islands whose residents likewise are citizens of the United States?

Washington, D.C. is not a State, it is a city. A fine city, but still a city.

There is no diversity of interest, there is no rural population, there are no small towns, there is no agricultural area.

In brief, Washington, D.C., is a densely populated city of 690,000 persons in a 67-square-mile area.

I shall vote against giving two Senators to Washington, D.C., which action would simultaneously distort the Constitution, set a dangerous precedent of city representation, and diminish the influence in the Senate of each of the 50 States.

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

The PRESIDING OFFICER (Mr. HODGES). The Senator has 2 minutes remaining.

Mr. HARRY F. BYRD, JR. I yield that additional 2 minutes to the Senator from Montana (Mr. MELCHER) when his time comes to speak.

Mr. MELCHER. I thank the Senator.

The PRESIDING OFFICER. Under the previous order the Senator from Idaho is recognized to offer his amendment.

UP AMENDMENT NO. 1695

(Purpose: To grant statehood to the District of Columbia)

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

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Idaho (Mr. McCLURE) proposes an unprinted amendment numbered 1695.

On page 2, strike out lines 2 through 10 and insert the following:

"Section 1. The District constituting the seat of government of the United States is hereby admitted into the Union as a State of the United States on an equal footing with the other States in all respects.

"SEC. 2. The Congress shall have power to enforce this article by appropriate legislation.

Mr. McCLURE. Mr. President, during the debate on the previous amendment, which would have retroceded the non-Federal Government in the District to the State of Maryland so that the people of the District might have the opportunity to have full civil rights, it was argued by the distinguished Senator from Massachusetts that we should instead grant them statehood, or at least that that would be more logically consistent.

Without conceding the fact as to where logical consistency might lie as between those two alternatives, certainly the arguments raised by the Senator from Indiana with regard to the difficulties of interpretation and application of voting rights as though they are a State without granting statehood is inherent to the pending resolution granting voting rights without statehood and would be completely solved by granting statehood.

(Mr. SASSER assumed the chair.)

Mr. McCLURE. This, at least, Mr. President, would be logically consistent with the stated thrust and purpose of the sponsors and floor managers of this House Joint Resolution 554.

In my opinion, this is the only way to provide a permanent solution to the issue of extending the full rights of political participation to all citizens of the District and at the same time avoid the insurmountable constitutional objections that mar other proposals, including House Joint Resolution 554.

While statehood is possible by means of a simple majority vote in both Houses of Congress, under article IV, section 3, any attempt to admit the District to the Union as a State without amending the Constitution would pose major legal problems. For one thing, statehood by legislative enactment would abrogate the "exclusive legislation" power of the Congress over the District under article I, section 8, clause 17. Moreover, article IV, section 3, clause 1 makes the consent of the legislatures concerned a prerequisite for forming new States. When Maryland ceded lands to the Federal Government for establishing the District of Columbia, it consented only to the creation of a Federal district, not the creation of a new State. Thus, to make the District by congressional enactment alone would violate that provision of the Constitution.

Under amendment XXIII the District has three votes in the electoral college, that is, no more than the number of electors accorded to the least populous State. however, it could be entitled to as many as four electors, according to the most recent census. Amendment XXIII would become a virtual dead letter since the District would cease to exist. Such a change in the Constitution should be made by amendment, rather than by legislation.

Granting statehood to the District would not only guarantee to D.C. residents voting representation in both Houses of Congress, under article I of the Constitution. They would also be able to participate in the process of ratification of proposed amendments to the Constitution, article V; they would be entitled to as many electors for President and Vice President as they have Senators and Representatives, article 2, section 1; they would be assured of territorial integrity and protection against absorption into other States, article IV, section 3; and they would have complete legislative control over internal matters, free of congressional veto. All congressional authority over the District now provided in article I, section 8, clause 17 would be effectively turned over to the people of the District acting through their elected representatives in a State legislature.

This amendment would not only assure to D.C. residents equal citizenship rights with other Americans; it would grant to the District complete self-government according to the wishes of its own people, without Federal interference. It would free the Federal Government of the responsibilities of providing special treatment for the District at a tremendous expense to other U.S. citizens. The people of the District would not only enjoy the rights and powers of statehood, they would also assume the full burden and responsibilities of citizens of a State of the Union. No longer would District citizens be considered second-class Americans or be victims of "taxation without representation."

Full representation is consistent with the principles of democracy upon which our Nation was founded. Statehood would attest to our commitment to equality and freedom for all American citizens and our concern for guaranteeing human rights thoughout the world.

Mr. President, I reserve the remainder of my time.

Mr. BAYH. Mr. President, I have listened to my good friend and distinguished colleague from Idaho struggling with how this business of representation for the people of the District, some 750,000 of them, can be accomplished. I know he is sincere about this desire. But I say with all respect that it seems to me he is making it an overcomplex issue, a more difficult one to resolve than it really need be.

First of all, those of us who are supporting and have supported for some time the right of representation for the District citizens, have said from the beginning that the District of Columbia is a unique part of the United States of America. It is a unique bit of geography. It is a capital city. For reasons that have already been thoroughly discussed, basically size and security, our Founding Fathers established it to be separate and different from States early on.

Just as this unique characteristic exists, it seems to me that there is no need to go the statehood route in providing representation for the citizens of the District.

As I said earlier, I guess as a Senator from Indiana I hate to see us taking the Nation's Capital from 500,000 Hoosiers. It is part ours. I do not see why the District should be a State because it is, indeed, the Nation's Capital.

As I said earlier, there is no need to go the statehood route in order to resolve the inequities which exist here.

I will not belabor the Senator or the Senate with some of the distinctions between means of approaching statehood and the thrust of the Senator's remarks. The question of statehood is very much up in the air in the District of Columbia.

There is a core of support for statehood here. But nothing approaching the clear majority wishes of the people for representation short of statehood, the majority support for the very resolution which we now have before us.

I say to my good friend from Idaho, it seems to me, if one gets into the whole fundamental study of government, we can see why the approach recommended by the Senator from Massachusetts, the Senator from Indiana and the rest of us in this resolution is more appropriate to the need than statehood.

We have three levels of government, and we are all aware of this, local government, State government, and National Government. The District of Columbia, very clearly, is a local government. It is a city. It has a city structure. Imperfect as it is, it is chosen by the people of this city. The city government controls the confines, the geographic limits of this city, which also happens to be the Nation's Capital.

So there is adequate government, there is representation. Some say it is inadequate, and you could make a good case of that. But at least, there is a participation in the representative process at the local level. I see no reason to have a State government, which would cover the same identical geographic description as the local government. That would be an absolute duplication of governmental responsibilities.

There is no other State in the United States that has a city which covers the total geography of the State; yet we would be establishing one if we went along this particular route.

No, it seems to me that what we are after here is not to create a State level of bureaucracy to deal with problems that are already dealt with by the local government, but to see that the citizens of the District are fully represented at the national Government level. They have the right to vote for the President now, as of the 23d amendment. What we are saying is give the citizens of the District the right to vote for and be represented in this body and our other body, the House of Representatives, to have the chance to affect the outcome of national decisions, national decisions that affect the lives of the people who live here.

Mr. McCLURE addressed the Chair.

Mr. BARTLETT. Will the Senator yield?

Mr. McCLURE. I am happy to yield to the Senator from Oklahoma.

Mr. BARTLETT. Mr. President, I ask unanimous consent that Edward King of my staff may be accorded the privilege of the floor during any vote on this bill and the transportation bill. I further ask that this request not interfere with the dialog that the Senator from Idaho is having.

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

Mr. McCLURE. Mr. President, I shall be very brief. I suspect we can either terminate the debate at this moment or debate for the next week. We cannot adequately cover the subject in a few brief moments and to attempt to cover it in much less than a week, in all of its ramifications, must be an exercise in frustration.

Let me respond to my friend from Indiana in this way: It seems to me that the arguments that have been used by the Senator in opposition to my amendment are really the arguments that the opponents of the resolution have been using. All of the arguments that have been raised against statehood are equally applicable against House Joint Resolution 554. I do not understand the distinction that says they are to be granted full voting rights without voting responsibilities. The effort to establish in people rights unassociated with responsibilities has been proven to be destructive of individual fiber, and it certainly is destructive of government structure as well.

It seems to me that this is really the crux of part of the dilemma, that there is the effort to invest the District of Columbia with all the rights of statehood with none of the responsibilities of statehood. It seems to me that has led us into the impasse of trying to find a way to give them something without giving them everything. We end up saying we are going to give them full civil rights, but we do not give them full civil rights; we give them some civil rights.

My friend from Indiana has indicated that this would be taking something away from the people of Indiana, because they own this Capital City. There are two answers to that. First of all, we could, by legislation, construct a Federal enclave within the city, which would then be a State, and allow them to have statehood and full rights and responsibilities of citizenship under statehood; at the same time, guaranteeing to the people of Indiana their sole share of the hold on the city as a seat of Government.

At the same time, my friend from Indiana is saying that we must pass the resolution granting representation in order to give them their rights as citizens, but whatever tenuous hold the people of Indiana have on the seat of Government is sufficient reason to deny them full rights as citizens.

I wonder if, really, the people of Indiana want to deny the people of the District of Columbia their right to full citizenship, full participation, full civil rights under the Constitution in exchange for, or as the price of, a tenuous hold on some nebulous concept of the Nation's Capital. I do not think the rights of citizenship are to be sold or bartered for such a small consideration as is implied by that statement.

Mr. President, if the Senator from Indiana is prepared to yield back the remainder of his time, I shall yield back the remainder of my time.

Mr. BAYH. I should like to respond.

Mr. McCLURE. Then I shall reserve the remainder of my time.

Mr. BAYH. I should like to say that, although the Senator from Indiana may not be as articulate as the Senator from Idaho, I should hate to see his argument used as my own argument against the resolution, as a cosponsor of the resolution.

I think what we are trying to do here is to say that whenever there is a process of Government that affects the lives of people, the people affected ought to have a right to have some influence on that process. We have wrangled over several things; some of them have been voted up and some have been voted down here this year.

About all the things we have discussed are going to affect the lives of the citizens of the District, but they will not have any representative here to help resolve that problem. That is what we are after. Inasmuch as there are not State responsibilities as far as the citizens of the District of Columbia are concerned, I do not know that we ought to give them States rights. What we are after is to see that they are represented in this form of Government which affects their lives, as far as taking their sons in war and taking their taxes in times of peace.

Mr. WALLOP. Will the Senator yield for a question?

Mr. BAYH. I am glad to yield. I do not know how much time I have; this is a one-sided apportionment. I am not complaining, but recognizing the facts of life.

Mr. WALLOP. I just have one question, on hearing what he is saying and the Senator from Idaho is saying. How do we square what the senior Senator from Virginia asked rhetorically: What do we now do, granting this on this basis, about the citizens of American Samoa, of Puerto Rico, or the Virgin Islands, who are subject to draft, who have all the other problems, whose sons go to war and other things? How do we now say they are not entitled to voting representation on the same basis that the District is?

I really ask that in all sincerity.

Mr. BAYH. I must say that I have asked myself that same question as the chairman of the committee that handles constitutional questions. I frankly believe, if the Senator from Wyoming is asking the Senator from Indiana, I think they are entitled to have a chance to vote for President. Whether they should be represented in Congress or not depends upon the size of the entity involved and the disposition of the people involved.

The fact of the matter is, we have a distinction here. We do not have any other territory urging to be heard as a State. We have had territories that have asked to be included in this direct popular vote amendment so they will have a chance to vote for President. Frankly, I think they ought to be. From a practical standpoint, I do not think there is any way of including them in there.

If the Senator would address himself to the real distinction, in all but Puerto Rico, there is a real distinction of size. That was one of the distinctions that caused the Founding Fathers to treat the District differently than they did other States.

Another distinction is that they are not a contiguous part of the United States. You could say the same thing about Alaska and Hawaii, but there again, you get into distinct size situation, with the exception of Puerto Rico.

If the time comes when the people of Puerto Rico can, by unanimous vote, decide that issue and then petition us and ask us to accept them, then I think we have a real question that we must deal with. Frankly, I would say we either have to fish or cut bait. I am not for having territories against their will.

Mr. BARTLETT. Will the Senator yield?

Mr. BAYH. Yes.

Mr. BARTLETT. As I understand it, the distinguished Senator from Indiana said that the citizens of the District need representation and need to have a person or two in this body representing them. As I understand it, at the present time, they are represented by all Members of this body and they are represented by specific Senators who serve on the District Committee.

My question is, If this resolution is passed and ratified by the States and becomes part of our Constitution and our basic law, then does it also provide that this extra representation that the Dis-

trict still has by virtue of having its own subcommittee here, by having the entire Senate and the House responsible for much of the care of its own citizens, is it written into this resolution that the District will no longer receive this extra representation they now have?

Mr. BAYH. I must say to my friend from Oklahoma, I do not think they have extra representation. I do not see how we can say the people in the District are represented by the Senator from Indiana, the Senator from Oklahoma, the Senator from Wyoming, and other places.

It is like saying the Senator's State can be represented by Senators from Texas or mine can be represented by Senators from Illinois.

Mr. BARTLETT. Let me say to the fine Senator from Indiana, that in the first 2 years I was here I was on the District Committee. I felt that I did a halfway decent job of representing the District, at least I tried to.

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

Mr. BAYH. Will someone else yield me some time to respond?

Mr. SCOTT. Mr. President, I yield myself time on the bill.

The PRESIDING OFFICER. Under the unanimous-consent agreement, there is no provision which would allow the Senator to do that without unanimous consent.

Mr. McCLURE. Mr. President, I ask unanimous consent the Senator from Virginia may yield himself time on the bill.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. SCOTT. Mr. President, I had 18 minutes some time ago, and I agree with the ruling of the Chair.

But I just want to say to my distinguished friend from Wyoming, the questions he posed were discussed by the junior Senator from Virginia in some detail earlier this morning when we had almost an empty Chamber.

I have asked my staff to prepare copies to put on every Senator's desk, and it will be available later in the afternoon.

It addresses itself to these very questions and to the various States where they did have Senators and went into the territories throughout the 19th and 20th centuries.

Mr. President, I just thought I should clarify that.

Mr. BAYH. Mr. President, I ask unanimous consent to have 5 minutes on the bill to respond to some of these questions, if I might, only to the questions which were posed.

Mr. BARTLETT. Would the Senator from Idaho yield 2 minutes to the Senator from Indiana to respond to my question?

Mr. McCLURE. Mr. President, I understand he asked for 5 minutes on the bill, and I have no objection.

The PRESIDING OFFICER. Is there objection to the Senator from Indiana having 5 minutes on the bill?

Without objection, it is so ordered.

Mr. BAYH. I appreciate that.

I do not want to unnecessarily belabor the Senate, but I think we all want these questions out on the table so we can make a decision.

I say, after hearing the remarks of my friend from Virginia, that if this has any relevance to people leaving other States and going out into the territories, is to ignore the fact that when enough of them got out there they could become a State.

I say to my my friend from Oklahoma, with all respect to the kind of service he represented as a member of the District Committee, that I had the distinction of being the chairman of the Appropriations Subcommittee of the District. So we both had that responsibility and we tried our best.

But it is contrary to the basic premise of the Democratic principles of our society to suggest we can ever be fully represented, but not from the constituency being represented.

Try as we will, it seems to me the people who live here have a right to determine how their representatives are going to be chosen, and if they do not like them, get rid of them and send us other representatives.

I say to my good friend from Oklahoma, they cannot do this.

Mr. BARTLETT. Let me say to my good friend from Indiana, the point I was making was that if this resolution is ratified into the Constitution as basic law, then the District, in addition to two Senators and some Representatives, will have the District subcommittees representing the District. They will also have responsibilities of the Congress to the District in addition to what is normally a responsibility of the Congress to the other States.

So what we are creating is a hybrid State, sort of a hybrid super State, which is different from going out to the territories, as the Senator was talking about earlier.

The original colonies, when they conveyed sovereignty to the National Government, also conveyed the right to extend that sovereignty by extending statehood, but not for this kind of hybrid super State.

Mr. BAYH. I think we should say super city, not super State. Because in the District, the Federal City, if one wants to address himself to the reason why there would be a District of Columbia Committee, it seems to me they have an entirely different issue than saying the people of the District can be adequately represented by Senators and Congressmen they do not choose, cannot effect, cannot get rid of, cannot have, and whose views may be entirely different on the issues than all of the people who actually live here and are affected by the taxation, war-making, and all those kinds of things.

The District of Columbia Committee, I assume, will continue to exist as long as the Congress feels there is a need to address special attention to the aspects of the District government which are unique. Because of the fact that it is the Nation's Capital, large parts of the territory are, indeed, consigned to the Federal Government. They cannot be taxed. The large percentages of the District's revenues are assessed for police and fire, for protecting Federal properties, and providing some of the regalia and pomp and circumstance of the foreign dignitaries that are part of the National Capital, not of the city of Washington, D.C.

Mr. BARTLETT. But this could be done with other committees.

But what the Senator sets up here is extra representation and also a hybrid State that does not have the responsibilities a State has.

Mr. BAYH. May I ask the Senator a question, would he support this resolution if we do away with the District Committee in the House and Senate?

Mr. BARTLETT. No, and I have other reasons for it.

But I am giving the Senator one argument based on what he was saying earlier about representation, because what we are doing is creating a hybrid State. It is not a hybrid city or supercity.

I think, if we were, New York City could later on look forward to better representation or direct representation as a supercity, because they certainly qualify, I believe, to a greater extent, because of their large population, than does Washington, D.C.

Mr. BAYH. I do not think I will persuade my friend from Oklahoma by making the same argument a third time when I have not the first two times.

I respect his judgment, but I respectfully disagree with his conclusions.

Mr. BARTLETT. I do not think I will persuade my good friend to change his amendment.

Mr. McCLURE. Mr. President, how much time do I have remaining on this amendment?

The PRESIDING OFFICER. The Senator from Idaho has 10 minutes remaining.

Mr. McCLURE. Mr. President, I do not expect to use all that time.

Let me respond to only two points that have been raised in the colloquy since I last addressed the Senate.

One, the argument that the Senator from Wyoming had raised with respect to the territories, invalid because of the size.

On size, I do not see anything in the Constitution that deals with the question of size. If the question of size were involved, Rhode Island would not have equal representation in this body with Alaska or Texas.

Certainly, size is not a matter that was addressed in the Constitution of the United States.

The Constitution addressed two principles: one was the representation of States within this body and the other was the representation of individuals in the other body. The pending resolution before us does not do either of those things correctly. It does not grant representation in this body as a State. It does not give full rights and responsibilities to the citizens of the District of Columbia with regard to statehood. It does not give them full civil rights as individual citizens of this country.

The pending resolution that they have

asked us to adopt simply creates, as the Senator from Oklahoma has suggested, a city-State, a new entity, different from any other that this country has known. It is being done under the guise of presenting to the people of the District their full civil rights, and it fails to do that.

There are only two means by which full civil rights can be granted to the residents of the District, and the Senate had better face up to that. One is by retrocession, so that they can vote within an existing State, the State of Maryland, which ceded the territory in the first place—and, incidentally, where the residents voted for the first several years after the creation of the District; and the second is the creation of another State, invested with all the rights, the duties, the responsibilities, and the full civil rights of its residents as citizens of this country. This resolution does neither.

The Senate has rejected the amendment I offered, which would have allowed them to exercise all those full civil rights within the State of Maryland; so I have offered this amendment, to allow them to exercise all their full civil rights, at the same time accepting all their full responsibilities as a State. To do less is unfair and unequal treatment with respect to all the other States and all the citizens of the other States. It does not achieve equity and equality. It creates a new inequity and a new inequality.

Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER. All time is yielded back. The question is on agreeing to the amendment.

Mr. BAYH. Mr. President, I move to table the amendment of the distinguished Senator from Idaho. I think the yeas and nays have been called for already.

The PRESIDING OFFICER. The Senator from Indiana is correct.

The question is on agreeing to the motion to table the amendment. 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 South Dakota (Mr. ABOUREZK), the Senator from Alabama (Mrs. ALLEN), the Senator from Minnesota (Mr. ANDERSON), the Senator from Arkansas (Mr. BUMPERS), the Senator from California (Mr. CRANSTON), the Senator from Arizona (Mr DECONCINI), the Senator from Mississippi (Mr. EASTLAND), the Senator from Montana (Mr. HATFIELD), the Senator from Minnesota (Mrs. HUMPHREY), the Senator from Louisiana (Mr. JOHNSTON), the Senator from New Hampshire (Mr. MCINTYRE), and the Senator from Georgia (Mr. TALMADGE) are necessarily absent.

I further announce that, if present and voting, the Senator from Minnesota (Mrs. HUMPHREY) would vote "yea."

Mr. STEVENS. I announce that the Senator from Kansas (Mr. DOLE), the Senator from Michigan (Mr. GRIFFIN), the Senator from Oregon (Mr. HATFIELD), and the Senator from Illinois (Mr. PERCY) are necessarily absent.

I further announce that, if present and voting, the Senator from Oregon (Mr. HATFIELD) would vote "yea."

The result was announced—yeas 67, nays 17, as follows:

[Rollcall Vote No. 336 Leg.]

YEAS—67

Bayh	Hart	Muskie
Bellmon	Haskell	Nelson
Bentsen	Hathaway	Nunn
Biden	Hayakawa	Pearson
Brooke	Heinz	Pell
Burdick	Hodges	Proxmire
Byrd, Harry F., Jr.	Hollings	Randolph
	Huddleston	Ribicoff
Byrd, Robert C.	Inouye	Riegle
Case	Jackson	Sarbanes
Chiles	Javits	Schweiker
Church	Kennedy	Sparkman
Clark	Leahy	Stafford
Culver	Long	Stennis
Curtis	Lugar	Stevenson
Danforth	Magnuson	Stone
Durkin	Mathias	Thurmond
Eagleton	Matsunaga	Tower
Ford	McGovern	Weicker
Glenn	Melcher	Williams
Goldwater	Metzenbaum	Young
Gravel	Morgan	Zorinsky
Hansen	Moynihan	

NAYS—17

Baker	Hatch	Sasser
Bartlett	Helms	Schmitt
Cannon	Laxalt	Scott
Chafee	McClure	Stevens
Domenici	Packwood	Wallop
Garn	Roth	

NOT VOTING—16

Abourezk	Eastland	Johnston
Allen	Griffin	McIntyre
Anderson	Hatfield, Mark O.	Percy
Bumpers		Talmadge
Cranston	Hatfield, Paul G.	
DeConcini		
Dole	Humphrey	

So the motion to lay on the table UP amendment 1695 was agreed to.

Mr. KENNEDY. Mr. President, I move to reconsider the vote by which the motion to lay on the table was agreed to.

Mr. ROBERT C. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. Under the previous order, the Senator from Montana is recognized for 10 minutes.

Mr. MELCHER. I thank the Chair.

Mr. President, earlier today we discussed whether or not the situation wherein the Constitution does not provide for D.C. voting for the House and Senate, whether it was deliberate or whether it was an oversight, whether it was a prohibition or whether it was something that slipped through.

Well, it certainly was not——

The PRESIDING OFFICER. The Senate is not in order. The Senate will be in order. Senators will confine their conversations to the cloakrooms. The Senator from Montana.

Mr. MELCHER. The Constitution, I think, is extremely clear on this, and I see little reason for prolonging discussion on whether or not it was a deliberate prohibition. The clause of article I, section 8, that deals with the District is clause 17. It mentions that "The District shall not exceed 10 miles square."

It mentions that it will not exceed 10 miles square, and that it will be a Federal district, the seat of the Government.

The Constitution is explicit on who gets membership in the House of Representatives. It says very simply that Representatives "shall be apportioned among several States according to their respective numbers," according to their population.

The District is not a State. It has no representation in the House. The District is not a State and it has no representation in the Senate, because the language of the Constitution says that each State will have two Senators.

There is little reason to quibble over whether that is an oversight, as the Senator from Massachusetts chooses to say, or whether it is deliberate. I maintain it was a deliberate, a conscious, decision.

I have no reason at all not to want the remedy to be applied now, and I have voted for it on previous occasions. I voted for it in 1976 in the House of Representatives, where it failed.

But representative government should be provided for the District, and it should be done now. There should be a remedy and it should be a proper remedy.

The Senator from Massachusetts, my friend Senator KENNEDY, argues for a special deal for the District in order to enlarge the Senate, to provide equal representation for the District on the basis of not making a mistake but on the basis of just saying in this special instance they may have two Senators.

On that point I disagree. There are other remedies available to us that are more proper and are more likely to succeed.

(Mr. METZENBAUM assumed the chair.)

Mr. MELCHER. If there is any merit to the argument that the opponents of the constitutional amendment believe that the District is either one or more of these: too liberal, too democratic, too black, or too urban, I do not think there is much merit to it. But if there was merit to that argument, would not the converse be true? In order to give the District representation in the Senate then it would be an opportunity for more liberalism, more Democrats, more blacks, and more urban?

I would discount either argument. I would not uphold either argument. In fact, I disagree with either argument.

How are the State legislatures going to view this? Jefferson said that a State represents both expansiveness and diversity. Our procedure here will be, if it is approved by a two-thirds vote, that the State legislatures look at it where three-fourths of them must ratify. What is going to be their view of it? I think the States, or at least many States, will view this constitutional amendment pretty much in the same light as Jefferson envisioned it. He envisioned the makeup of the Senate to be different, to allow for a truly bicameral type of legislature, a legislature where the House is represented on the basis of population and the Senate is represented on the basis of States to properly reflect the expansiveness and the diversity of the States.

The legislatures, if the Senate will bear with me, are debating this issue of whether or not that legislature or those legislatures should approve this constitutional amendment if it is presented to them. The legislators will argue un-

doubtedly on the question of whether or not the District, having two Senators would dilute the Senate by how much to their particular State? Will not the argument be made in many cases that a State that is primarily interested in agriculture, which is its basic industry, along with all of its other interests, along with all of its diversity, will not the argument be made in the legislature of such a State that two Senators from the District will cancel out their States' two Senators' vote on a question, for instance, of farm prices? Will not the aspects of a farm State's Senators' representing a basic industry in their State be different from the District's two Senators who represent no diversity in terms of agriculture within the District? Will they not be voting on, perhaps, the side of what seems to be consumerism to, say, farm prices should be lowered?

What about other issues, such as mining or forest products or what about the basic argument of rural interests versus urban interests? Of course, there is a difference that will have to be debated by each individual State legislature.

It is a rather compelling argument that the State legislature could view that very seriously in terms of the basic industry to recognize that, perhaps—no certainty but, perhaps—the District's two Senators would view it entirely contrary to the interests of that basic industry or several basic industries within a State?

So I say to my colleagues that a better remedy should be found that can get the overwhelming approval of the Senate and assure its rapid ratification among the 50 State legislatures to at least three-fourths, and then by that process to rapidly allow the enfranchisement of the District residents in both the House and in the Senate.

For that reason I offered on Thursday the amendment that would treat the District on the question of population exactly as they wish to be treated, exactly on the basis of population as if they were a State, recognizing the validity of the bicameral situation where diversity and expansiveness are indicative of a State and should be represented here in a different light in the Senate.

I call for the voters of the District to vote in Maryland for their Senators as if they were residents of Maryland. That was exactly the case the way it was here in the District prior to 1800, when in 1800 the United States accepted the ceded land from the State of Maryland.

From that point on, article I, section 8, clause 17 forbade, and the residents that were here at that time were no longer permitted to vote for their Representatives for the House of Representatives, or for their Senators for the Senate.

I think that was an error. I think it was a fault within the Constitution itself, one that should be corrected and corrected properly, in the manner I have described.

I yield 30 seconds to the Senator from Wyoming.

Mr. HANSEN. Mr. President, I appreciate——

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

Mr. MELCHER. Mr. President, I have 2 additional minutes yielded to me by the Senator from Virginia.

The PRESIDING OFFICER. The Senator is correct.

Mr. MELCHER. I yield 30 seconds to the Senator from Wyoming.

Mr. HANSEN. Mr. President, I would like to associate myself with the remarks made by the distinguished Senator from Montana. I think he is eminently accurate and fair in his assessment.

I think the proposition he has offered to the Senate makes good sense. It would seem to me to achieve all of the rights it is heard in both bodies of this Congress that residents of the District of Columbia are yearning for, without incorporating in it the shortcomings that would flow from the kind of proposal we are faced with now.

I hope very much that the proposition as it now seems to be before the Senate will not be adopted. I thank the Senator from Montana.

Mr. MELCHER. Mr. President, I reserve the remainder of my time.

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

PROPOSED AMENDMENTS BY MR. SCOTT

Mr. SCOTT. Mr. President, the 17th amendment provided that when vacancies happen in the representation of any State in the Senate, the executive authority of such State shall issue writs of election to fill such vacancies, provided that the legislature of any State may empower the executive thereof to make temporary appointments until the people fill the vacancy by election, as the legislature may direct.

Mr. President, under the joint resolution before, House Joint Resolution 554, there is no provision for the filling of vacancies. We know that under article I, section 8 of the Constitution, Congress has exclusive legislative jurisdiction over the seat of Government, but that we have passed an act within the past several years delegating a portion of our legislative jurisdiction to the Council of the District of Columbia, subject to the right of Congress to override any decision that might be made by the City Council of the city of Washington.

So there is doubt, under this joint resolution, as to whether the legislature that is spoken of in the 17th amendment, the legislature of the State—if we apply that to the District of Columbia, are we talking about the U.S. Congress, both bodies of Congress, or are we talking about the City Council of the District of Columbia?

Mr. President, in order to clarify this, I send to the desk two amendments and ask that they be received and printed. It is not my intention to call up these amendments today, but I want them to be before the Senate so that Senators will know the purpose.

Mr. ROBERT C. BYRD. Mr. President, will the Senator yield?

Mr. SCOTT. Certainly.

Mr. ROBERT C. BYRD. Does the Senator intend to ask for a roll call vote on either or both of those?

Mr. SCOTT. It is my intention tomorrow, at the proper time, to ask for roll call votes on the amendments.

Mr. ROBERT C. BYRD. Would it be possible for the Senator to begin on those amendments in the morning, to lay them down at the close of business today?

Let me say it this way: Will it be possible to lay them down now, as we prepare to move off this bill, so that it would be possible to go to them in the morning?

Mr. SCOTT. You know, some of us Members of the Senate are late people, some of us are early people. Some of us get up at 6 o'clock in the morning, and some get up late and stay up late. I frequently do not go to bed until 1 o'clock, so I am one of the late people.

I would prefer not to do that, because I do not know—I believe the distinguished Senator is going to convene the Senate at 10 o'clock in the morning?

Mr. ROBERT C. BYRD. Perhaps we can get Mr. MCCLURE, then, to lay down an amendment. Let us leave it at that.

Mr. KENNEDY. Maybe we ought to find out whether he is an early one or a late one.

Mr. SCOTT. Mr. President, as long as we are speaking in a somewhat humorous vein, let me say that when I come back to the floor of the Senate in a few minutes I will have a patch over one of my eyes. I hasten to say that has nothing to do with the business pending before the Senate. Over the weekend, I was riding on a lawnmower, and I got a piece of bark from a tree in one of my eyes. It is gone now, but there is a little scratch on there, and the doctor is going to put a patch over it. I just thought I would explain to the Senate that it has nothing to do with the matter before the Senate.

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

Mr. SCOTT. I would rather complete my explanation of these amendments. If the distinguished Senator wants to talk about my eye, I am happy to yield.

Mr. BAYH. I thank the Senator. I am talking about your health. When you say, "It is gone now," are you talking about the bark, or your eye?

Mr. SCOTT. I hope it is the bark.

Mr. HANSEN. Can the Senator from Virginia tell us whether that will improve his vision?

Mr. SCOTT. I hope so.

If I may continue here for a moment—Mr. President, the amendments that I have sent to the desk are offered on behalf of myself and the distinguished Senator from Wyoming (Mr. WALLOP).

The first amendment would provide a new section 3 in the joint resolution before us that says that when vacancies happen in the representation of the District of Columbia in the Senate or the House of Represenatives, the Mayor of the District of Columbia shall issue writs of election to fill such vacancies, except that the Council of the District of Columbia may empower the Mayor thereof to make temporary appointments until the people of the District of Columbia fill the vacancies by election, as the Council of the District of Columbia may direct.

Then it provides technical changes to renumber the paragraphs.

In other words, the first amendment would put the District of Columbia, insofar as the appointment of Senators to fill vacancies is concerned, on the same level with the legislatures and the executives of the States.

The second amendment that would be offered is to add to section 2, which now reads:

The exercise of the rights and powers conferred under this article shall be by the people of the District constituting the seat of government, and as shall be provided by Congress.

It does not indicate which shall be superior, the Congress or the people of the District of Columbia. I would add a phrase to make it read thusly:

SEC. 2. The exercise of the rights and powers conferred under this article shall be by the people of the District constituting the seat of Government and to the extent not in conflict with the people of the District of Columbia as shall be provided by the Congress.

The proponents of this joint resolution seem to want to give the people of the District of Columbia authority to elect the Senators and it seems to me that it should be clarified so that Congress will be taken completely out of the picture insofar as the selection of Senators for the District of Columbia is concerned. These are both clarifying amendments. They do not add to the substance of the joint resolution, but they do clarify some inconsistencies or some vagueness in the joint resolution.

Mr. President, I yield back the remainder of my time.

Mr. President, for purposes of clarification, I yield back the remainder of my time allocated for today.

Mr. KENNEDY. Mr. President, as I understand with the agreement of the Senator from Virginia we have concluded the discussion on District of Columbia representation today and will now move, as the leader mentioned, to the Federal-Aid Highway Act. That is my understanding.

The PRESIDING OFFICER. It is in order to proceed for 10 minutes on the conference report on military construction.

TIME-LIMITATION AGREEMENT—OUTER CONTINENTAL SHELF CONFERENCE REPORT

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that there be an overall time limitation on the OCS conference report to be equally divided as follows: 15 minutes under the control of Mr. JACKSON; 15 minutes under the control of Mr. HANSEN; 10 minutes under the control of Mr. BARTLETT at such time as the conference report is called up. That is on the Outer Continental Shelf.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Mr. ROBERT C. BYRD. I thank the Chair and the Senators.

MILITARY CONSTRUCTION APPROPRIATIONS, 1979—CONFERENCE REPORT

Mr. HUDDLESTON. Mr. President, I submit a report of the committee of conference on H.R. 12927 and ask for its immediate consideration.

The PRESIDING OFFICER. The report will be stated.

The legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 12927) making appropriations for military construction for the Department of Defense for the fiscal year ending September 30, 1979, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by all of the conferees.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report is printed in the House proceedings of the RECORD of August 15, 1978.)

Mr. HUDDLESTON. Mr. President, this conference agreement provides $3,880,863,000 in new budget authority for fiscal year 1979 military construction and family housing programs of the Department of Defense. This amount is $83,883,000 below the bill as it passed the Senate, and $35,976,000 above the House level. It is, in total, $372,137,000 below the original budget estimate, a reduction of almost 9 percent.

I ask unanimous consent that a table displaying these comparisons by appropriation be printed in the RECORD immediately following my remarks.

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

(See exhibit 1.)

Mr. HUDDLESTON. Although this year's House and Senate bills were only $119 million apart, there were actually more than 200 items and over $750 million in disagreement. Considering this difference, of course, neither House was able to sustain all of the items contained in its bill. On balance, however, I believe that the conference agreement represents a fair compromise which I do not hesitate to endorse.

In the interests of time, I do not plan to address the details of the agreement; the conference report was printed in full in the CONGRESSIONAL RECORD of August 15. I do, however, wish to again call the attention of my colleagues to the fact that new fiscal year 1979 appropriations constitute a $372 million, or almost 9 percent, decrease to the budget request. I emphasize this point because, during floor debate on the Senate bill, I argued that a proposed 2-percent general reduction was not only inappropriate, but unnecessary in light of probable conference outcome. I think we have a case in point here which members might bear in mind for future bills.

At this point, I would like to publicly commend my House counterpart, the Honorable GUNN MCKAY of Utah, whose spirit of cooperation materially expedited what would have otherwise been a difficult conference. And, while it almost goes without saying, I owe a considerable debt to my colleague from Alaska (Mr. STEVENS) for his untiring support as ranking minority member of our subcommittee. He has played a direct and active role in the formulation of this bill, and I thank him.

In conclusion, Mr. President, I urge that the Senate adopt the conference agreement on military construction appropriations for fiscal year 1979.

EXHIBIT 1

COMPARATIVE STATEMENT OF NEW BUDGET AUTHORITY

	Budget authority					Conference compared with—			
	Enacted, fiscal year 1978	Estimates, fiscal year 1979	House, fiscal year 1979	Senate, fiscal year 1979	Conference, fiscal year 1979	Fiscal year 1978 enacted	Fiscal year 1979 estimate	House bill	Senate bill
Planning and design	219,812,000	198,450,000	186,450,000			−219,812,000	−198,450,000	−186,450,000	
Military construction, Army	461,369,000	814,500,000	628,644,000	712,053,000	711,509,000	+250,140,000	−102,991,000	+82,865,000	−544,000
Military construction, Navy	390,556,000	771,600,000	683,695,000	806,124,000	760,145,000	+369,589,000	−11,455,000	+76,450,000	−45,979,000
Military construction, Air Force	348,586,000	584,100,000	461,703,000	519,984,000	483,264,000	+134,678,000	−100,836,000	+21,561,000	−36,720,000
Military construction, Defense agencies	53,009,000	164,900,000	183,280,000	173,780,000	194,880,000	+141,871,000	+29,980,000	+11,600,000	+21,100,000
(Transfer, not to exceed)	(20,000,000)		(20,000,000)	(20,000,000)	(20,000,000)		(+20,000,000)		
Military construction, Army National Guard	46,400,000	46,800,000	43,500,000	52,200,000	52,200,000	+5,800,000	+5,400,000	+8,700,000	
Military construction, Air National Guard	40,300,000	38,100,000	35,800,000	44,750,000	44,750,000	+4,450,000	+6,650,000	+8,950,000	
Military construction, Army Reserve	44,390,000	29,300,000	26,900,000	37,100,000	37,100,000	−7,290,000	+7,800,000	+10,200,000	
Military construction, Naval Reserve	20,300,000	18,900,000	16,600,000	21,850,000	21,850,000	+1,550,000	+2,950,000	+5,250,000	
Military construction, Air Force Reserve	10,200,000	11,200,000	8,900,000	13,000,000	13,000,000	+2,800,000	+1,800,000	+4,100,000	
Total, military construction	1,415,110,000	2,479,400,000	2,089,022,000	2,380,841,000	2,318,698,000	+903,588,000	−160,702,000	+229,676,000	−62,143,000

	Budget authority					Conference compared with—			
	Enacted, fiscal year 1978	Estimates, fiscal year 1979	House, fiscal year 1979	Senate, fiscal year 1979	Conference, fiscal year 1979	Fiscal year 1978 enacted	Fiscal year 1979 estimate	House bill	Senate bill
Family housing, defense	1,457,138,000	1,689,350,000	1,688,615,000	1,701,605,000	1,679,865,000	+222,727,000	−9,485,000	−8,750,000	−21,740,000
Portion applied to debt reduction	−115,840,000	−119,200,000	−119,200,000	−119,200,000	−119,200,000	−3,300,000			
Total, family housing	1,341,298,000	1,570,150,000	1,569,415,000	1,582,405,000	1,560,665,000	+219,367,000	−9,485,000	−8,750,000	−21,740,000
Homeowners assistance fund, defense	1,500,000	5,000,000		1,500,000	1,500,000		−3,500,000	+1,500,000	
Grand total, new budget (obligational) authority	2,977,720,000	4,253,000,000	3,844,887,000	3,964,746,000	3,880,863,000	+903,143,000	−372,137,000	+35,976,000	−83,883,000

Mr. HUDDLESTON. If there is to be a response from the other side of the aisle, Mr. President, I will yield at this point.

Mr. STEVENS. Mr. President, the distinguished chairman of our subcommittee, Mr. HUDDLESTON, has provided us with the details of the conference agreement on the fiscal year 1979 military construction appropriations bill.

The conferees diligently reviewed the items in disagreement and have appropriated $3.8 billion for military construction in fiscal year 1979. I think it is commendable on the part of the committees of both the House and Senate that this bill is about $372 million under the President's budget and yet still provides for the necessary construction as requested by the Defense Department.

I would like to thank our able chairman (Mr. HUDDLESTON) for his leadership in getting this bill through the Senate as well as for his mood of cooperation when we went to conference. Under his leadership and with the cooperation of the House subcommittee chairman, Mr. MCKAY, we were able to settle the differences without major difficulty.

The military construction appropriations bill for fiscal year 1979 is a sound bill. I urge adoption of the conference report by the Senate.

Mr. HUDDLESTON. Mr. President, I move the adoption of the conference report.

Mr. STEVENS. Mr. President, I have been requested to ask for the yeas and nays. I previously indicated I thought it would not be necessary, but there has been a request on our side. I do ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. Do the Senators yield back the remainder of their time?

Mr. STEVENS. I yield back the remainder of my time.

Mr. HUDDLESTON. I yield back the remainder of my time.

The PRESIDING OFFICER. The question is on agreeing to the conference report. The yeas and nays have been ordered and the clerk will call the roll.

The legislative clerk called the roll.

Mr. CRANSTON. I announced that the Senator from South Dakota (Mr. ABOUREZK), the Senator from Alabama (Mrs. ALLEN), the Senator from Minnesota (Mr. ANDERSON), the Senator from Arkansas (Mr. BUMPERS), the Senator from Arizona (Mr. DECONCINI), the Senator from Mississippi (Mr. EASTLAND), the Senator from Montana (Mr. HATFIELD), the Senator from Arkansas (Mr. HODGES), the Senator from Minnesota (Mrs. HUMPHREY), the Senator from Louisiana (Mr. JOHNSTON), the Senator from New Hampshire (Mr. MCINTYRE), and the Senator from Georgia (Mr. TALMADGE) are necessarily absent.

I further announce that if present and voting, the Senator from Minnesota (Mrs. HUMPHREY) would vote "yea."

Mr. STEVENS. I announce that the Senator from Kansas (Mr. DOLE), the Senator from Michigan (Mr. GRIFFIN), the Senator from Oregon Mr. HATFIELD), and the Senator from Illinois (Mr. PERCY) are necessarily absent.

I further announce that, if present and voting, the Senator from Illinois (Mr. PERCY) and the Senator from Michigan (Mr. GRIFFIN) would each vote "yea."

The result was announced—yeas 83, nays 1, as follows:

[Rollcall Vote No. 337 Leg.]

YEAS—83

Baker	Gravel	Nelson
Bartlett	Hansen	Nunn
Bayh	Hart	Packwood
Bellmon	Haskell	Pearson
Bentsen	Hatch	Pell
Biden	Hathaway	Proxmire
Brooke	Hayakawa	Randolph
Burdick	Heinz	Ribicoff
Byrd, Harry F., Jr.	Helms	Riegle
	Hollings	Roth
Byrd, Robert C.	Huddleston	Sarbanes
Cannon	Inouye	Sasser
Case	Jackson	Schmitt
Chafee	Javits	Schweiker
Chiles	Kennedy	Scott
Church	Laxalt	Sparkman
Clark	Leahy	Stafford
Cranston	Long	Stennis
Culver	Lugar	Stevens
Curtis	Magnuson	Stevenson
Danforth	Mathias	Stone
Domenici	Matsunaga	Thurmond
Durkin	McGovern	Tower
Eagleton	Melcher	Wallop
Ford	Metzenbaum	Weicker
Garn	Morgan	Williams
Glenn	Moynihan	Young
Goldwater	Muskie	Zorinsky

NAYS—1

McClure

NOT VOTING—16

Abourezk	Eastland	Hodges
Allen	Griffin	Humphrey
Anderson	Hatfield, Mark O.	Johnston
Bumpers		McIntyre
DeConcini	Hatfield, Paul G.	Percy
Dole		Talmadge

So the conference report was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the conference report was agreed to.

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

The motion to lay on the table was agreed to.

Mr. HUDDLESTON. Mr. President, there are amendments in technical disagreement. Since they are not controversial, I ask unanimous consent they be considered en bloc.

The PRESIDING OFFICER. (Mr. MUSKIE). Without objection, it is so ordered. The clerk will state the amendments in disagreement.

The legislative clerk read as follows:

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 3 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the matter inserted by the said amendment, insert: "1983: *Provided*, That of this amount, not to exceed $64,400,000 shall be available for study, planning, design, architect and engineer services, as authorized by law, unless the Secretary of Defense determines that additional obligations are necessary for such purposes and notifies the Committees on Appropriations for both Houses of Congress of his determination and the reasons therefor".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 5 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the matter inserted by said amendment, insert: "1983: *Provided*, That of this amount, not to exceed $46,300,000 shall be available for study, planning, design, architect and engineer services, as authorized by law, unless the Secretary of Defense determines that additional obligations are necessary for such purposes and notifies the Committees on Appropriations of both Houses of Congress of his determination and the reasons therefor".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 7 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the matter inserted by said amendment, insert: "1983: *Provided*, That of this amount, not to exceed $52,000,000 shall be available for study, planning, design, architect and engineer services, as authorized by law, unless the Secretary of Defense determines that additional obligations are necessary for such purposes and notifies the Committees on Appropriations of both Houses of Congress of his determination and the reasons therefor".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 8 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the sum proposed in said amendment, insert "$194,880,000".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 9 to the aforesaid bill, and

concur therein with an amendment as follows:

In lieu of the matter proposed by said amendment, insert: "designate: *Provided further*, That of the amount appropriated, not to exceed $9,400,000 shall be available for study, planning, design, architect and engineer services, as authorized by law, unless the Secretary of Defense determines that additional obligations are necessary for such purposes and notifies the Committees on Appropriations of both Houses of Congress of his determination and the reasons therefor".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 15 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the sum proposed in said amendment, insert "$1,679,865,000".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 17 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the sum proposed in said amendment, insert "$33,446,000".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 20 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the sum proposed in said amendment, insert "$1,399,400,000".

Mr. HUDDLESTON. Mr. President, I ask unanimous consent that the Senate concur in the amendments of the House to the amendments of the Senate as stated by the clerk.

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

The motion was agreed to.

FEDERAL-AID HIGHWAY ACT OF 1978

The PRESIDING OFFICER. The Senate will now resume the consideration of S. 3073, which the clerk will state by title.

The second assistant legislative clerk read as follows:

A bill (S. 3073) to amend title 23, United States Code, to authorize Federal-aid highway programs through fiscal year 1980, and for other purposes.

The Senate resumed the consideration of the bill.

Mr. CHILES. Mr. President, on Friday I had the opportunity to read an opening statement of the Senator from Texas on the highway bill. It was one of the most incisive and precise statements that I have ever read. I was very much impressed with it. I think it is the kind of statement that this body really needs to hear.

The Senator from Texas stood in the Senate Chamber last Friday and felt moved to make a statement that I think will be of great help to this body. I merely wish to call the attention of all Senators to the speech to make sure they were alert and listening. I certainly associate myself with the remarks.

Mr. ROBERT C. BYRD. Mr. President, if the Senator from Kentucky will allow me, I also want to express appreciation to the Senator from Texas. He did well to stand on his feet, even, last Friday. He had a terrible sore throat, yet he stood here all day and disposed of 19 or 20 amendments on Friday.

I thank the Senator from Kentucky.

Mr. BENTSEN. I thank the distinguished Senator from Florida.

Mr. BARTLETT. I ask unanimous consent that the amendment submitted by me and Mr. BELLMON, amendment No. 3513, be withdrawn.

The PRESIDING OFFICER. Is there objection to withdrawing the amendment? Without objection, it is so ordered.

AMENDMENT NO. 3507

The PRESIDING OFFICER. The pending business is the amendment of the Senator from Kentucky (Mr. HUDDLESTON).

Who seeks time?

Mr. HUDDLESTON. Mr. President, would the Chair indicate how much time there is and how it is divided?

The PRESIDING OFFICER. There are 21 minutes of the Senator from Kentucky and 45 minutes of the Senator from Texas.

Mr. BENTSEN. Let me say to the Senator from Kentucky, we wanted to get along as far as we could on Friday. If the Senator would like some more time I can give him some of my time.

Mr. HUDDLESTON. It is my opinion right now that this will be adequate time.

Mr. BENTSEN. If the Senator finds he wants more time, we will rediscuss it.

Mr. HUDDLESTON. I regret I was not here on Friday. I had the distinct understanding the amendment would not be called up until today.

Mr. BENTSEN. I do not know who the Senator had the understanding with. It was not with this manager of the bill.

Mr. HUDDLESTON. That is correct. It was not with this manager of the bill.

Mr. President, I am extremely pleased to join with the distinguished chairman of the Senate Environment and Public Works Committee, Senator RANDOLPH, and our other colleagues in introducing this most important amendment to S. 3073, the 1978 Federal-Aid Highway Act. Our amendment, if adopted, will address a critical situation with respect to the adequacy of our Nation's highway system and the increasing amount of energy supplies that this system must carry.

No one can argue that highways play a major role in the energy transportation system. The establishment of the program called for in our amendment should serve as the first plank in the development of such a system. Though I will place the emphasis in this statement on the importance of our highways in transporting coal, the amendment before us makes it clear that routes used for transportation of not only coal but also uranium, oil, and gas, as well as related resource recovery and exploration equipment used to increase national energy supplies would be eligible for the program.

Particularly in coal-producing regions, the Nation's extensive road and highway network allows trucks to extend the reach of railroads and waterways. The effort to meet projected increases in energy production will place unprecedented demands upon our highway system. There will undoubtedly be major challenges with respect to construction of new routes to carry energy supplies and perhaps more importantly to the reconstruction and maintenance of the existing impacted highway network.

We all know that a truly significant problem exists. As long as 5 years ago the Kentucky Department of Transportation made an assessment of the needs in the Commonwealth and came up with projections that have held true through today; the Appalachian Regional Commission completed a review of the problems in January of this year; the Department of Interior has issued a very detailed national energy transportation "atlas"; the U.S. Department of Transportation in a "preliminary assessment report" to the Secretary of Transportation has at long last noted the Federal Government's responsibility in this area. The following are quotes from the DOT's preliminary assessment:

There's every indication that coal road problems will become even more severe in the future unless existing federal policies are altered.

Coal road problems could well become so severe as to become a bottleneck on coal production.

Present apportionment formulas for federal highway aid do not recognize that many states have significant special needs attributable to coal production.

Immediate consideration should be given to the establishment of a coal roads and highways program to assure that near term highway transportation problems will not seriously hamper coal production.

Unless reconstruction and repair of the energy impacted routes is undertaken quickly, there will undoubtedly be bottlenecks in coal deliveries to the Nation's consumers.

In addition to the possibility that there will be bottlenecks for consumers, it should be pointed out that implementation of an energy impacted road program would provide a most valuable aspect for the population of producing regions. It is the men, women, and children who inhabit these regions that must employ the energy-impacted road system as their lifeline to the rest of the world. It is the energy-impacted road system that carries other industrial goods to and from these regions. It is the energy-impacted road system, now in a tragic state of disrepair, that carry the youth of the region to and from their schools. To be sure, the Nation as a whole benefits by increased energy supplies. However, there are just as certainly immediate negative impacts which are evident in several regions. Several legislative proposals have been introduced in an effort to offset social and economic boomtown situations, however, no one has yet adequately addressed the physical deterioration of the roads and accompanying safety problems in these areas. Our amendment is an attempt to do that. We feel that the short-term relief offered in this amendment will prevent further deterioration of our highway network as well as provide the basis for the development of an overall energy transportation system.

I believe certain facets of our amendment merit close attention. First, in an effort to make certain that States are shouldering their fair share of the costs involved, we have asked that they con-

tribute a 30-percent matching share for each project which is approved.

Additionally, to be absolutely sure that overloaded trucks do not contribute to further damage to the highways involved, we have mandated that the State enforce applicable vehicle weight limitations to the satisfaction of the Secretary of Transportation in order for that State to be eligible. We have placed this language in the amendment to emphasize our desire to see vehicle weight laws strictly enforced. Our language is an addition to the very effective language already in section 126 of S. 3073.

To assure that our Nation's energy producing capabilities will not be stifled, because of a lack of transportation capabilities, we urge that Senators join us in supporting this amendment.

Mr. President, the amendment we are addressing is really very simple in nature. It is designed to meet a very desperate need that exists in much of the Nation and which will undoubtedly exist in much more of the Nation as we seek to meet our energy requirements in this country.

The President has called for, and all energy experts have confirmed, that if we are to meet our energy problems in the short term, it will be necessary to increase vastly the production and utilization of coal. To achieve that requires a number of things. It cannot be done simply by Government fiat or Presidential decree. Getting coal out of the ground is a consideration. Further, once it is taken out of the ground in environmentally acceptable ways, it has to be transported to the points where it is to be used.

A very important chain in that transportation link is the highways over which that coal must be transported, whether it is transported to the ultimate user by highway or whether it is transported to a rail center, where it then is transported by rail, or whether it is transported to a river port, where then it is carried by barge.

The fact is that already we are seeing that this vastly increased production is placing an unbearable strain upon the roads and highways over which coal must be transported.

I point out that we are not talking only about coal. This amendment has been referred to variously as a coal-haul amendment or coal-road amendment. Actually, we are talking about energy resources of any kind. We are talking about the need for opening up new oilfields and new gasfields. We are talking about the need to recover uranium and transport it to markets.

So what we have had is a situation that is now becoming intolerable in certain areas of the country and certainly will grow much worse, in which the addition of the many extra tons of energy that have to be transported has deteriorated the highway system, has made the highways extremely hazardous for other citizens who must use the same highways, and has impaired seriously the ability to move the coal from the place it is produced to the place where it is going to be used.

As I pointed out, the President has indicated that the national interest requires that we have this greatly increased production and utilization of coal and other resources. So the national interest is involved, and in my judgment it is in the national interest that the highways and roads be available to transport the coal from the production areas to the areas where it is consumed.

I know there have been arguments that this is an amendment that affects only a few States because only a few States benefit, according to one school of thought. That is not true, because the entire Nation benefits from the production and utilization of energy resources, wherever they may come from.

If we look at our State of Kentucky—and we are a major coal-producing State, the largest in the United States right now—we produce the coal that goes all over the United States, virtually. Incidentally, we produce the coal that provides the electricity to light and heat and cool this very building we are standing, in because the Potomac Electric & Power Co. is a customer of Kentucky coal. The coal has to be transported here.

As far back as 1970, we were supplying 8.4 million tons of coal per year to the State of Michigan to heat and light the homes there; 6.4 million tons for the same purposes in Georgia; 9.9 million for North Carolina; 7.2 million for Florida. Alabama and Mississippi also receive coal produced in Kentucky, as does Wisconsin.

So we are not talking about a regionalized problem. We are talking about the national interest and the way best to serve that interest and what the national interest dictates the Federal Government's participation and share should be in providing the means of moving these energy supplies from production to consumption.

It also has been argued that this is a problem that the individual States should solve, that the States where production occurs are not doing enough. I cannot speak for all the States that produce coal or oil or uranium, or whatever energy supply is necessary, but I know that in Kentucky we addressed this problem some time ago.

The Department of Transportation in the State of Kentucky, in 1974, completed an extensive coal-haul study entitled "Kentucky Coal and Its Transportation Impact."

We established a coal severance tax in Kentucky. The current rate is 4.5 percent of the value of the coal being produced; the minimum tax of 50 cents a ton.

In 1974, an industrial haul-road program was established and funded with $22 million, the primary purpose being to reconstruct certain essential haul roads. An energy road fund has been established in Kentucky for the purpose of concentrating money on the repair of coal-haul roads. This program was funded in the 1976–78 biennium with $25 million.

A new program has been established, called "The Resource Recovery Road Program," which enabled bonds to be sold for the construction and reconstruction of critical resource recovery roads in the Commonwealth. Kentucky Highway 80 was the first project under which this program has been funded with $212 million worth of funds, more than twice what we are asking for on an annual basis in this bill for the entire Nation.

A special appropriation of $30 million was made last year in Kentucky for extremely critical road damage due to floods, coal hauling, and winter damage.

The completion of the Daniel Boone Parkway, which extends to the heart of the eastern Kentucky coalfields, was accomplished with a funding level of $110 million of State funds.

For 1978 through 1980, the resource recovery roads program has authorized 15 major projects, with funding of $240 million.

The 1977–78 fiscal year resurfacing budget for the Kentucky Department of Transportation has increased from $7 to $8 million, and the budget has been increased from $8 to $13 million for 1978–79.

The point is, Mr. President, that Kentucky is doing what it can. Kentucky is doing, and already has committed, much more than this amendment is asking the entire Nation to do to meet this critical problem.

We recognize, as has been argued, that perhaps this problem exists, because the States have allowed overweight trucks on these roads. Certainly, overweight trucks have exacerbated the problem, but that in itself is not the total problem. It is the number of trucks that are traveling. Also, even if the surface of the road were not damaged, we still would have an almost impossible situation, as the large number of trucks necessary to transport the increased fuel production is in frequent conflict, constant conflict, with the need of the citizens in the area to use those roads. The idea that this is somehow an amendment that will benefit only coal producers, and that they should be carrying this burden, should be dispelled by the fact that it is the citizens in the area who are faced with the hazardous task of traveling these roads in order to get from place to place.

I point out that this amendment recognizes the overweight problem and mandates that the State must enforce weight limits in order to participate in the funding made available here.

This amendment does not ask for new funds, any spent beyond what the bill calls for. It simply asks for a category of energy impact roads where the Federal Government will participate on a 70–30 percent sharing basis to help areas of this country provide the means of transporting energy whether it is coal, oil, gas, or uranium from the area of production to the area of consumption.

I think it is vital. It is vital to the Nation's effort to produce energy that it needs and utilize that energy here in the short term as we try to find alternate sources and try to reduce our dependence on energy from abroad.

So I believe, Mr. President, that upon consideration of this amendment by Members from whatever section of the country, whether they are depending on the importation of energy from some other section of the Nation, or whether they are in fact the major producing

areas of this energy, it is in the interests of each section that we provide the method to get the coal or get the energy to where it needs to be used in the most efficient, most effective, most cost-effective way. I know that we need to consider all of our energy problems in this country. We really do need a comprehensive transportation policy for the country, taking into account all the various modes. But our immediate need, and certainly this will not be contrary at all to the overall and comprehensive plan, is to make sure that we can move what is necessary to move so that it can be utilized in the most efficient and effective way.

This amendment is designed to accomplish that short-term need.

Mr. President, I yield at this point to the Senator from West Virginia who I believe is ready to make some remarks.

Mr. RANDOLPH. Yes, if agreeable.

How much time, may I inquire, is allotted to the able Senator from Kentucky?

The PRESIDING OFFICER. The Senator has 8 minutes remaining.

Mr. RANDOLPH. I thank the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. BAYH addressed the Chair.

Mr. RANDOLPH. Will the Senator yield?

Mr. HUDDLESTON. I yield such time as the Senator from West Virginia may require.

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

Mr. RANDOLPH. Did the Senator want unanimous consent?

I yield to my colleague from Indiana.

Mr. BAYH. I want a couple minutes after the Senator from West Virginia. I wish to join him in supporting the amendment which we coauthored with the Senator from Kentucky.

Mr. RANDOLPH. I wish to be notified at the end of 5 minutes, if it will be agreeable to the Chair.

Mr. President, I thank the knowledgeable Senator from the leading coal-producing State of the Nation. A West Virginian finds it a little difficult to say that Kentucky is the leader, but we are very close in production. We vary back and forth in the volume of production. The amendment under consideration, as the able manager of the bill, Senator BENTSEN, has indicated was discussed for a considerable time on Friday.

I am always reluctant to oppose the chairman of the Transportation Subcommittee. As the chairman of the full committee, I try to work constantly with the subcommittee, and in this case it is difficult for me to work for an amendment with which he is in disagreement.

I hope, perhaps, that there might be an inclination on the part of the manager of the bill for our committee to perhaps accommodate this need not because it is offered by the Senators from coal-producing States, but because there is the need, a very real need, to formulate not only an energy policy but a transportation policy also. The means of moving the coal from mine to the market, to the consumers of this abundant fossil fuel is as important as is the production of the coal.

The magnitude of the problem in certain areas of our country is almost staggering, as we attempt to look at it. We do know that there will be an increased production of coal and other energy supplies. Frankly that means that we are not against other forms of energy that will come along later, but now, now is the time when the coal must be moved from, of course, the miles to the marketplace.

This has meant an unprecedented use of our highway system and in the several States, not just Kentucky and West Virginia. The roads, of course, have deteriorated by the coal hauling which has been absolutely necessary, and we are also faced with the fact that at the present time there is a strike which is now in its 6th week which affects the Norfolk and Western, one of the greatest, perhaps the greatest, rail hauler of coal in the country.

As we think of the construction of roads and the reconstruction of roads, it is not wrong for me to say that I think the immediacy of the problem can only be met by, let us say, a substantial sum of money, not an excessive sum of money.

The PRESIDING OFFICER (Mr. CULVER). The Senator's 5 minutes have expired.

Mr. RANDOLPH. I have no further statement to make except to say that I do hope and I know the manager of the bill will give careful consideration to his position on behalf of the reported bill from the Senator from Texas.

Mr. BENTSEN. Mr. President, I yield such time as he desires to the Senator from Maine.

Mr. MUSKIE. Mr. President, a little later in the debate on this pending measure I will make a more extensive statement with respect to the budget implications of the Highway Act.

For the moment, I regret that I find myself in opposition to the amendment of my good friend and colleague from Kentucky, Senator HUDDLESTON, and my colleague, the chairman of my committee, my good friend, Senator RANDOLPH, who, as chairman of the Public Works Committee, is proceeding in very responsible fashion from the point of view of the budget resolution with respect to the pending bill.

But the amendment of my good friend from Kentucky, Senator HUDDLESTON, simply creates budget problems and it is my responsibility as budget chairman to point them out. His proposal would add funding of $100 million per year from the Highway Trust Fund for energy-impacted roads. The bill reported by the Public Works Committee is a fiscally responsible bill as I will say at greater length later. The reported bill is consistent with the budget resolution for fiscal 1979, but there is very little leeway to increase the authorizations. The Senate already approved a $75 million increase for bridges, as was pointed out by Senator RANDOLPH, using up what little room there was. Therefore, Mr. President, I must oppose further add-ons to this bill.

Furthermore, Mr. President, to accept this special program is to create a "wedge" for future increases which it is difficult to estimate. A report from the Appalachian Regional Commission projects needs of $4 billion to $5 billion to rehabilitate and redesign these roads to carry heavy coal trucks. Mr. President, the reason we have the problem of energy-impacted roads is clear—energy traffic involves very heavy loads, often exceeding statutory weight limits as Senator HUDDLESTON has suggested. Hearings earlier this year before the Oversight Subcommittee of the House Ways and Means Committee showed that in many places coal trucks were consistently in excess of legal weights. Senator BENTSEN's subcommittee also heard testimony on the inadequacy of State weight enforcement.

Mr. President, if it is true as seems the case, that a principal reason for coal road deterioration is inadequate enforcement of truck weight limits, then if we remove from the States the major burden of repairing the damage, would we not also be removing the incentive for them to improve their policing of truck weight limits? Indeed, might not the problems caused by overweight trucks become even more severe if the Federal Government assumes the major cost for repairing the damage caused to local roads?

Before we create a special-purpose highway program, taking user taxes collected from across the country to pay for road improvements unique to a few areas, I think other alternatives should be explored. For example, the committee bill has several provisions which would strengthen enforcement of weight limits, and these provisions properly address the problem at its source. Further, it seems to me also pertinent to recognize that increased extraction of coal generates employment, profits, and State collection of severance taxes, presenting alternative funding sources. In addition, we already have a special program for Appalachian highways for which more than $2 billion has been appropriated from general funds since 1965.

I urge the Senate, therefore, Mr. President, considering the potential magnitude of the program that may be generated by this wedge, and considering the tightness of present budget considerations, to resist adding further authorizations to the highway bill, and to vote against this amendment.

Mr. BENTSEN. I thank the distinguished Senator. Mr. President, I yield myself 10 minutes.

I, too, Mr. President, oppose the amendment, and I must say with some regret because of my high esteem for the Senators from Kentucky and from West Virginia. But my friend, the Senator from Maine, has referred to what has been done for Appalachia before. If the people of West Virginia and the people of Appalachia really knew and understood what the chairman of the committee has done for Appalachia they would duplicate Mount Rushmore in Appalachia with Senator RANDOLPH at the head of that team.

I do not begrudge them any of it. I think it is well deserved, and it has helped that area immensely, and it should be so understood by everyone here.

But, Mr. President, I would like to dispel the notion that we are talking about anything here other than a program for coal-damaged roads. The sponsors of this amendment have attempted to broaden its appeal by referring "energy-impacted" highways; by not limiting its scope to coal-haul roads. This is little more than a smokescreen. According to a study by the Department of Transportation, once a program like this is implemented, noncoal-producing States will be left holding an empty bag. By and large, energy-impacted roads are coal-haul roads.

This amendment would target its funds to the restoration and repair of existing roads damaged by energy transportation and development. The Department of Transportation study indicated that 95 percent of the energy damaged roads are in seven Appalachian States; 60 percent of the needs are in Kentucky alone. If these funds are distributed on the basis of current needs, as we assume they would be, only 5 percent would be left for the rest of the Nation after these seven States have taken their share. Its obvious we are really talking about coal-haul roads. There is not much oil, uranium, or natural gas in Appalachia. Furthermore, because the Western coal-producing States have not permitted their coal roads to deteriorate, they also would be left out of the picture as the amendment is drafted.

It should be understood that this amendment will address a regional problem at best, one which has arisen primarily because these States have been lax in enforcing their own State laws on highway weight limitations. It is common knowledge that overweight trucks pose the greatest threat to the life and durability of road surfaces. When you consistently permit trucks to exceed a road's designed weight limitations, you quickly destroy it.

The State of Kentucky, which would be the primary beneficiary of this amendment, has not enforced its own weight limitations on coal trucks. Trucks weighing as much as 130,000 pounds—which is 50,000 pounds over the interstate weight limit and two or three times the limit of most primary and secondary roads—have been permitted to abuse these highways with virtual impunity from the law. The Governor of Kentucky, testifying before the Public Works Committee, apologized for the situation by saying,

". . . Local courts are understandably reluctant to restrict the activities of their best, sometimes only, industry."

Well, Mr. President, I am equally reluctant to reward those same local courts for their unwillingness to enforce the law. Although the sponsors of this amendment have attempted to cast this as a national problem, it is really a regional problem brought on by the negligence of their own local law enforcement officials.

Furthermore, the same States that would benefit from this amendment are already the target of special highway assistance—assistance which is not available to other States. Thirteen years ago we were singling out Appalachia for special treatment because it was distressed. We created a new program—the Appalachian Development Highway System—and authorized the construction of 2,350 new miles of highways and 1,000 miles of access roads. Since then, we have added an additional 550 highway miles and 400 miles of access roads. By 1981, when the present funding for the Appalachian Highway System expires, these seven States will have received over $2 billion in extra Federal highway assistance. Even the $100 million price tag on this amendment looks small in comparison to the special Federal assistance they are already receiving.

Although the Appalachia Highway System was created to promote economic development in the region, the funds from this program have greatly assisted these States in providing for coal transportation. This point was clearly made by the distinguished senior Senator from West Virginia and the Governor of Kentucky in hearings held by the Public Works Committee in 1976

Now, today, we are being asked to target the same region for special assistance because it is growing, because the area is developing its resources and destroying its roads in the process. If this amendment is accepted, Appalachia will continue to receive one pool of Federal funds because it is underdeveloped, and a second pool of funds because it is developing and cannot keep up with the rapid growth of its major industry.

Mr. President, when you have an $8 billion kitty like the highway trust fund, it is tempting to think that you can grab off a hundred million here and a hundred million there without destroying the integrity of the fund. Well, that just is not so. There is no fat in the highway trust fund and there is no fat in this highway bill. We are working off a Federal gasoline tax that has not been raised in 19 years. We are trying to do the best we can with the limited funds we have. We are trying to serve national needs while providing State and local governments the flexibility to address their own peculiar needs. We cannot afford to divert substantial chunks of money into special categories to address regional problems.

I am sympathetic to the problem of coal-haul roads; I understand the importance of these roads to the economy and prosperity of millions of Americans.

There exists a remedy to the coal-haul road problem, but the answer is not found in this amendment. We all realize that the easiest solution to any local problem is to turn to Uncle Sam for help, but in this case it would not be fair to those States which have stretched thin their Federal highway dollars to meet their own special needs.

The answer to the coal-haul road problem lies in the judicious use of a combination of existing resources including:

Their regular Federal highway assistance, which provides the flexibility to shift funds to address regional problems such as this,

Their special Federal highway assistance from the Appalachian development highway program, and

Their revenues from severance taxes and other energy-related income. In a study released Friday by the Department of Transportation, the severance tax is recommended as the most appropriate source of revenues for repairing energy-related road damage.

Finally, this problem can never successfully be addressed until coal producing States like Kentucky get their acts together and begin enforcing their own State weight laws. As long as these States permit coal trucks to operate with impunity from the law, the plight of coal-haul roads will persist. But clearly, this is a local problem, and one that cannot be solved by throwing Federal money at it.

Mr. President, I join the good people of Kentucky in commending their junior Senator for his imaginative solution to a very serious local problem. If he succeeds with this amendment, I am sure other Members of this body will attempt to follow his lead, and rush forth with their own amendments to address the special problems of the States they represent. We can look forward to the establishment of a patchwork of Federal programs for coal-haul roads in Kentucky and Appalachia, grain-haul roads for the plains States, timber-impacted roads for the Pacific Northwest, and citrus-impacted roads for Florida and the lower Rio Grande valley of Texas.

Each region of the country has its own unique economic climate and specific transportation requirements. But rather than establishing individual categories to address each of these special problems, the committee has attempted to develop an extremely flexible highway program that gives each State the ability to apply its Federal assistance to addressing its own peculiar transportation needs. The bill we have reported to the Senate includes several changes designed to even further increase the flexibility of the progam. It consolidates 6 special funding categories, and provides for up to 50 percent transferability from one category to another. Our efforts in this area have been applauded by all participants in the highway program; from the Department of Transportation to the State and local governments that are recipients of the funds.

But the amendment offered by the Senator from Kentucky would fly directly in the face of the reforms we have accomplished in this bill. It would establish yet another special category to address a particular regional problem; and would do so at the expense of program flexibility and at the expense of every other region of the country.

Therefore, I urge the defeat of this amendment.

Mr. BAYH. Mr. President, what is the time situation? I ask my friend from West Virginia for some time as a cosponsor of this amendment. Will he yield me 3 minutes?

Mr. President, I hesitate to take issue

with my distinguished friend from Texas not only because I respect him but I know how difficult it is to fill the role which he now fills with such admiration, inasmuch as I had the good fortune to have a similar capacity some time ago, and I want to salute him for the prudent way in which he has ironed out all of the problems and presented them to us. My cosponsoring of this amendment in no way reflects my attitude toward him or the good work he has done as the chairman of the subcommittee.

I think it is important for us to look at the impact of this amendment as one that goes beyond Appalachia. There are some who may like to think of southern Indiana as part of Appalachia. I do not know whether that is a compliment or an indictment. I accept it either way. But we produce a good chunk of coal down in that part of our State, and it just so happens that I was down in that part of the State this last weekend.

The road conditions between the present mine operations and the points of distribution are almost impossible to describe. I think "chuckhole" is the most often used word in the vocabulary of most Hoosiers. And I think we need to understand that this is going to get worse in those areas where coal is presently being produced.

I notice from the report that we produced 23 million tons of coal, and the Department suggests that it will be 27 million tons by 1985, but the State feels it will be 50 million tons. So the problem is going to get worse, much worse, instead of better.

When I think of this bill, I think in terms of the importance of the contribution the coal conservation bill and the coal conservation effort are going to make to the solution of our energy problems. We have to find a way to get all possible uses of oil and gas off those short commodities and on to coal. We have a bill to accomplish that, which hopefully will be passed by Congress and signed into law.

If we are going to do something about the shortage of oil and something about the shortage of natural gas, we had better see that the line between the production and the end use of coal is a strong one. Right now we find the roads breaking down. It is going to get worse instead of better, and as I see it, this amendment is an important part of the energy package, to see that the pipeline of distribution from miner to user is a strong one.

The condition of our roads as they now are cannot be tolerated. We have to do something about strengthening them. I think the whole country will benefit by this amendment, not just the particular States involved in coal production.

Mr. FORD. Mr. President, could I have 3 minutes?

Mr. BENTSEN. Mr. President, what is the time situation?

The PRESIDING OFFICER. The Senator from Kentucky has utilized the time available to him. There is 31 minutes remaining on the side of the Senator from Texas.

Mr. BENTSEN. I am happy to give the Senator from Kentucky 5 minutes of my time.

Mr. HUDDLESTON. I would like to have about 10 minutes, but half of it belongs to my colleague.

Mr. FORD. I will take 3.

Mr. BENTSEN. How much time remains?

The PRESIDING OFFICER. Thirty-one minutes.

Mr. BENTSEN. All right. I give 10 minutes of my time to the Senators from Kentucky.

Mr. HUDDLESTON. I yield my colleague 3 minutes.

Mr. FORD. Mr. President, I ask to be notified when 3 minutes have expired.

The PRESIDING OFFICER. The Senator from Kentucky (Mr. FORD) is recognized for 3 minutes.

Mr. FORD. Mr. President, I rise in support of the Huddleston amendment, but before addressing it, would like to make clear a few points about my State.

Mr. President, I represent the State with the largest coal production in the Nation. Kentucky now mines 147 million tons of coal annually with over 200 million tons annually projected in the future. We have both low and high sulphur coal: coal for now, coal for later, coal for use in synthetic solvent refining, coal for liquefaction, coal for gasification. Kentucky can meet existing environmental standards in all of these categories and can help keep the country supplied with energy for years to come.

Over the past decade, the amount of coal mined in Kentucky has more than doubled. As a result of this upsurge in production, the State's coal-haul road system has been subjected to excessive demands. Existing roads are not adequate to sustain their increased burden and all of the Kentucky highway system—Federal, State and local, have suffered extensive damage.

For the sake of the Nation, the President has asked Kentucky to double current coal production by 1985. At best, this will be a difficult task, but we believe we can handle the production part of this equation provided that we have an effective energy delivery system.

The amendment before us would earmark $100 million annually of the Highway Trust Fund for reconstruction and repair of roads impacted by energy transportation. When spread among energy producing States, this money will amount to only a drop in the bucket. But, it is a start and a desperately needed one at that.

In a "Dear Colleague" letter sent 2 weeks ago, the managers of the bill wrote of their opposition to the Huddleston amendment because it, and I quote:

> • • • diverts funds from throughout the nation to utilize them for a problem in a limited number of states.

End quote. A limited number of States.

Mr. President, since when has the energy crisis been a limited problem? Opponents of the amendment act as though it is the responsibility, even the privilege, of energy-producing States to tear up their land, destabilize their communities, and ruin their highways so that the rest of the country can drive cars and keep warm in winter. They seem to think it is quite fair that the citizens of these States foot the bill for road repair and reconstruction so that the rest of the country can have energy.

I do not agree.

The energy problem is everyone's problem and it is not right to ask the citizens of the energy-producing States to assume responsibility for the interests of an entire Nation.

I would remind the managers of the bill that it is not the people of the Southwest who bear the full cost of transporting natural gas to the rest of the Nation. It is all the people of America who share the cost of gas transmission lines.

I am sure the Senator from Texas will say they are producing the natural gas and oil, but you have to take into consideration that the rest of the country pays for that transportation, and it is included in their charges.

I would remind the managers of the bill that it is not the people of New England who bear the full cost of the entitlement program that fuels that region's energy. It is all the people of America who share the cost of that program.

We will be asked, why give money to the ARC, when many of the Appalachian States have had 100 percent Federal funds? I remind the managers of the bill that a lot of these roads being torn up were built with 100 percent State money. There is some 50–50 money being spent, also some 70–30. I do not agree that any of it is 100 percent Federal funds; there is also State money. The State of Kentucky raised over $100 million last year for its road program. Since 1959, they have put $1 billion into Appalachia, but that is much less than we are working on, for our State, in the amount of $100 million a year.

They are trying to blame the State for not enforcing the Federal speed limit. There may be other States which might be interested to know that Kentucky has passed a judicial reform bill, and it is now in place. We now have district judges. The county judges do not handle these cases, and I have a press clipping today showing where the district judges are doing an excellent job, the court procedure has been accelerated, and we have tried our best to eliminate the problem we are being accused of here today.

So, Mr. President, I think, as we try to do the job, the next thing is gasification, liquefaction. These things will come from coal, and they will be the items we will lean on to help this country solve its energy problem.

We are grateful to the other States for natural gas, and we are grateful to the other States for oil, but I hope you will allow those States which have coal to produce it and be able to transport it.

In closing, I would like to point out to my colleagues that the energy crisis is upon us and that the demand for national energy sources will only increase. We are on the verge of reaching consensus here in the Congress on a national energy policy, but to increase our domestic energy supply without maintaining the mechanisms to move that energy to the

people would be a totally meaningless act.

I urge the adoption of the amendment.

Mr. METZENBAUM. Mr. President, will the Senator yield for a unanimous-consent request?

Mr. BENTSEN. I yield.

Mr. METZENBAUM. I ask unanimous consent that Rick Sloan and Rick Wilson of my staff be accorded the privilege of the floor.

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

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Texas has the floor.

Mr. DURKIN. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. DURKIN. What is the time situation?

The PRESIDING OFFICER. Twenty-seven minutes remains on the amendment. It is in the possession of the Senator from Texas.

Mr. BENTSEN. Mr. President, I yield 10 minutes to the Senator from Rhode Island.

Mr. CHAFEE. Mr. President, if I may respond briefly to the comments of the Senator from Kentucky, it appears that under this amendment the money can only go to those roads in the Federal-aid system. Second, it can only go for the repair of roads which have incurred a substantial increase in use and subsequent deterioration as a result of the transportation of coal. In other words, we are talking in the past tense.

The Secretary of Transportation has come up with a survey of those roads that qualify, and the Western States do not qualify under the survey by the Secretary of Transportation. The only States that qualify are the States primarily in the Appalachian region. That is why the Senator from Texas has been talking about the Appalachian situation particularly.

It seems to me the points to be made, Mr. President, are that in this area where we are primarily going to give the aid for these roads, the Appalachian area—since 1965 that area has received $3 billion for authorized Federal-aid roads, in addition to the national highway program from the Trust Fund, which the rest of the Nation has not participated in at all. In other words, the area we are talking about has received a substantial bonanza from the Federal Government in the form of $3 billion. That is point 1.

Point 2 is that when you have coal in an area, you are getting something out of it. The State is getting a very substantial return in the form of taxes and in the form of jobs that come with mining of the coal. I wish we had a bonanza like that in our State. Unfortunately, we do not. Sometimes when you have a bonanza like that, some problems come along with it.

We are asking only that all these problems, in other words, the construction and repair of roads, over which the coal is hauled, not be turned over to the Federal Government; that the local communities in the State carry them; that these problems not be turned over to the highway trust fund to carry that burden from which the States have a dividend returned.

So, Mr. President, I think this $100 million is something that should not come from the income of the highway trust fund. It is going beyond what we expect of the fund. It is something very, very special for an area which is already receiving a form of benefit because they have the coal.

Mr. President, I hope the amendment would be defeated.

Mr. HUDDLESTON. Mr. President, I will respond to the statements which have been made. First of all, as to the budget implications, it is somewhat difficult to get hard and fast figures on the estimate of the trust fund, but we do have from the Secretary of Transportation, the Honorable Brock Adams, a table which suggests that the revised fiscal year 1979 estimates are $9.1 billion.

The bill we are dealing with is in the neighborhood of $8 billion. So it would seem that there certainly is a likelihood that there is enough flexibility there to accommodate this modest increase we are talking about at the present time.

The distinguished Senator from Maine made the point that if the Federal Government assumes this responsibility, it will take the burden off the States and decrease their incentive for doing what they can and ought to do.

I think I dispelled that notion by pointing out that the State of Kentucky alone is already spending several times what we are asking the entire Nation to spend on this particular problem. There is no thought that this approach is going to take care of all of the need. As the distinguished Senator has pointed out, many of these roads are off the Federal system and the States and counties are hard pressed to meet the needs there at the present time.

The suggestion has been made that already the Federal Government is doing enough through the Appalachian program, the Appalachian Regional Commission. But I would point out that the need there and the programs there were developed before the doubling of coal production became a national mandate. Those roads are set for other purposes, a wide variety of things—economic development—and are not necessarily applicable to the kinds of roads we are talking about at the present time.

The Department of Transportation study, which has been quoted as saying that 75 percent of the need exists in the Appalachian area, was a 1975 study and did not take into account the new energy development which is going to be necessary in the vast areas of the West where the production of coal, the production of oil, and the production of other energy resources will certainly be accelerated in the coming year. There will be a need there, too.

My colleague from Kentucky (Mr. FORD) has already addressed the weight limit problem. I would point out again that the amendment we have before us mandates that the States enforce the weight limits that are in effect.

In talking about the regional concept, I am delighted that the Senator from Indiana, a State which is outside of the Appalachian Regional Commission, and the chairman of the Subcommittee on Appropriations, is a cosponsor and has spoken in favor of this bill. Other cosponsors are from Montana and South Dakota. Those are certainly areas far away from the few States which comprise the Applachian region of this country.

Let me say finally that we are talking about a situation that exists now, a need which exists now, and conditions which can only get worse day by day and hour by hour as we try to meet our energy needs.

I have read the study by the Department of Transportation. It makes some suggestions for meeting the current need, short-term suggestions. Well, aside from being illegal, they are also somewhat impractical when they suggest that we take from the reclamation fund, established by the Surface Mining Act, funds to build and construct these necessary energy impacted roads.

As I say, the Department of the Interior was quick to point out that that is not within the scope of the legislation, it is not a priority. They will not have enough funds to come close to meeting the reclamation needs, much less meet these critical needs which exist at the present time.

The study did say that in the long term a national severance tax ought to be considered as providing the necessary funding for this kind of a need. I think that is worthy of consideration. But that cannot be done overnight. By the time that kind of legislation could be enacted, and that kind of program put into place, we would be so hopelessly far behind there would be no chance of ever catching up. In the meantime, our ability to move energy resources will be severely restricted.

This is the manner in which we can address this problem immediately. The need is there and has been demonstrated. It is my judgment that there is enough flexibility in the highway trust fund to supply these modest amounts without any undue hardship, without any great budget impact. It seems to me it is appropriate to move now to address this problem before it gets so totally out of hand that we will not be able to ever, ever catch up with it.

Mr. MELCHER. Will the Senator yield me 2 minutes?

Mr. HUDDLESTON. I will yield if I have 2 minutes remaining from the time the manager of the bill so generously gave me a moment ago.

The PRESIDING OFFICER. The Senator has 2 minutes.

Mr. HUDDLESTON. I yield 2 minutes to the Senator.

Mr. MELCHER. I thank the Senator.

I would hope that no argument against the amendment would be lodged when a question of safety is involved. We had a discussion during the D.C. representation debate concerning the number of lives of D.C. residents lost during the Vietnam war. That is an argument which carries a lot of weight.

In my own county in Montana we have 30 miles of road where we have had over 30 lives lost in the last 20 years. It is a situation which should not continue to exist. It should be corrected. The amendment offered by the Senator from Kentucky, which I am delighted to cosponsor, addresses a problem where a 30–70 matching fund can be arrived at for critical needs.

We have such a critical need. If the amendment is adopted, I would hope that the Secretary of Transportation would look at our need. The State can make the 30 percent. We have scratched around trying to find where we could draw up some more money and we simply have not been able to come up with it, even though safety is involved and it is a very serious situation in that regard.

I think the amendment is a meritorious amendment and I think in the light of the vast needs which have been described, the Senate should adopt the amendment. I thank the Senator for yielding.

Mr. CHAFEE. How much time remains, Mr. President?

The PRESIDING OFFICER. The Senator from Texas has 18 minutes remaining.

Mr. BENTSEN. I yield 3 minutes to the Senator from Rhode Island.

Mr. CHAFEE. I would like to make one point, if I might, Mr. President. It is terribly important to look at the language of the amendment with which we are dealing. The Secretary of Transportation has said that seven Appalachian States account for over 98 percent of the reported backlog needs. The Senator from Montana may hope that his State is going to get something out of this, but it is very clear that they are not going to get anything. If they do get something, it will be so small it will not amount to very much.

Over 98 percent of this amount is for roads to be used for coal hauling, with the Appalachian States again reporting the greatest needs.

Mr. MELCHER. Will the Senator yield?

Mr. CHAFEE. If I might continue, please.

That is a quote from the Secretary of Transportation. The point we are making here, Mr. President, is that, first of all, this proposal that we have before us presents a fiscal issue, in that there is already a question whether there is going to be adequate funding for the highway programs that are already in place.

Second, it is very clear that the Appalachian States that are going to receive this money have already received some $3 billion extra, outside of what the rest of the Nation gets, for roads.

Finally, to suggest that States that have roads that are hauling coal get nothing out of it seems to me to be a very odd suggestion. Obviously, the States are receiving a return in the form of taxes and jobs. To ask the Federal Government to step in and cover this as an added bonus seems to me to be stretching it a little far.

I thank the Senator.

Mr. MELCHER. Will the Senator yield?

Mr. BENTSEN. For a question? Yes, without losing the floor.

Mr. MELCHER. The question I should like to propound is, is not the study that the Senator from Rhode Island referred to based on the previous amendmcnt and not the amendment before us, which deals, in a broader concept, with energy?

Mr. BENTSEN. I did not get the question.

Mr. MELCHER. The Senator from Rhode Island referred to a study undertaken by the Secretary of Transportation, which was based on the narrow concept of coal-hauling roads.

Mr. BENTSEN. That is not correct.

Mr. MELCHER. That is not correct?

Mr. BENTSEN. No, it is energy-impacted roads. That is why it is my judgment and the judgment of the Senator from Rhode Island that the Senator will get little or nothing from it.

Mr. MELCHER. The point of my question was, was the study based and applied to the other amendment of the Senator from Kentucky and not to the broader concept of the amendment that we are looking at today, at this time?

Mr. BENTSEN. The information was based on replies from the States themselves. The States were surveyed regarding the impact on highways from all forms of energy production. The Department of Transportation assimilated the information that came out of the survey. It reported that all repair needs were associated with coal haul roads. Based on the needs described in the report 60 percent of the funds generated by this amendment would go to Kentucky, 95 to 98 percent to seven Appalachian States. I would say the Senator's State would get little, if anything.

Mr. DURKIN. Will the Senator yield?

Mr. BENTSEN. If I may make my comments now, please; I have yielded quite a bit today.

Mr. President, in recent years the Federal Government has assumed a responsibility for providing financial assistance to communities and regions of the country that are suffering from social and economic decline. Although many of our efforts in this area have been costly. We have decided that it is in the national interest to focus Federal assistance on economically disadvantaged areas.

But Senator HUDDLESTON'S amendment would do just the opposite; it would direct Federal assistance to a part of the country that is on the threshold of economic development and prosperity. Instead of giving aid to declining communities, it would award Federal funds to areas that are facing tremendous economic growth—the type of growth that every other State would like for itself.

In Texas, we are familiar with both the benefits and problems that come with rapid development of energy resources. And although there is no question that the discovery of oil brought with it a bundle of problems, I doubt, if many Texans would want our "black gold" to go away. The growth of the oil industry in Texas brought with it a period of unprecedented economic growth and prosperity. With the increase in State revenues from the expanded economic activity and severance taxes, Texas has managed to maintain the lowest per capital tax burden in the Nation.

The black gold of the 1980's, however, will not be oil, but coal. We have had our shot at prosperity, and wish Kentucky well with its promising future. Our only regret is that when we struck it big at spindletop, we did not have the inventiveness to appeal to the U.S. Senate for special impact assistance.

Mr. President, each day the Members of this body must make difficult decisions on how to allocate limited Federal resources among a wide variety of worthy programs. Given the tremendous competition for Federal assistance, I think it would be irresponsible to embark on a new course of directing Federal tax dollars to developing areas with growth-related problems, but also which have expanding resources for addressing those problems.

I do not argue that coal-haul roads are not a serious problem, but I do not think that declining communities should see their tax dollars directed to solving the problems of States which are expecting unprecedented growth and new prosperity.

I yield back the remainder of my time.

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

The PRESIDING OFFICER. All time having been yielded back and all time on the amendment therefore having been used, it is now in order——

Mr. HEINZ. Mr. President, I ask for 1 minute on the bill.

The PRESIDING OFFICER. Does time remain on the bill? Who is in charge of the time?

Mr. BENTSEN. Mr. President, we have debated this thing now for 2 days. We would like to get to a vote, if we can.

Mr. HEINZ. I ask for 30 seconds on the bill.

Mr. BENTSEN. For 30 seconds on the bill, I yield to the distinguished Senator from Pennsylvania.

Mr. HEINZ. I thank my distinguished colleague. I shall take 29 seconds to commend the Senator from Texas and 1 second to commend similarly Senator HUDDLESTON and Senator RANDOLPH.

Mr. President, transporting energy-related materials is only one of a number of complex demands which have been placed on our highway system. I congratulate the distinguished chairman of the Subcommittee on Transportation (Mr. BENTSEN) and the capable ranking minority member of the subcommittee (Mr. CHAFEE) for the commitment and effort they have made, along with all of the members of the committee, to present the Senate with the well-focused, balanced legislation we are considering today. But that does not mean that the legislation is perfect. Indeed, when the question of matching this Nation's energy priorities with our transportation system is concerned, I believe we are making a grave mistake. Our amendment seeks to correct this shortsighted error.

Mr. President, I commend the Senator from West Virginia (Mr. RANDOLPH), and the Senator from Kentucky (Mr. HUDDLESTON) for the diligence and dedication which they have shown in the

development of the energy impact road rehabilitation program which would be established by the amendment we are considering. This amendment addresses a problem not only of West Virginia, Kentucky, and Pennsylvania, but of States throughout the Nation whose roads are presently deteriorating because of increased usage of them to transport coal and other energy-related materials.

The need for this energy impact road rehabilitation program was dramatically pointed to in a report entitled "Transporting the Nation's Coal—A Preliminary Assessment," which was published by the Department of Transportation earlier this year. The report stated:

Significant increases in coal truck traffic on the nation's highways and particularly on Appalachian roads (will require) new roads to be built and increased maintenance on the existing network.

A separate report issued by the Appalachian Regional Commission indicated coal-hauling trucks in the region now travel over 6,800 miles of roadway and 900 bridges that were not designed for such heavy traffic. This same report estimated that, by 1980, more than 8,500 miles of roadways and between 1,100 and 1,300 bridges will be unsafe for coal-hauling purposes.

The problem of coal transportation affects more than just Appalachian States. By 1985, increased production of coal west of the Mississippi River and in the South will place new demands on our national transportation system, especially on our roads. I stress the immediacy of the problem. There is no doubt that our Nation will eventually depend heavily on coal. Without adequate transportation to move it, energy plans will be impeded. All States, even if they do not produce coal themselves, will be affected. The DOT report indicated that while rail, water, and pipeline problems are either addressed by existing legislation or will not be severe, highway inadequacies will be a significant problem. The report recommends "immediate consideration" of a coal road and highway program. If Congress does not act to establish a program this year, our inadequate coal road system may prevent us from transporting the amounts of coal which we must produce in order to meet our energy needs without spending billions of dollars annually on foreign oil.

I have seen the deplorable conditions of roads which are extensively used to transport coal. Approximately 1 year ago today, I inspected coal haul roads in Cambria County, Pa. These deteriorating roads are a threat to public safety. It was possible to crumble the pavement with your bare hands. Similarly unsafe, unacceptable conditions exist in other counties throughout Pennsylvania and the Nation. We must act now to provide assistance for the repair of these roads. The residents of Cambria County and other counties should not be forced to sacrifice their safety, their roads, and their own wages as increased taxes for road repair to produce the energy which all Americans need.

Mr. President, this amendment will help us realize two goals: First, maintaining and improving highways which will be used to transport the increased amounts of coal which we must produce in order to meet the energy needs of a strong, growing economy and second, protecting the public safety by repairing roads which are presently in unacceptably bad condition because of heavy, necessary use by coal trucks. These are worthy objectives and I urge my colleagues to support this amendment.

Mr. McGOVERN. Mr. President, I appreciate this opportunity to join with my colleagues, Senator HUDDLESTON and Senator RANDOLPH, in introducing this important amendment.

I am especially pleased at the success of our efforts to expand this proposal to include assistance for roads rapidly deteriorating from not only coal production but also uranium, oil and gas development. This modified amendment is also designed to allow State and local governments flexibility to designate those areas within their jurisdiction as facing the most critical needs for road impact aid.

The necessity of this program is well established in the numerous energy impact aid proposals that Congress has attempted to legislate, some of them with full support of the administration.

However, the vast majority of programs presently being considered by Congress concern the serious social and economic impacts being faced by energy boomtowns and not with the transportation dilemma created by resource development. In order to fully present this issue, I would like to briefly discuss the relationship between resource development and energy impacts.

Over the past decade, States throughout the Nation have experienced dramatic increases in energy resource production in an attempt to alleviate potential national energy shortages through increased development of our conventional fuels. I firmly believe this production, in conjunction with rapid development of our renewable energy resources, is essential to assure adequate short-term energy supplies and to reduce our dependence on imported fuels.

Yet, due to the rapid expansion of domestic energy production and the accompanying population increases, hundreds of communities in the heart of these developments have experienced wide ranging impacts, straining their capacity to provide minimum essential services.

One of the key problems is that energy developments often locate in rural areas. Consequently, any increase in population and traffic creates some strain on community services and transportation.

While several legislative proposals have been introduced to offset socio-economic impacts experienced by boomtown communities, virtually no proposals for impacted and deteriorating roads and highways have received similar consideration.

A key issue at stake is that impacted roads may not be eligible for any of the pending energy impact assistance programs. Most of these roads do not fall within community boundaries and roads obviously do not experience population increase, a major requirement for much of the proposed impact assistance.

The majority of the affected roads were never designed to accommodate the weight and frequency of travel of drilling rigs, seismic trucks, coal trucks, and exploration rigs. Critics of this proposal contend that if State vehicle weight limit laws were properly enforced, these road deterioration problems would not exist.

This is not true.

If weight limit laws were enforced without special overweight vehicle permits, we would have little energy production and would jeopardize our future national energy needs.

For example, many States allow a maximum weight on State roads of 90,000 pounds, and between 70,000 and 80,000 pounds on interstates. Consequently, under the law, heavier loads may and do travel on the more poorly constructed highways. However, the average weight of drilling rigs in South Dakota is well over 100,000 pounds, while the oil, water, and cement vehicles used to service oil wells are generally between 50,000 and 70,000 pounds.

Additionally, while some of these vehicles may be marginally within the legal limit, the frequency of their travel on these roads contributes substantially to their rapid deterioration. It is not unusual for cement and water trucks to make 120 to 180 trips to each producing oil well.

The Buffalo oilfield in South Dakota is a comparatively small oilfield and has over 45 producing wells alone. The frequency and weight of oil related vehicles on roads near major oilfields is staggering. The county in which this field is located has estimated that road repairs stemming from existing resource development could amount to over $500,000. This amendment at least would make some assistance available to these seriously impacted areas.

With regard to coal transportation, several companies are now finding it cheaper and faster to ship western coal for short hauls by truck rather than in coal unit trains. Several companies in South Dakota are now contracting for truck shipments from the coalfields in northeastern Wyoming. Coal trucks weigh as much as 75,000 pounds and it takes several truckloads of coal to transport the same amount in one rail hopper car. Many trucks in my region use the more poorly constructed non-interstate routes to transport coal shipments.

South Dakota has already documented serious road impacts due to increasing coal truck shipments from northeastern Wyoming and North Dakota, and such shipments are anticipated to increase greatly in the near future.

The administration and other critics of this amendment have stated that the proposal would result in trust fund revenues flowing to only a few States, primarily Kentucky and West Virginia. Under the modified amendment, expanded to include several energy resources and resource recovery equipment, the benefits would flow to a large

number of States, including Colorado, Wyoming, New Mexico, Utah, Idaho, Montana, North Dakota, South Dakota, Texas, Louisiana, Indiana and Illinois, as well as the Eastern coal States and other Northern and Western energy producing States.

Additionally, the administration has opposed this amendment based on the need to keep a lid on the expenditures from the highway trust fund. I am well aware of and sensitive to that need.

It would be folly to increase expenditures that may cripple the trust fund. However, we are not requesting a massive or crippling amount of revenue. We are not legislating handouts to a few communities. We are attempting to legislate a fair and equitable proposal to assure adequate and safe transportation on these roads. I believe this proposal is essential to assure adequate and safe transportation on these roads.

I am also aware that the Department of Transportation would appreciate additional time to study the problem. The Department was scheduled to release a study on this dilemma over a year ago, and today it is still not available. However, we do have studies conducted by several States and local governments conclusively documenting the severity of deteriorating road conditions.

Additionally, while we do not have the Department's study, we do know that the problems have grown worse and they will continue to worsen unless we take immediate action. Several counties in South Dakota have already attributed a number of accidents to the deteriorating conditions on roads in energy development areas.

I do not believe we can afford to further jeopardize human lives for the sake of a long overdue agency study. It is imperative to act now to assure the safety to those who travel these highways and to facilitate the energy development in these areas.

The PRESIDING OFFICER. The vote now occurs on agreeing to the amendment of the Senator from Kentucky.

Mr. BENTSEN. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? Evidently, there is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from South Dakota (Mr. ABOUREZK), the Senator from Alabama (Mrs. ALLEN), the Senator from Minnesota (Mr. ANDERSON), the Senator from Arkansas (Mr. BUMPERS), the Senator from Arizona (Mr. DECONCINI), the Senator from Mississippi (Mr. EASTLAND), the Senator from Montana (Mr. PAUL G. HATFIELD), the Senator from Minnesota (Mrs. HUMPHREY), the Senator from Louisiana (Mr. JOHNSTON), and the Senator from Georgia (Mr. TALMADGE) are necessarily absent.

Mr. STEVENS. I announce that the Senator from Kansas (Mr. DOLE) and the Senator from Michigan (Mr. GRIFFIN) are necessarily absent.

I further announce that, if present and voting, the Senator from Michigan (Mr. GRIFFIN) would vote "nay."

The result was announced—yeas 37, nays 51, as follows:

[Rollcall Vote No. 338 Leg.]

YEAS—37

Baker	Inouye	Percy
Bayh	Javits	Randolph
Byrd, Robert C.	Kennedy	Riegle
Case	Long	Sarbanes
Chiles	Lugar	Sasser
Cranston	Magnuson	Schweiker
Domenici	Mathias	Scott
Durkin	Matsunaga	Sparkman
Ford	McGovern	Stennis
Glenn	Melcher	Stone
Gravel	Metzenbaum	Williams
Heinz	Morgan	
Huddleston	Nelson	

NAYS—51

Bartlett	Hansen	Nunn
Bellmon	Hart	Packwood
Bentsen	Haskell	Pearson
Biden	Hatch	Pell
Brooke	Hatfield, Mark O.	Proxmire
Burdick	Hathaway	Ribicoff
Byrd, Harry F., Jr.	Hayakawa	Roth
Cannon	Helms	Schmitt
Chafee	Hodges	Stafford
Church	Hollings	Stevens
Clark	Jackson	Stevenson
Culver	Laxalt	Thurmond
Curtis	Leahy	Tower
Danforth	McClure	Wallop
Eagleton	McIntyre	Weicker
Garn	Moynihan	Young
Goldwater	Muskie	Zorinsky

NOT VOTING—12

Abourezk	Dole	Humphrey
Allen	Eastland	Johnston
Anderson	Griffin	Talmadge
Bumpers	Hatfield, Paul G.	
DeConcini		

So the amendment (No. 3507) was rejected.

Mr. BENTSEN. Mr. President, I move to reconsider the vote by which the amendment was rejected.

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

The motion to lay on the table was agreed to.

UP AMENDMENT NO. 1696

(Purpose: Relating to the continuation of certain establishments serving Interstate motor vehicle users)

Mr. METZENBAUM. Mr. President, I call up my amendment which is at the desk.

The PRESIDING OFFICER (Mr. MATSUNAGA). The amendment will be stated.

The legislative clerk read as follows:

The Senator from Ohio (Mr. METZENBAUM) proposes an unprinted amendment numbered 1696.

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

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

The amendment is as follows:

At the appropriate place in the bill, insert the following:

SEC. . Section 111 of title 23, United States Code, is amended by adding at the end thereof the following new sentence: "Nothing in this section, or in any agreement entered into under this section, shall require the discontinuance, obstruction, or removal of any establishment for serving motor vehicle users on any highway which has been, or is hereafter, designated as a highway or route on the Interstate System (1) if such establishment (A) was in existence before January 1, 1960, (B) is owned by a State, and (C) is operated through concessionaires or otherwise, and (2) if all access to, and exits from, such establishment conform to the standards established for such a highway under this title.".

Mr. BENTSEN. Mr. President, may we have order, so that the Senator can be heard?

The PRESIDING OFFICER. The point is well taken. The Senate will be in order. Members will cease conversations. Authorized staff will retire to the rear of the Chamber.

Mr. METZENBAUM. Mr. President, this amendment will preserve existing service plazas on the Ohio Turnpike, the Kentucky Turnpike, and several other State turnpikes which soon will become a part of the interstate highway system. This amendment has been approved by the Department of Transportation and by the Office of Management and Budget. I have also been told that this amendment is acceptable to the committee.

This amendment will not require any new Federal funds. Instead, it is designed to protect the substantial investment that taxpayers have already made for service plazas on State turnpikes that were built before 1960 and which predated the development of our national interstate highway system. These plazas have been serving the public safely for 20 years. But unless this amendment is approved, those service plazas, which are worth millions of dollars, must be torn down because of one provision in the existing law.

Under the present law, title 23, section 111, all Federal interstate highways must be free of commercial service plazas in order to become eligible for 90 percent Federal improvement funds. In Ohio, this means that 16 service plazas that now operate along the Ohio Turnpike must be torn down before that road can become part of the interstate highway system.

According to the Ohio Turnpike Commission, the 16 plazas along the 241-mile Ohio Turnpike were originally constructed at a cost of $16 million. Since that time another $25 million worth of construction has taken place at those plazas. The commission estimates that it would cost taxpayers today more than $50 million to duplicate those facilities. Those plazas employ 2,000 people and generate about $6 million a year for the State in rental fees. But all of this would be lost if this amendment is not approved. This would be a tremendous and unnecessary waste of taxpayers dollars. The present law was never intended to eliminate the existing State-owned service areas. It was intended to prevent unsightly and possible unsafe commercial development along the interstate highways. This amendment would preserve the integrity of our interstate roads without forcing us to lose these needed service plazas along State turnpikes.

Mr. President, I point out that this is not an idle threat. The State of Kentucky Turnpike Commission has already been informed by the Federal Highway

Administration that access to one service plaza along I–65, formerly the Kentucky Turnpike, must be eliminated to conform with title 23. The Ohio Turnpike Commission has already announced its intention to remove tolls from the Ohio Turnpike by 1981 and allow it to become part of the Interstate Highway System. Ohio would face the same problems that Kentucky has already encountered unless this amendment is accepted.

This amendment would preserve only those service plazas that were constructed before 1960 and which are owned by the State. It will not allow new commercial development. It will also help other States, possibly including Maine, West Virginia, and others, which may decide to remove their turnpike tolls in the future. This amendment will prevent the unnecessary and wasteful destruction of existing service plazas that have been serving the driving public for the past two decades. I urge my colleagues to support this amendment.

Mr. BENTSEN. Mr. President, the manager for the majority on this measure has discussed this amendment with the Senator from Ohio and finds that it improves the proposed legislation and that it should be accepted, subject to the comments of the minority manager.

Mr. CHAFEE. The minority has the same position as the majority on this, Mr. President.

Mr. METZENBAUM. I appreciate that.

Mr. President, I yield back the remainder of my time.

Mr. BENTSEN. I yield back the remainder of my time.

The PRESIDING OFFICER. All time having been yielded back, the question is on agreeing to the amendment offered by the distinguished Senator from Ohio.

The amendment was agreed to.

UP AMENDMENT NO. 1697

Mr. MORGAN. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from North Carolina (Mr. MORGAN) proposes an unprinted amendment numbered 1697.

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

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

The amendment is as follows:

On page 10, after line 25 add the following new subsection:

"(c) Section 101 of title 23, United States Code, is further amended by adding at the end thereof the following new subsection:

"'(f) It is hereby declared to be the national policy that annual authorizations for programs to be financed from Highway Trust Fund be closely related to anticipated annual receipts accruing to the fund in order that the decision on appropriate program levels and the decision on sources of revenue to finance the program be made in conjunction with each other.

"'It is further declared that whenever authorizing legislation provides for growth in program levels, such growth should be consistent with (1) the rate of growth of revenues from existing sources, (2) the ability of States responsibly to obligate increased Federal funds, and (3) a sound overall Federal fiscal policy.'"

Mr. MORGAN. Mr. President, I am submitting an amendment to the Highway Assistance Act to insure that the highway trust fund remains on a fiscally sound basis in the years ahead. Ever since its creation in 1956, the highway trust fund has been on sound financial footing. My amendment would insure that this continues to be the case.

The fiscal integrity of the Federal highway assistance program is today under serious assault. There is a move afoot in the House of Representatives to violate the most simple principles of sound fiscal management. Simply stated the House wants to authorize expenditures far beyond the revenues which can reasonably be expected to be available to the trust fund from the Federal gasoline excise tax. The unsound practice has been dubbed "anticipatory financing." "Anticipatory financing" is a new word for deficit spending; let there be no doubt about that. To extend deficit spending to the highway assistance program at a time when the economy is already reeling under the impact of massive Federal deficits is the height of irresponsibility.

Congress has tried the route recommended by the House of Representatives. Several years ago this Congress increased social security benefits without a corresponding increase in taxes. The result of this folly was that last December we faced the prospect of a bankruptcy of the social security system. To cover the benefits we had voted before, we had to vote a major tax increase. If we do not take positive action today to stem the tide of misdirected generosity, we will face the same problem we faced last December. We must not embark upon an expanded spending program unless we are willing to increase taxes to pay for the additional services.

I commend the Highway Subcommittee of the Environment and Public Works Committee for reporting to the Senate a bill which sets expenditure levels near the levels of expected revenues. If the pressures for increased spending I have felt are any indication, the members of this subcommittee are to be congratulated for their adherence to the principles of fiscal responsibility.

Unfortunately, the House of Representatives has not shown similar restraint. Although the exact totals have not been agreed upon, all indications are that the House will send to conference a bill spending several billion a year more than will be available from the excise tax. Reasonable predictions place the revenues available from the gasoline excise tax at about $8 billion per year. The Senate bill authorizes about $8 billion a year, but the House wants to authorize around $11 billion a year. This $3 billion a year shortfall between expenditures and revenues will bankrupt the trust fund by the early 1980's. To pay for this $11 billion a year expenditure, Congress will have to raise taxes or use general revenues to prevent the bankruptcy of the highway trust fund. Passage of this amendment will set the Senate clearly on record in opposition to this departure from the principles of sound fiscal management.

I emphasize that this amendment does not establish a ceiling on highway expenditures. It only requires that expenditures not exceed revenues over the period of the program. If Congress sees fit to increase taxes in order to spend more on the highways, then Congress should explicitly and clearly do so. We should not spend the money and then be put in a position where we have to increase taxes. We in this country must return to the tradition that public services must be paid for by taxes. In my view there is no better way to separate the wheat from the chaff in Federal spending than to link the decision to spend with the decision to tax. I think we would all be much more realistic in our evaluation of the value of Federal programs if we had to explicitly and clearly levy a tax for each expenditure.

The highway trust fund has been one of the few parts of the Federal budget that has remained on sound fiscal footing over the years. Organized around a "pay as you go" user fee system, the highway trust fund has served us well since its creation 20 years ago. I think it would be a national tragedy of the first magnitude if we destroyed the soundness of this institution for the sake of short-term expediency. At a time when the public is awakening to the consequences of Federal fiscal irresponsibility, the Senate should go firmly on record against new spending that we are not willing to pay for. I hope that my colleagues will reaffirm the fiscal integrity of the highway trust fund by agreeing to this amendment.

Mr. MUSKIE and Mr. BENTSEN addressed the Chair.

The PRESIDING OFFICER. The Senator from Texas.

Mr. BENTSEN. I yield such time as he may desire to the Senator from Maine, the chairman of the Budget Committee.

The PRESIDING OFFICER. The Senator from Maine is recognized.

Mr. MUSKIE. Mr. President, the Senate has before it S. 3073, the Federal-Aid Highway Act of 1978. I shall take a few minutes to comment upon the major budgetary aspects of this legislation, particularly as they relate to the spending targets which Congress established in the first budget resolution for fiscal year 1979.

As reported in the Senate, S. 3073 provides highway program authorizations for fiscal years 1979 and 1980 of $8.4 billion each year. The bulk of these authorizations, $7.9 billion in fiscal 1979 and $7.8 billion in fiscal 1980, provide contract authority from the highway trust fund, and thus represent direct spending authorizations not requiring appropriations except for liquidation. The balance of the authorizations are for appropriated highway programs, some of which are funded from the trust fund and some from the general fund.

I am pleased to be able to report to the Senate that these reported authorizations are consistent with the budget

resolution for fiscal 1979. Further, the spending pattern established by the bill suggests that highway spending through fiscal 1983 also will be consistent with the 5-year targets set forth in the report on the first budget resolution. I feel I must warn the Senate, however, that very little leeway exists to increase the reported authorizations.

Mr. President, I take this opportunity to compliment the Committee on Environment and Public Works, and particularly its distinguished chairman, Senator RANDOLPH, its ranking minority member, Senator STAFFORD, and its excellent Transportation Subcommittee, led by Senators BENTSEN and CHAFEE, for the exceptionally fine job they have done in writing this 1978 highway bill. Rarely in the time I have been in the Senate—and never in the time I have served as chairman of the Budget Committee—have I seen a Senate committee approach such a difficult task in a more deliberate, objective and fiscally responsible manner. It is because of their efforts that S. 3073 is such a responsible piece of legislation, and one which the Senate can be proud to support.

I base my compliments for this legislation and for its authors on three major features of S. 3073—its budget totals which are consistent with the congressional budget; its rejection of policy changes which could lead to an unnecessarily expanded role for the Federal Government in highway development and maintenance; and its preservation and protection of the fiscal integrity of the highway trust fund.

First, as I have indicated, S. 3073 is within and totally consistent with the congressional budget. The reason for this is not blind good fortune. Rather it is that the Public Works Committee intended that to be the result and consciously worked to achieve it. In the early months of this year the committee's members were faced with two proposals, both representing significant departures from current Federal highway policy. On the one hand, the administration proposed only a moderate increase in highway spending for fiscal year 1979, but recommended substantial policy changes which if enacted would create pressures to increase Federal highway spending significantly in the future. The leadership of the House Public Works Committee, meanwhile, was proposing to increase Federal highway spending by billions of dollars per year, starting immediately.

Exerting its independence and drawing upon its own substantial knowledge and resources, the Public Works Committee charted its own course and drafted legislation that represents its own more realistic and viable judgment of the appropriate future of Federal highway assistance. The committee carefully assessed the need for increased Federal financial assistance, and concluded that some increase above the administration's request is warranted. It wisely rejected, however, the excessive multibillion-dollar increase proposed in House legislation. The committee then reported its recommendation to the Committee on the Budget, which concurred and included similar budget targets for highway spending in the first budget resolution approved by the Congress. Thus, the fact that S. 3073 is consistent with the congressionally approved budget is no accident. Rather it is because of the good judgment and effective leadership of the Committee on Environment and Public Works.

A second reason to compliment the authorizing committee relates to the policy direction the reported bill establishes. The Department of Transportation's proposal submitted to the Congress in January contained a number of policy changes which, if enacted, would seem certain to result in a new and significantly expanded role for the Federal Government in highway spending. These proposals included: Extension of eligibility for Federal assistance under the urban highway program to all urban roads; extension of eligibility for assistance under the small urban and rural grant program to any public road; expansion of eligibility under the special bridge program to bridges off as well as on the Federal-aid highway systems; and, perhaps most significant of all, a further increase in the Federal share of noninterstate projects from the current 70 to 80 percent.

Wisely, the Senate Committee chose to reject most of these proposals. The only one which it incorporated into S. 3373 is the one that would open Federal assistance for bridge repair and replacement to bridges not on a Federal-aid system. I remain somewhat concerned about the implications of the precedent this provision establishes, but for now I accept the recommendation of the Public Works Subcommittee which has studied this issue more thoroughly than I, and which has concluded that this new policy is necessary in order to deal with a unique and serious problem. I would not, however, that while the Senate bill as reported included a reasonable authorization of $450 million to fund this expanded bridge program, this amount already has been increased to $525 million on the Senate floor, so that the authorization now exceeds the maximum amount which DOT says can responsibly be obligated in fiscal 1979. And if this is not sufficiently frightening, the House bill as reported provides a $2 billion authorization for fiscal 1979.

I strongly urge the Senate conferees to stand firm against any further increases to the bridge program above the Senate figure. Further, I believe that the Senate should take the House's proposed authorization level as a warning of what could happen to this program if we are not careful. Clearly, the program warrants continued examination to assure that what is intended to be a limited expansion of eligibility for Federal assistance does not produce undesired and unintended financial impacts on the Federal budget.

While I am on this topic of questionable policy changes, I would note also that while the Senate authorizing committee has prudently rejected the Transportation Secretary's proposal to increase the Federal matching share to 80 percent, its House counterpart has not. This means that the provision will be an important issue in conference, and I would therefore like to take this opportunity to encourage the Senate conferees to hold fact to the Senate position that the Federal share should remain at 70 percent. Were it to increase to 80 percent, it would be certain to stimulate significant increases in Federal highway spending in the near future. This is because of the increased leverage it provides to program beneficiaries.

To be more specific, $1 billion of State and local spending on noninterstate products currently can produce $2.3 billion in matching Federal expenditures. With an increase in the Federal share to 80 percent, however, that same $1 billion could produce $4 billion of matching Federal expenditures. Thus, what looks like a 10-percent change could increase Federal expenditures by 74 percent without an additional cent of State and local spending.

Such a shifting of the highway spending burden to the Federal Government is not warranted, particularly when State and local governments are, collectively, in a much more liquid financial position than is the Federal Government. Further, I would remind the Senate that it has been only 5 years since we increased the Federal share on noninterstate projects from 50 to 70 percent. The push for that increase also came from the House, and as I recall it, the principal argument was that Federal spending on the interstate system was about to drop sharply, and it was therefore necessary to increase noninterstate spending in order to preserve prevailing overall highway spending levels. Of course, no such sharp reduction in interstate spending ever materialized. Total Federal highway spending rose steadily, and is projected to continue to do so. In the face of this, however, the House is now proposing yet a further increase in the Federal matching share. If they were consistent in their approach, they should be suggesting instead that the Federal share be returned to its previous 50 percent level.

Mr. President, the third reason—this is really the point I wanted to get at in connection with Senator MORGAN'S amendment—I see for complimenting the Public Works Committee is that its reported bill preserves the fiscal integrity and fundamental soundness of the Highway Trust Fund. It does this by preserving a policy which has long prevailed in the management of the Federal highway program, that there should be a basic equality of projected trust fund expenditures and receipts.

This is pretty fundamental. But the House-reported bill proposes to ignore this established policy, and to provide annual expenditure authorizations for programs financed from the trust fund at levels which exceed projected trust fund receipts by more than $3 billion per year!

Those critical of former Redskins coach George Allen's financial management skills claim that "he was given an unlimited budget and he exceeded it." Well, considering what the House is doing with the 1978 highway bill, I would

say that in comparison George Allen looks like Ebenezer Scrooge.

Were the new policy proposed in the House bill to be enacted, CBO projects that the highway trust fund would be broke by fiscal 1985. At best, there would be an excessive accumulation of unfunded liabilities mortgaging several years of future revenues. More likely, the cash would be exhausted and the program seriously disrupted.

Financial calamity could be avoided only by one of four means, none of which would be acceptable. One option would be for Congress to again surrender the power of purse to the executive branch by allowing the President to protect the trust fund by impounding highway funds. Or, the Congress could temporarily suspend all or a significant portion of Federal highway spending. Or, it could enact sharp increases in highway excise taxes to finance the "unexpected emergency," which in fact was entirely predictable. Or, it could use appropriations from the general fund to bail out the trust fund.

If this sounds familiar, it is for the simple reason that it is very similar to the financing mess in which we find ourselves in the case of the social security program and its trust fund.

Mr. President, I believe the Senate must do its best to assure that the House cannot "social securitize" the Federal highway program and highway trust fund.

Further, I believe we can strengthen the conference position of the Senate by stating in statutory language the policy implicit in the Senate bill's responsible approach to managing the highway trust fund. The amendment offered by Senator MORGAN does this. It provides simply that trust fund spending policy and revenue policy should be consistent, and that significant alterations to one cannot responsibly be considered without considering compatible alterations in the other.

Overwhelming approval of the bill before us, amended to include the policy statement proposed by Senator MORGAN, will demonstrate to the House the Senate's concern that the fiscal integrity of the trust fund be protected. I therefore urge my fellow Senators to vote in favor of the amendment offered by Senator MORGAN and for the Senate bill as thus amended.

Mr. BENTSEN. Mr. President, I appreciate the remarks of the distinguished chairman of the Budget Committee and those of my able friend, the Senator from North Carolina. In reading his amendments, it is a very sound statement of principle in budget fiscal prudence, one that we have tried very much to comply with, and it has not been easy. But I believe it is a contribution to the legislation and I for one am pleased to accept it subject to the comments of the minority manager of the bill.

Mr. CHAFEE. Mr. President, first, I ask unanimous consent that Patty White of Senator HAYAKAWA's staff, and Donna Maddox of Senator PERCY's staff have the privileges of the floor during the consideration of this measure and the votes thereon.

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

Mr. CHAFEE. Mr. President, I would like to join with the Senator from North Carolina in support of this amendment. It sets forth a philosophy to which we can adhere in the future. So I join with my colleague from Texas in support of this amendment.

Mr. BENTSEN. I yield back the remainder of my time.

Mr. MORGAN. I am willing to yield back the remainder of my time, but to strengthen the hand of the conference committee, some of those who support the amendment with whom I have talked feel that a rollcall vote would be helpful in that committee and, for that reason, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. RANDOLPH. Mr. President, will the Senator from North Carolina add me to his amendment as a cosponsor?

Mr. MORGAN. I would be happy to.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from North Carolina. The yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from South Dakota (Mr. ABOUREZK), the Senator from Alabama (Mrs. ALLEN), the Senator from Minnesota (Mr. ANDERSON), the Senator from Arkansas (Mr. BUMPERS), the Senator from Arizona (Mr. DECONCINI), the Senator from Mississippi (Mr. EASTLAND), the Senator from Alaska (Mr. GRAVEL), the Senator from Montana (Mr. HATFIELD), the Senator from Minnesota (Mrs. HUMPHREY), the Senator from Louisiana (Mr. JOHNSTON), and the Senator from Georgia (Mr. TALMADGE) are necessarily absent.

Mr. STEVENS. I announce that the Senator from Kansas (Mr. DOLE), the Senator from Michigan (Mr. GRIFFIN), and the Senator from North Dakota (Mr. YOUNG) are necessarily absent.

I further announce that, if present and voting, the Senator from Michigan (Mr. GRIFFIN) would vote "yea."

The result was announced—yeas 86, nays 0, as follows:

[Rollcall Vote No. 339 Leg.]

YEAS—86

Baker	Garn	Mathias
Bartlett	Glenn	Matsunaga
Bayh	Goldwater	McClure
Bellmon	Hansen	McGovern
Bentsen	Hart	McIntyre
Biden	Haskell	Melcher
Brooke	Hatch	Metzenbaum
Burdick	Hatfield, Mark O.	Morgan
Byrd, Harry F., Jr.	Hathaway	Moynihan
Byrd, Robert C.	Hayakawa	Muskie
Cannon	Heinz	Nelson
Case	Helms	Nunn
Chafee	Hodges	Packwood
Chiles	Hollings	Pearson
Church	Huddleston	Pell
Clark	Inouye	Percy
Cranston	Jackson	Proxmire
Culver	Javits	Randolph
Curtis	Kennedy	Ribicoff
Danforth	Laxalt	Riegle
Domenici	Leahy	Roth
Durkin	Long	Sarbanes
Eagleton	Lugar	Sasser
Ford	Magnuson	Schmitt
Scott	Stevenson	Schweiker
Sparkman	Stone	Weicker
Stafford	Thurmond	Williams
Stennis	Tower	Zorinsky
Stevens	Wallop	

NAYS—0

NOT VOTING—14

Abourezk	Eastland	Johnston
Allen	Gravel	Talmadge
Anderson	Griffin	Young
Bumpers	Hatfield, Paul G.	
DeConcini	Humphrey	
Dole		

So the amendment (UP amendment No. 1697) was agreed to.

The PRESIDING OFFICER. The Senator from Texas.

Mr. BENTSEN. Mr. President, I yield for a unanimous-consent request to the Senator from Vermont.

Mr. LEAHY. Mr. President, I ask unanimous consent that Susan Branigan of my staff may have the privilege of the floor for the rest of the evening, throughout the debate and votes.

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

UP AMENDMENT NO. 1698

(Purpose: Terminating the Highway Trust Fund)

Mr. KENNEDY. Mr. President, I send an unprinted amendment to the desk in behalf of myself and the Senator from Connecticut (Mr. WEICKER).

The PRESIDING OFFICER. The amendment will be stated.

The second assistant legislative clerk read as follows:

The Senator from Massachusetts (Mr. KENNEDY, for himself and Mr. WEICKER), proposes an unprinted amendment numbered 1698.

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

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

The amendment is as follows:

At the end of the bill, insert the following:

HIGHWAY TRUST FUND

SEC. 146. Effective after September 30, 1978—

(1) the Highway Trust Fund is terminated and the amount in such Fund, including any obligations held in such a Fund, shall be covered into the general fund of the Treasury;

(2) any outstanding appropriations from, or obligations of, such Trust Fund shall be paid from such general fund;

(3) any authorizations for appropriations to be made from such Trust Fund shall be considered to be authorizations for appropriations from such general fund; and

(4) section 209 of the Highway Revenue Act of 1956 is repealed.

The PRESIDING OFFICER. The Chair inquires of the Senator from Massachusetts whether this is the amendment on which there has been an agreed time limitation of 1½ hours.

Mr. KENNEDY. The Chair is correct. I yield myself 7 minutes.

Mr. BENTSEN. Mr. President, will the Senator yield for a question?

Mr. KENNEDY. I yield.

Mr. BENTSEN. The manager of the bill would inquire how long the Senator expects us to be here.

Mr. KENNEDY. I do not know how long my colleague and cosponsor (Mr. WEICKER) wishes to speak, but this is an

issue which has been before the Senate many times. I do not think it will require more than 10 minutes on my part to explain the amendment. It is well understood, I think; the Members are familiar with the subject matter.

Mr. BENTSEN. Would the Senator care to agree to limit the time?

Mr. KENNEDY. As soon as my cosponsor arrives, I would be glad to inquire how much time he would require; but for my part, I would be more than willing to cut it in half. I do not intend to take a long time.

Mr. President, I yield myself 7 minutes. First of all, I wish to express my appreciation to the managers of the bill, the Senator from Texas (Mr. BENTSEN) and the Senator from Rhode Island (Mr. CHAFEE), and to the Senator from West Virginia (Mr. RANDOLPH) and the Senator from Vermont (Mr. STAFFORD) and the other members of the committee for the accommodations they have made to a number of different suggestions and recommendations that have come before the committee. They have, I think, been extraordinarily responsive and helpful to those of us who have followed this issue.

Their attitude has made a very important and significant difference in the whole development of transportation, in my State and in other parts of the country. The interstate transfer provisions, for example, the reduced number of highway categories, the ability to transfer within various road categories, have, I think, given greater flexibility and insured important accommodations of different interests in the field of transportation.

I am very much appreciative of the reception with which a number of these ideas have been received by my colleagues on the committee.

The amendment that we offer today, myself and the Senator from Connecticut, is an amendment which we have offered, each congress for a period of 8 years, since 1970. It would abolish the highway trust fund.

The highway trust fund and the funds which it keeps from the general revenues make an enormous impact on our budget. Income to the highway trust fund is around $10 billion a year. Expenses are over $8 billion.

The total cost for the Interstate Highway System is now projected to be $104.3 billion.

This enormous amount of money should not be reserved to one mode of transportation or to transportation as a whole regardless of conditions. Rather, funding should be subject to the regular authorization and appropriations process. If that process is good enough for our national defense, if it is good enough for our health expenditures, if it is good encugh for our education programs, it shouid be good enough for highways.

Flexible funding is especially important now:

The most essential parts of the interstate system have been completed. Of a total system of 42,500 miles, 91.9 percent—39,050—have been finished. Another 1,432 miles are under construction, leaving less than 2,000 which have not yet been started.

Meanwhile, the drawbacks of private auto transportation have become of greater concern. The private auto uses far more energy than public transportation. The average auto uses over three times the energy of a bus, over twice the energy of light rail systems like trolleys, and over twice the energy of commuter rails.

The private auto creates more pollution. The private auto requires a great investment of our lands, including downtown areas and farm lands.

And, a separate fund for any construction project—which is the primary mission of the highway fund—is dangerous to the economy as a whole. The costs of construction have been rising the fastest in the last couple of years and have been a primary factor in the inflation rate. It was for this reason that the Senate voted last month to take $600 million out of the authorization for federally subsidized housing. We should also be able to control construction expenditures here.

The Congressional Budget Office in a report issued in March clearly called for the liquidation of the highway trust fund. It said:

> The existing financing practices have several serious shortcomings and relatively few strengths. Current Federal practices are not conducive either to coordinated policy making or to sound fiscal control, and they are highly uneven in their treatment of different modes. By far the most significant practical advantage of the current system is that it already exists.

CBO concluded:

> The option of no trust funds appears to be the most promising of those reviewed here because it substantially strengthens the ability of the Congress to make policy and to exercise fiscal control. By placing all modes on an equal and flexible footing, the Congress would increase its coordination of transportation policies through both the authorizing and appropriating committees.

Mr. President, for these reasons, I am hopeful that the amendment will be accepted by the Senate. It seems to me that for reasons of good transportation policy, for reasons of sound expenditure policy, and for reasons of prudent economic policy; for all these reasons, this particular amendment deserves to be accepted.

Hopefully those who support this amendment recognize that there must be important support for automotive transportation, and certainly the importance of trucking and trucking transportation is fundamental to the commerce of this Nation.

We believe those resources ought to be devoted to both the completion of the system and providing within the States, within the rural areas and the urban areas of this country, the kinds of transportation services which are absolutely essential for the American people. This definitely includes a strong component for roads. But our transportation funding should be put in the context where the committees themselves can view other alternative means of transportation and make final judgments on what should be authorized and what should be appropriated in the different forms of transportation. I would hope this amendment would be accepted.

Mr. President, before I yield such time as the Senator from Connecticut desires, I would like to make special mention of a few of the valuable features of the bill now before us.

For many years I have introduced highway legislation along with the distinguished Senator from Connecticut (Mr. WEICKER).

In this legislation we have recommended many changes in the way the Federal Government assists in the construction and operation of roadways. We have advocated the consolidation of many aid categories, the establishment of the interstate transfer provision and the elimination of the trust fund form of funding.

In many of these areas we have been successful in convincing others that the Federal-aid system should be changed. When the administration introduced its bill reauthorizing expenditures from the highway trust fund, Senator WEICKER and I introduced an act, S. 2953, the Highway and Public Transportation Improvement Act of 1978, which incorporated a series of amendments in that bill.

Mr. President, Senator BENTSEN and Senator CHAFEE for the Transportation Subcommittee of the Environment and Public Works Committee, and Senator RANDOLPH and Senator STAFFORD for the full committee have given thoughtful consideration to different transportation needs and to the effect of our transportation policies on energy and the environment. I am pleased to see that many of our ideas have been incorporated in S. 3073, the bill before us today.

I would like to enumerate some of the proposals that we made in our bill which have also been incorporated into the committee bill.

We consolidated a number of existing highway programs into four Federal-aid systems, the interstate, primary, urban and small urban and rural. We allowed great transferability of funds among the system. The committee also consolidated down to four transit categories and it too allows the transferability of up to 50 percent of the funds in one category to another category.

The committee also showed its dedication to the concept of flexible transit planning by setting the Federal match for an interstate transfer at 90 percent of the cost. Previously, the Federal match was set at the match for the mode into which the funds were being switched. This was usually 80 percent of the total cost.

Our next amendment restored the sentence to section 103(e)(4) which the administration took out of its proposed bill which says that any funds transferred from an interstate project would be a supplement to and not a substitute for money due under UMTA. We certainly do not want to penalize those who make the decision to switch funds from highways to mass transit. Yet, deleting this sentence might suggest that DOT has the authority to do so. We want to allow a State to transfer money but without the sentence DOT might be able to force the State into merely choosing whether to forsake a highway.

We also restored to the act another provision involving the obligation to match funds for those projects transferred between 1973 and 1976, between the time when the interstate transfer provision was first put in and the 1976 amendments to the Highway Act. Under the 1973 interstate transfer amendment the Federal Government undertook a contractual obligation to fund the Federal share of any transferred project. Under the 1976 amendments, subsequent transferors were not guaranteed that the Federal Government would continue to provide its share till completion. The administration bill took the contractual obligation off of the Federal Government for the projects switched between 1973 and 1976. But, the Federal Government should maintain its terms after a State has irretrievably committed to a transfer.

In both of these areas, the Environment and Public Works Committee maintained current law, so that interstate transfer funds remain a supplement to UMTA funds and not a susbtitute for them and so that the Federal commitment to meet its transfer obligations remains as strong as ever.

S. 2953 also changed the law to allow a State to impose a toll on Federal aid system highways for purposes of managing peakload demands. The Clean Air Act allows use of such tolls in nonattainment areas, where air pollution is too great. But the Highway Act currently disallows such tolls. The purpose of these tolls is to set a price on the use of the road equal to the external costs that the use produces at peak hours.

The committee now allows States and metropolitan areas in nonattainment areas to impose tolls in order to help reduce air pollution.

Finally, Mr. President, on the floor last Friday, the committee accepted an amendment which repeals section 142(k) of the act. This section would terminate interstate transfer projects if a mass transit trust fund were set up. But, the section could not assure us of the size of the mass transit fund, the conditions under which it would operate, or that localities which have switched funds would in any way be reimbursed for the interstate transfer funds they would no longer be allowed to invest in alternative projects. I was glad to see this amendment accepted.

The committee has made some important improvements in this act. I thank the committee for the careful review it has given in reauthorizing the Federal-Aid Highway Act.

Mr. President, I still believe that the funding mechanism that we use for our transportation expenditures should be changed. The current system of financing freezes congressional review. We should abolish the Highway Trust Fund.

I yield to the Senator from Connecticut.

The PRESIDING OFFICER. The Senator from Connecticut is recognized.

Mr. WEICKER. I thank the Senator from Massachusetts.

I rise to support the amendment.

In reminiscing a moment ago with my staff, I noted that it has been 9 years since the Senator from Massachusetts and I first proposed this principle in the form of an amendment or one bill or another. For 9 years we have been defeated. I do not know what the result will be this evening. I have a feeling it might adhere to past historical patterns.

I think it has to be pointed out that certainly life in this country and around the world has very much changed within that period of time. And yet the highway trust fund is still with us in basically its original form.

I have read a great deal as to the concern of the administration as it relates to the failure of this Nation to adopt any sort of an energy program. Yet in its initial presentation to the country and the Congress, the administration's energy program specifically skirted around the issue of mass transit and public transportation, as a conservation measure. That is still the case today. Not just so far as the administration is concerned, but also the Congress.

There is nothing that we can do that would further the cause of conservation more than to make available to the citizens of this country transportation other than the automobile. Yet that has not been the will of the Congress, nor has it been the will of the President.

I realize that this is not the forum for legislation to discuss the production side as a solution to the energy crisis. It is, however, the forum to discuss the demand side, the consumption side.

The Senator from Massachusetts and I have, for 9 years, put forth the idea that there are means with which to move about this Nation other than the automobile.

We do not insist that you take a subway or that you take a train or that you take a bus. What we are saying is that, in the resolution of our transportation difficulties, at least, let us have the option to decide what is the best solution. Right now, the best solution is a highway, because you can be guaranteed 90 percent Federal dollars if you adopt a highway solution. Well, that is not good traffic engineering; it is good politics. In my State of Connecticut, we have almost totally completed our highway system, but we desperately need bus transportation. None of our cities is big enough for mass transit rail, but we need mass transit bus. Indeed, as the population centers shift to many of the cities of the South and Southwest and the West, believe me, what will be demanded there is rail facilities in order to move people about.

Today, in Los Angeles, Calif., they are stuck with the automobile, period. There is nothing else that they can do, even though it chokes them to death; not just in the sense of the early morning commuter hour, but in the sense of their bodies. They are getting choked to death.

It is not a situation we have to live with.

Mr. President, I am pleased to have joined with the Senator from Massachusetts (Mr. KENNEDY) in offering this amendment to abolish the highway trust fund. Since the trust fund was created 22 years ago, the needs of our society have been drastically affected by changing energy, safety, and environmental considerations. In 1956, energy was plentiful and cheap. In 1978, our national security is threatened by heavy reliance on insecure sources of foreign oil. In 1956, air pollution alerts were virtually unheard of.

Today, auto emissions are among the main pollutants in our cities and are considered the cause of millions of illnesses annually. In 1956, our road system was obviously deficient. Today, the Interstate System is 92 percent complete and we have the finest highway system in the world. Yet our Federal transportation programs continue to allocate funds according to the priorities of 22 years ago. The stumbling block here is the highway trust fund, and the problem we face is this:

The revenues flowing into the fund tend to become the driving force for allocations of transportation dollars rather than having Congress, together with the States and localities, set our transportation needs. If the fund generates $10 billion of revenue, then it is easy for Congress to spend that $10 billion. The process should operate the other way around: Congress should review the transportation needs and provide funding up to the levels it considers appropriate. This is how we act on all other programs and how we should act on transportation.

The trust fund tends to operate like an automatic pilot which pumps billions of dollars into a separate and sacred pool; the levels of revenue are arbitrary and bear no logical relation to the need for further highway construction. I am not trying to stop highway construction or maintenance or bridge repair, or any other highway programs, and so forth. All this amendment is trying to do is to give Congress a chance to exercise its proper responsibility in reviewing annual transportation funding needs through the appropriations process. We may decide that even more money is needed for roads or repairs or bridges. But whatever is decided, I would rather Congress make that decision than have it dictated by the arbitrary mechanism of a trust fund.

Senator KENNEDY and I first introduced this kind of amendment back in 1973. This Nation's economic situation has changed dramatically since then, and I am talking here in an energy context. At that time, our transportation program—legitimately perhaps—focused on the automobile and its needs. Our dependence on the automobile is almost total: 90 percent of all urban travel is by car or truck. More than 4 out of 5 American families own cars. Of the 18 million barrels of oil that this Nation consumes per day, cars and trucks burn up nearly 45 percent or over 8 million barrels. The message here is clear: as a nation we have to try and balance our transportation system. Energy considerations, along with environmental and safety considerations, need to be given a higher visibility in the overall transportation equation. I repeat: This does not necessarily mean less money for highways. It may mean more coordinated intermodal planning so that we do not

duplicate our spending by building both a new road and a new mass transit system in the same corridor. But whatever the final decisions on spending, we should not put ourselves in the straitjacket of the trust fund which reduces the flexibility we need to move funds to those areas of greatest need.

Mr. President, there are too many sacred cows already clogging up the Halls of Congress. The highway trust fund is one sacred cow which has been milked for too long by highway interests. It is ready for the slaughter. But let us make this a mercy killing—we do not want to strangle our highway programs because our Nation needs a strong road system and will need it as far into the future as we can see. But let us give ourselves the flexibility and control we need here in the Congress to make our transportation system more balanced and more responsive to the needs of this Nation as we enter the 1980's.

My purpose in taking the floor at this moment to support this amendment is to ask that we do the unusual. That is to apply a little logic, a little common sense to a problem, a little grasp of the facts as they exist today in the year 1978, rather than as they existed at the end of World War II. I am afraid that 9 years of frustration will not end here this evening, but it really makes no sense to continue a system in 1978 that was based on 1946 and 1947 facts. I shall be more than delighted to debate any of the advocates of the highway trust fund as to why it is that we have to continue with this mechanism rather than applying the regular appropriation and budgetary process to the needs as they come before us in a highway sense.

The fact is that logic cannot sustain their arguments any longer. Facts cannot sustain their arguments any longer. So the only thing that they raise is a trust fund concept, with all the fiduciary obligations that go along with that. Purely and simply today, it is insane, it is illogical, and it is a payoff to the lobbying groups. It certainly cannot be explained in terms of supplying a logical transportation system to the United States of America.

I yield the floor, Mr. President.

The PRESIDING OFFICER. Who yields time?

Mr. CHAFEE. Mr. President, I should like to speak in favor of the amendment. Who is in control of the time?

Mr. KENNEDY. I yield the Senator whatever time he needs.

Mr. CHAFEE. Five minutes will be plenty, Mr. President.

It seems to me that, in running any kind of government, those in charge of the government, be they Congress or the State legislatures or whatever government it might be, should be able to take all the money into a common pool and then decide what their top priorities are for spending that money, what the needs of the State are or, as in this case, of the Nation, that should be met. The trouble with restricted funds is that those funds do not take their position in line, seeking their priority. Such funds work with a set amount of money—in this case, some $8 billion. Whether the program covered by the restricted fund is the top priority of the Nation is not considered. All that is considered is that the fund has x dollars and they can spend x dollars, on the program under the fund, roads in the instance.

Mr. President, I feel strongly that the amendment of the Senators from Massachusetts and Connecticut is a good one. It would force all that money to go into a common fund. Then the President, through the OMB and the Congress, could decide on whether, that year, the highest priority of the Nation indeed was to spend it on highways. Perhaps it might be, in that particular year, that it could be better spent on other programs. Or at least, the total amount may not be needed. But these funds are beyond the reach of Congress as to whether they should be spent in this particular manner or that particular manner, and they have to be spent on highways. I agree with the amendment of the Senators from Connecticut and Massachusetts.

The PRESIDING OFFICER. Who yields time?

Mr. BENTSEN. Mr. President, in this changing world of ours, an uncertain world, it is very comforting and helpful to know that there is a certain sense of order, a certain discipline; that every 2 years we are going to have a highway bill, and every 2 years we are going to have an amendment to end the highway trust fund; and that the Senator from Massachusetts and the Senator from Connecticut will make their very able and impassioned speeches to carry out that initiative. Fortunately, in each instance, logic has prevailed in this body and the amendment has been defeated.

Let me say to my friend from Connecticut, who talks about this hulk of a highway trust fund, this inflexible hulk. Much has been done, because of the initiative of the Senator from Connecticut and the Senator from Massachusetts, insofar as adapting this trust fund to the needs of the people: The great fight that they made in 1973 on the urban trust fund, allowing that to go to mass transit.

Let me say that I think that time has overcome the idea of ending the trust fund because, as the Senator from Connecticut has said, times have changed. We have found, through our experience, that there are very few areas that are really adaptable to rail mass transit; that you really have to have concentrations along population corridors for it to work.

The Interstate Highway System, Mr. President, is one of the great public works achievements of this century; it is of enormous significance to every citizen and every business in this country. The highway trust fund has always been essential to the success of this program. To abolish the trust fund would be to gut the highway program.

Over time, we have developed new additions to our transportation needs. We have given special lanes for buses going out the Shirley Highway. Nothing has the psychological impact of having a fellow driving on a freeway at 16 miles an hour, breathing the fumes of a car in front of him, then having a bus go by in a special lane, with some fellow sitting there reading a newspaper and grinning at him as he goes by. Those kinds of things have been proving themselves as we go along.

We have seen a situation where, to develop just the needs of the highways and hold them to the 1975 standards of use, between now and 1990, we will need $21.8 billion. But we can forsee only $16.9 billion that will be available to it. When it comes to the question of priorities and trying to fulfill those priorities, we are not going to have enough money in the trust fund to accomplish that.

We do have a "user pays" principle that we are using here. One of the interesting things about this particular program that sets it apart from some other Government programs is that this one happens to work. It has been effective. But we are now having a study made by the Department of Transportation to be sure that we are really fairly allocating that cost, that the user who burns up those highways is the one who pays the full share of the cost.

Mr. President, the most persuasive arguments in favor of abolishing the trust fund have been overtaken by events. Trust fund termination is an issue whose time has come and gone.

For example, it has become apparent that the all-too-familiar "either/or" mentality that pitted highway transportation against mass transit in the past has largely disappeared. During our extensive deliberations on S. 3073 both sides to this controversy came to recognize that these modes are not inherently competitive, but are in fact complementary. This is especially true when we have a national commitment today to reduce air pollution and to save energy.

We have seen that only a limited number of metropolitan areas possess the population density to support nonhighway mass transportation. In other areas, mass transportation must take the form of multipassenger motor vehicles which traverse the regional road and highway network. Any significant departures in small urban and rural public transportation will depend on good roads and highways.

Now, Mr. President, opponents of the trust fund have long maintained that it serves as a straitjacket inhibiting Federal flexibility in meeting national transportation requirements. This argument may have had relevance in the past, but recent legislative developments have demonstrated the enormous adaptability of this funding concept in responding to our ever-changing pattern of highway-related needs.

Consider, for example, some of the innovations contained in the 1973 Federal-Aid Highway Act. The act broke with past practice by permitting the transfer of highway funds for the purchase of buses, for the construction of bus lanes, highway traffic control devices, bus passenger loading facilities, and fringe parking lots to serve mass transportation passengers. The 1973 act, for the first time, permitted urban areas to substitute a mass transit project for an unwanted interstate segment. Contingent on approval by the Secretary of Transportation.

The 1976 act gave the trust fund even greater flexibility. It authorized financing for the resurfacing rehabilitation of interstate and other Federal-aid routes; it gave urban areas the ability to reject an unwanted interstate segment and use equivalent funds for mass transit projects or a noninterstate highway, if they so desired.

Clearly, there is a great deal of flexibility in the highway trust fund; it is not some "incredible hulk" that stands in the path of legislative innovation. And let me point out that S. 3073, the bill before the Senate today, continues this process of flexibility and innovation.

We worked hard at it. We have even included a program now to encourage the use of bicycles.

It provides trust fund financing for capital improvements to facilitate State enforcement of weight limits; for projects to encourage the use of carpools and vanpools; and for programs to encourage the use of bicycles.

It is also argued, Mr. President, that the trust fund stands as an obstacle to effective congressional control over expenditures. This argument is without merit. There is nothing in the trust fund that requires highway authorizations to keep pace with revenues. Congress has always been free to provide authorizations that fall short of revenue levels. We have generally not done so, because highway needs have generally far exceeded revenue generated by the fund. But neither, Mr. President, have we made it a practice to provide authorizations that exceed revenues. In this respect the trust fund has operated as a cap on highway expenditures.

During this decade Congress has also moved to control highway spending. The Congressional Budget and Impoundment Control Act of 1974 eliminated funding commitments in advance of appropriations, or contract authority, for those Federal highway programs not funded by the trust fund. As a result, programs like highway beautification, territorial highways, and safer off-svstem roads must now await appropriations before obligations can be incurred.

Two years later, in 1976, Congress took another step toward controlling highway expenditures. The DOT Appropriations Act, for the first time, imposed an overall limitation on obligations for the Federal aid program. In subsequent acts, both overall and specific program limitations have been utilized.

In this manner, Congress has evolved a mechanism for controlling highway spending, and the trust fund has not been an obstacle. And finally, Mr. President, the Senate today, at this very moment, has total control over highway expenditures for the coming 2 years. We are recommending $8.3 billion a year. If the Senate feels the figure is too high or too low, the legislation can be amended.

I mentioned earlier in my remarks that the concept of "user pays" has been fundamental to the trust fund. I said this is a principle worth preserving; it is also a principle worth improving. We have sought to improve it by directing the Secretary of Transportation to undertake a study of the design, construction, rehabilitation, and maintenance costs for Federal aid highways occasioned by the use of vehicles of different specifications and the proportional share of such costs attributable to each class of persons and vehicles using the highways. We want to make sure that each highway user is paying his fair share of the construction and maintenance costs.

Mr. President, perhaps the strongest argument in favor of retaining the trust fund is that it is urgently needed to finance outstanding highway needs. Typically, highway-related projects have long leadtimes. The ability to enter into obligations without waiting for appropriations allows State agencies to plan their programs far in advance and make the necessary financial arrangements. To abolish the trust fund would be to replace a proven, effective program with uncertainty—uncertainty that we can ill afford.

The fact of the matter is that we are living within the constraints of revenues generated from the trust fund, revenues that simply are not commensurate with the magnitude of our highway needs.

What is the measure of these needs? First and foremost is the completion of the Interstate System, which is now 90 percent finished at current funding levels, certain segments may not be open to traffic before the end of the century. With current rates of inflation, the outstanding 10 percent could cost as much as the 90 percent of the system already completed.

S. 3073 contains a number of important provisions designed to accelerate interstate completion; this has been one of our priority objectives, and it is an objective that can only be frustrated if the trust fund were to be terminated at this time. I think it is safe to assert that such an action would delay interstate completion by at least a decade.

We have an enormous investment—over $100 billion—in the Interstate System, an investment that must be protected. You protect a highway network through maintenance, and maintenance costs money, a lot of money. More money than we have available. A recent FHA study estimates that there is a $2.3 billion backlog of work in this area.

Many of the bridges in this country are critically deficient or functionally obsolete. Many of our bridges, both on and off the Federal-aid system, are downright dangerous. S. 3073, with revenue from the trust fund, devotes $450 million to bridge repair and replacement; that is a 250 percent increase over last year.

What I am saying, Mr. President, is that we have a job to do; an important job. We must complete the Interstate System as rapidly as possible and we must maintain what we have built.

Take away the trust fund and you will inhibit—perhaps cripple—our ability to do the job.

For these reasons, I strongly urge rejection of the Kennedy amendment.

Mr. RANDOLPH. Will the Senator yield?

Mr. BENTSEN. I am glad to yield to the chairman of the full committee.

Mr. RANDOLPH. Mr. President, I urge the Senate to reject the amendment to terminate the highway trust fund offered by the distinguished Senator from Massachusetts, my friend Senator KENNEDY and the able Senator from Connecticut (Mr. WEICKER). I stress that the trust fund has proved a valuable as well as a flexible asset in meeting the highway needs of the Nation over more than 20 years.

It has afforded financing for the greatest public works program ever undertaken by any country in any age—the construction of the Interstate Highway System. I am sure we recognize that this task is not yet completed. This is not the time to terminate the existance of the mechanism which has been responsible for the monumental accomplishment already achieved in this program.

We must also remember that the priority accorded interstate construction—a justified priority, I add—has obscured a number of other pressing highway needs. I speak of such needs as bridge replacement and rehabilitation, roadway resurfacing and repair and highway safety. I repeat, we should not terminate a financing source which has proven itself equal to the task of addressing needs of the magnitude of our highway transportation system.

Mr. BENTSEN. I fully agree with the observations of the chairman. It is through his leadership that we have been able to further the highway program and develop our mobility.

Mr. President, I see that my colleague from Vermont desires to speak and I will reserve the remainder of my time. I yield to the Senator from Vermont.

Mr. STAFFORD. Will the distinguished manager yield me a couple of minutes?

Mr. BENTSEN. I am delighted to yield 5 minutes if the Senator desires it.

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

Mr. STAFFORD. Mr. President, I will start by saying that I do take some comfort from the fact it has been pointed out earlier that the highway trust fund is one of the few funds in the Federal Government in which in the past income has equaled outgo. This Senate has just voted unanimously to emphasize its commitment to having income and outgo in the highway trust fund equal in the future.

I think that is a very worthwhile thing and something that we should keep in mind with the rest of the future history here in the U.S. Congress.

Mr. President, I also take the position on the amendment of the distinguished Senator from Massachusetts and his colleague from Connecticut that I was one of those who helped bring about the change in the Federal highway trust fund in the summer of 1973 when we had a very long committee of conference with the House, and I was one of those who held out to open up the highway trust fund to give urban areas an option as to whether they spent their urban systems highway trust fund for highways or for other mass transit, rail or bus.

So I believe that that was a good time to make that change and open up the trust fund to that degree.

But I do not believe, Mr. President, that the time has come to abolish the trust fund and turn that money into the general fund of the Treasury as proposed by the distinguished authors of the amendment.

Mr. President, I agree with much the distinguished minority floor manager has said with one exception: I believe it is a least one step too early—too early, Mr. President—to abolish the highway trust fund.

The 92 percent of the system is open to traffic, but only 26 percent is essentially complete. There remain 1,891 miles that still require major improvements. And well over 2,000 miles of so-called "essential gaps" remain to be completed.

With this large a portion of interstate work still to be done, it seems premature to abolish the funding mechanism created to do the job. By 1982, under the terms of this bill, States will have to decide which interstate routes to complete and which to withdraw.

By 1982 a substantial amount of work on essential gaps will have been finished. We will be turning our attention even more to rehabilitation needs. Such a change in emphasis should necessitate less assurance of long term funding than was needed to undertake the Interstate System.

At the time we next consider highway legislation I think it will be clear that we can consider ending the trust fund without doing damage to the highway program. At present however, I think we should continue to make flexible the use of trust funds while continuing to earmark user taxes for completion of the Interstate System.

Mr. President, I yield the remainder of my 2 minutes, if I have any, back to the manager of the bill and I yield the floor.

Mr. WEICKER. Mr. President, I intend to be brief. I do not know whether my distinguished colleague, the Senator from Massachusetts, expects to speak any further on the matter and I am quite prepared to go to a roll call vote.

Mr. President, I ask for the yeas and nays on this amendment.

The PRESIDING OFFICER (Mr. SARBANES). Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. WEICKER. Mr. President, there are several points that I think are worthy of response, insofar as they have been raised. First of all, let us understand this.

I drive, at the present time, an automobile. That is just about all that is left for me to do with the exception of airplane travel. Therefore, I pay the Federal tax on gasoline.

I want it understood, as a member of the motoring public, that I am not paying my Federal tax for highways. I am paying my Federal tax to move—to move—and many times I would prefer moving in something other than an automobile.

We are prisoners of the system.

But I daresay, of course, as to anybody that pays the user taxes, that that phrase is a favorite expression of the lobbying which is also behind maintaining the trust fund. For some reason or another, everybody that drives an automobile appears, by that phrase, to be part of their organization. I am not. I would far prefer to take a bus.

In many areas of my own State and in many other areas of the Nation bus systems are not available. Indeed, in the State of Connecticut, which is relatively small geographically—the third smallest in the country—the bus systems existant in the year 1978 are probably one-half of what they used to be 20 years ago.

This is within a time when we are supposed to be geared toward mass transit.

We had far better bus systems in the State of Connecticut 20 years ago.

So let us get that point clear. The highway lobby, as it is represented by tire manufacturers, automobile manufacturers, cement manufacturers, asphalt manufacturers, and truckers, does not represent me when I pay my tax at the gas pump. They represent their own special interests.

I, like most Americans, want to be able to move in the safest and most expeditious way.

Now we get to the point raised, since I have mentioned buses, and it has been mentioned by the distinguished Senator from Texas: The bus lanes are not the issue. The fact is that if a State wants to go ahead and enhance its bus service, it cannot use Federal funds to purchase that equipment. Make clear that all that is there is the highway, not the means to travel across it, and certainly not an enhanced bus system.

Mr. President, may we have order?

The PRESIDING OFFICER. The Senate will be in order.

Mr. WEICKER. Finally—and then I will conclude by an attempted exercise in logic and fact and subject it to the forces of irrelevancy—here we are in a day and age when gasoline is scarcer in supply and more expensive insofar as the product is concerned, when we know from statistics that, since the Arab oil embargo, we have become more and more dependent on the automobile. These are the facts, not the opinions of this Senator. We continue to vote through legislation that causes the United States to become more dependent on the automobile, by virtue of where the Federal dollars go. Mind you, this is not something being imposed upon us by the OPEC cartel. This is not something being thrust upon the United States of America. This is something America is doing to itself. The Federal dollars should go where the crises exist.

Yes, we need more rail systems. Yes, we need more mass transit systems, and we need more buses. We might very well need better airports, and so forth. But none of these options is available to the American public, because Congress insists that, regardless of the energy crisis, we will continue to feed the taxpayers' dollar to those who control this particular form of energy. In that sense, nothing has changed since 1946, and it is the reason why we cannot change anything that has occurred since 1974.

I yield the floor.

SEVERAL SENATORS. Vote! Vote!

Mr. BENTSEN. Mr. President, I yield such time as he may require to the senior Senator from Texas.

Mr. TOWER. Mr. President, I have discovered that everybody is ready to vote; therefore, I will be extremely brief.

My good friend from Connecticut proceeds on the assumption that if alternative transportation were available, all the people who travel by highway would travel by some other means. I think that is not supportable by verifiable data.

I further note that goods and services move along the highways, and this benefits the people; and the better our highways are, the more expeditiously these goods and services are going to move over these highways. Therefore, I see nothing in the argument of the distinguished Senator from Texas that I think would lie strongly against the maintenance of the highway trust fund.

Mr. WEICKER. Mr. President, I should like to respond to the two distinguished Senators from Texas—Senator TOWER and Senator BENTSEN.

Mr. TOWER. I apologize to everybody here for starting this.

[Laughter.]

Mr. WEICKER. Contra to what has been the traditional, popular view of my section of the country, I always have responded very favorably to the pleas of both distinguished Senators from Texas when it comes to the production side of our energy crisis. So far as the consumption side is concerned, not only do I disagree, but I would suggest that perhaps the time has come on this matter that you start voting contra to what had been the subsidy interests of your constituency; and, believe me, when we both do that, we will have a solution to the energy crisis.

SEVERAL SENATORS. Vote! Vote!

Mr. BENTSEN. Mr. President, if the proponents are ready to yield back their time, I am ready to yield back the remainder of my time.

The PRESIDING OFFICER. Is all time yielded back?

Mr. KENNEDY. I yield back the remainder of my time.

Mr. BENTSEN. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. The question is on agreeing to the amendment. 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. CRANSTON. I announce that the Senator from South Dakota (Mr. ABOUREZK), the Senator from Alabama (Mrs. ALLEN), the Senator from Arkansas (Mr. BUMPERS), the Senator from Arizona (Mr. DECONCINI), the Senator from Mississippi (Mr. EASTLAND), the Senator from Montana (Mr. HATFIELD), the Senator from Minnesota (Mrs. HUMPHREY), the Senator from Hawaii (Mr. INOUYE), the Senator from Louisiana (Mr. JOHNSTON), the Senator from Tennessee (Mr. SASSER), the Senator from Georgia (Mr. TALMADGE), and the

Senator from Minnesota (Mr. ANDERSON) are necessarily absent.

Mr. STEVENS. I announce that the Senator from Kansas (Mr. DOLE), the Senator from Michigan (Mr. GRIFFIN), and the Senator from North Dakota (Mr. YOUNG) are necessarily absent.

I further announce that, if present and voting the Senator from Michigan (Mr. GRIFFIN) would vote "nay."

The result was announced—yeas 10, nays 75, as follows:

[Rollcall Vote No. 340 Leg.]

YEAS—10

Brooke	Kennedy	Proxmire
Chafee	Mathias	Weicker
Cranston	Pell	
Javits	Percy	

NAYS—75

Baker	Hansen	Moynihan
Bartlett	Hart	Muskie
Bayh	Haskell	Nelson
Bellmon	Hatch	Nunn
Bentsen	Hatfield, Mark O.	Packwood
Biden	Hathaway	Pearson
Burdick	Hayakawa	Randolph
Byrd, Harry F., Jr.	Heinz	Ribicoff
Byrd, Robert C.	Helms	Riegle
Cannon	Hodges	Roth
Case	Hollings	Sarbanes
Chiles	Huddleston	Schmitt
Church	Jackson	Schweiker
Clark	Laxalt	Scott
Culver	Leahy	Sparkman
Curtis	Long	Stafford
Danforth	Lugar	Stennis
Domenici	Magnuson	Stevens
Durkin	Matsunaga	Stevenson
Eagleton	McClure	Stone
Ford	McGovern	Thurmond
Garn	McIntyre	Tower
Glenn	Melcher	Wallop
Goldwater	Metzenbaum	Williams
Gravel	Morgan	Zorinsky

NOT VOTING—15

Abourezk	Eastland	Johnston
Allen	Griffin	Sasser
Anderson	Hatfield, Paul G.	Talmadge
Bumpers	Humphrey	Young
DeConcini	Inouye	
Dole		

So the amendment (UP No. 1698) was rejected.

Mr. BENTSEN. Mr. President, I move to reconsider the vote by which the amendment was rejected.

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

The motion to lay on the table was agreed to.

Mr. GRAVEL and Mr. MAGNUSON addressed the Chair.

UP AMENDMENT NO. 1699

(Purpose: To provide for a study concerning urban blight)

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

The PRESIDING OFFICER. The clerk will report the amendment. Will the clerk suspend momentarily so that we can have order in the Chamber? Will the Senator suspend for a moment until we obtain order? Will Members please clear the well.

The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Washington (Mr. MAGNUSON) proposes an unprinted amendment numbered 1699.

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

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

The amendment is as follows:

On page 29, after line 19 insert the following new section and redesignate the following sections accordingly:

"SEC. 123. The Secretary shall conduct a study of the potential for reducing urban blight adjacent to federal-aid primary and interstate highways located in central business districts, which shall include but not be limited to the following—

(a) a catalogue and evaluation of adverse impacts on adjacent land use;

(b) development of a list of potential ways that these adverse impacts could be eliminated or reduced;

(c) estimates of potential increases in value of adjacent land and air rights resulting from reduction of adverse highway impacts together with estimates of potential costs of highway improvements and related measures needed to reduce adverse impacts;

(d) an assessment of the feasibility of using air rights and adjacent land after the improvements are completed to contribute to urban employment, recreational opportunities, low and moderate income housing, and commercial, retail, institutional and higher income residential development;

(e) the development of financing proposals, including legislative proposals, involving all appropriate levels of government and private capital where appropriate, which would finance improvements identified as desirable;

(f) such other matters as the Secretary shall deem appropriate.

Mr. MAGNUSON. Mr. President, this amendment would require the Federal Highway Administration to conduct a thorough study of the potential benefits and costs of special projects that would bring certain blighted areas adjacent to urban freeways into more productive use. In many urban areas of our Nation, we have built elevated or otherwise dominant freeways, and they have brought us both significant benefits and in some cases significant costs in terms of blight and decay to areas that are immediately adjacent to them. These blight areas of our cities could possibly be brought back to more productive use, contributing to the revitalization of urban life and adding to the urban tax base. This amendment is intended to help identify the benefits and costs of such projects, and also to identify potential financing mechanisms to carry them out.

Mr. President, in the city of Seattle in my State we have examples of both the problem of urban freeway related decay and an example of some of the possible ways in which local jurisdictions, together with the Federal Government, can act to alleviate that decay. We have an elevated freeway along the city's waterfront that has caused substantial blight in what would otherwise be valuable properties nearby. On the other hand, we also have recently completed a park—called Freeway Park—which has covered over a depressed freeway in the center of the city with a public facility that not only is an asset to all who use it, but has also led to the revitalization of an entire area. It has led to significant interest in further private development in adjacent properties, which will assist in providing more housing, a greater urban tax base, and so forth.

Mr. President, I am informed that there are several other cities in the Nation which have similar problems and which could also benefit from the study that would be required by this amendment. San Antonio, Boston, and San Francisco have elevated freeways similar to Seattle's, and could benefit from this study. I am hopeful that the study results will lead to the development of a program that is addressed to this need.

I am informed that the committee is aware of this amendment and is prepared to accept it.

Mr. BENTSEN. Mr. President, the manager for the majority has studied the amendment and is ready to accept it, subject to the comment of the manager for the minority.

Mr. STAFFORD. We would be glad to accept it for the minority.

Mr. BENTSEN. Mr. President, I yield back the remainder of my time.

Mr. MAGNUSON. I yield back the remainder of my time.

The PRESIDING OFFICER. All time is yielded back, and the question is on agreeing to the amendment of the Senator from Washington.

The amendment was agreed to.

Mr. MAGNUSON. I thank the Senator.

UP AMENDMENT NO. 1700

(Purpose: Amendment to essential gaps language)

Mr. KENNEDY. Mr. President, I have an amendment which I send to the desk.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Massachusetts (Mr. KENNEDY) proposed an unprinted amendment numbered 1700.

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

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

The amendment is as follows:

On page 15, insert after the word "Code" in line 20 the following: "and shall also include those routes in urbanized areas which are on the Interstate System on the date of enactment of the Federal-aid Highway Act of 1978, which were constructed prior to 1960 without Federal highway funds, which are substandard with reference to the standards for the Interstate System adopted by the Secretary under section 109(b) of this title, and which are, prior to September 30, 1982, jointly determined by the Governor and the local governments concerned to be a route which is essential to the sound functioning of the Interstate System in such urbanized area.

Mr. KENNEDY. Mr. President, I had an opportunity to talk with the manager of the bill as well as the ranking member on this. This amendment adds to the definition of essentiality to include gaps within city areas that were built before 1960, that were so important to the State involved that they were built completely with local and State funds and which are now substandard according to Interstate System criteria.

This would permit certain parts of the Interstate System, if they can meet these factors, to be eligible for funding under the essential gap category.

Mr. BENTSEN. Mr. President, the manager of the bill for the majority has examined the amendment and feels it is a good amendment, makes a contribution and helps the transportation needs in that State, and we will be pleased to

accept the amendment on behalf of the majority.

Mr. CHAFEE. Mr. President, on behalf of the minority, we have examined the amendment and agree with it and recommend its adoption.

Mr. KENNEDY. I yield back the remainder of my time.

Mr. BENTSEN. I yield back the remainder of my time.

The PRESIDING OFFICER. All time being yielded back, the question is on agreeing to the amendment of the Senator from Massachusetts.

The amendment was agreed to.

UP AMENDMENT NO. 1701

(Purpose: To authorize use of highway funds for rail operations in non-highway areas)

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

The PRESIDING OFFICER. The clerk will report the amendment of the Senator from Alaska.

The assistant legislative clerk read as follows:

The Senator from Alaska (Mr. GRAVEL) proposes an unprinted amendment numbered 1701.

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

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

The amendment is as follows:

At the end of the bill insert a new section as follows:

RAIL OPERATION PROJECTS IN NON-HIGHWAY AREAS

SEC. 146. (a) Chapter 1 of title 23, United States Code, is amended by adding at the end thereof the following section:

"157. Rail operation projects in non-highway areas

"The Secretary may approve for Federal financial assistance from funds apportioned under section 104, projects to provide such assistance for the operation of those portions of a publicly or privately owned railroad serving an area not served by a highway, and on which portions, automobiles are transported for the purpose of linking highways or other transportation modes receiving Federal financial assistance from funds apportioned under such section.

Any such approval shall be subject to the conditions that—

"(1) fares or other charges made in such operations shall be under the control of a Federal or State agency or official; and

"(2) all revenues derived from operation of such portions shall be used to pay for the cost of construction or acquisition of the railroad (including equipment) involved in such operation, debt service thereon, and actual and necessary costs of operation, maintenance, repair, and replacement.

"(b) A project authorized by this section shall be subject to and carried out in accordance with all provisions of this title, except those provisions which the Secretary determines are inconsistent with this section.".

(b) The analysis of chapter 1 of title 23 is amended by inserting at the end thereof the following:

"157. Rail operation projects in non-highway areas.".

Mr. BENTSEN. Mr. President, will the Senator yield for a question?

Mr. GRAVEL. I would be happy to yield.

Mr. BENTSEN. Because of the lateness of the hour is the Senator ready to accept a limitation on time somewhat less than that which had been ordered? I believe the Senator talked about 30 minutes, 15 minutes to each side.

Mr. GRAVEL. I think that would be more than adequate, and I would be happy to agree to that time limitation. I would be happy to agree to 15 minutes to each side. I ask unanimous consent that there be such time limitation.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Mr. GRAVEL. Mr. President, I would like to have the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second for the yeas and nays? There is a sufficient second.

The yeas and nays were ordered.

Mr. GRAVEL. Mr. President, it is my intention to call for a vote unless there can be some persuasive argument propounded by the managers of the bill as to why this amendment I am offering is not reasonable. It does not cost a dime. All it speaks to is the flexibility of a highway program within a State. Of course, flexibility in government cannot be a bad thing. So I am waiting with bated breath as to why the managers of the bill chose not to accept this amendment.

Mr. President, today I am offering an amendment which would allow States to use Federal-aid highway funds for rail operations in those areas of the country where no highway exists.

Additionally, the amendment requires that those portions of a railroad to receive such funds must be used for the transporting of automobiles between linking highways or other transportation modes receiving Federal-aid highway funds. Highway dollars are apportioned to the States, who must decide which highways projects should receive attention each year. Federal-aid system apportionments can be used for all expenses incidental to the construction or reconstruction of a highway—surveying, mapping, rights-of-way acquisition, and improvements which directly facilitate and control traffic flow, such as grade separation of intersections, widening of lanes, channelization of traffic, traffic control systems, and passenger loading and unloading areas in Alaska, however, the majority of communities are unconnected by the highway system. It will be some time before Alaska's transportation system reaches the level of advancement now enjoyed by systems throughout the continental United States.

In many areas, Alaskan citizens must rely on whatever single mode of transportation is available, be it airplane, ferry, train, or automobile. They often do not have the option of choosing between flying or driving or catching the train. For this reason, I am asking that the State be allowed to use Federal-aid highway moneys for the operation of those portions of a railroad, publicly or privately owned, in an area not served by a highway—areas where the railroad could be the only means to travel in and out.

The rail service of particular need is the Portage-Whittier section of the Alaska railroad. The Alaska railroad is presently the only method of transportation between these two communities. The ferry docks at Whittier, and a highway leads out of Portage. Automobiles are transported to and from Whittier via the ferry and are then transported by train in and out of Portage where a highway leads to Anchorage.

My amendment would give the State the flexibility to use highway funds to insure that passengers traveling by automobile will continue to be able to take the train from Portage to Whittier. At present, the train operates every day in the summer and will operate three times per week this winter. There is no increase in the bill's authorization level; more flexibility is simply granted for use of the funds already authorized.

There are relatively few areas of the country where this amendment could actually be applied. Most localities throughout the country are connected to some form of highway system. This would allow only those areas of the country not served by a highway to use the available Federal-aid highway funds on a rail system if such rail system transports automobiles. This provision would not subsequently apply if a roadway were later constructed into the region. Such construction would require recission of such funding.

A similar precedent was established in 1970 when States were allowed to apply highway funds for use on marine highway facilities. Alaska now has 773 miles of ferry routes included in its Federal-aid primary system. By granting this flexibility in 1970, Alaska has been able to use highway dollars on the marine highway rather than undertaking the expensive construction of bridges and roadways connecting the many islands of southeast Alaska. The ferry system also operates in Prince William Sound and down to Kodiak Island. Granting this flexibility to the Portage-Whittier shuttle would again prove to be a much more cost-effective alternative.

Many aspects of Alaska's transportation system, although limited, are quite multimodal. In 1977, 7,332 passengers and 1,659 motor vehicles boarded the ferry liner, the Bartlett, which serves the port of Whittier. Eight thousand four hundred and sixty-eight passengers and 1,862 motor vehicles disembarked the Bartlett at Whittier. In arriving or departing Whittier, these individuals and vehicles had to use the railroad. The marine highway system and rail system truly complement eath other at present and I would like to continue to encourage this concept. When the Environment and Public Works Committee was considering the urban transportation planning section of this bill, the need to include various objectives in such planning was discussed. As a result, the bill now before us includes the language declaring it to be "national transportation policy to encourage and promote the development of transportation systems embracing various modes of transportation that will serve the States and local communities efficiently and effectively * * *"

I would suggest that adoption of my amendment would contribute to the achievement of such goals.

ALASKA AND THE FEDERAL-AID HIGHWAY SYSTEM

In all the 586,400 square miles of Alaska, only 6,430 miles of Federal-aid highway exist. Much of that remains unpaved; only this summer will the Alaska highway paving begin and interior Alaska will be connected to southeast, which contains Juneau, by more than a dusty gravel road. This is only one indication of how far Alaska is below the standards expected and demanded by U.S. citizens in the other 49 States.

Alaska was simply not included when the first Federal Aid Highway Act was passed in 1916 and it continued to be excluded for 40 years, although Alaska paid all Federal taxes throughout those years. In 1956, Alaska was asked to pay further taxes on tires, trucks, trailers, and gasoline to pay for highways throughout the lower 48. Finally, in 1956, however, Alaska was given one-third the amount it should have been entitled to as a public domain State. This inequitable arrangement continued for 3 years until statehood.

In 1959, the Bureau of Public Roads within the Department of Commerce estimated that if Alaska had received equitable treatment for all those years, it would have received $575 million. As it was, Alaska was 50 years behind the rest of the Nation in development of its highway system.

As Alaska undertook the huge task of developing a highway system, the general policy was to build as many highways as possible with the minimal funds available. For this reason, the existing highway system is still built to minimum standards and is finding it difficult to meet the needs of a developing State with increased population and economic activity. It is only recently that Alaska and her abundance of resources have been recognized as important to States throughout the United States. More strain than was ever anticipated was placed on the highway system with construction of the Alaska oil pipeline and the State has suffered accordingly.

The Department of Transportation has issued a draft study on the impact of the pipeline on Alaska roads which attributes $40 million of repair on Alaska roads directly to construction of the pipeline. From 1972–75 (the time of the study), motor vehicle traffic increased by 68 percent in the State. It has increased by another 84 percent since then. On the pipeline routes studied, total truck equivalent wheel loadings increased an average of 170 percent. Alaskan roads were not constructed to absorb this much increased traffic in such a short time and they are requiring the extra attention.

Alaska receives 96 percent Federal funding on highway projects usually assigned 70 percent.

Alaska receives 96/4 ratio because 96.4 percent of its lands is held by the Federal Government. There are only four States which do not receive more than 70 percent due to this adjustment for Federal land.

This percentage will decrease after passage of D–2 next year when more land is transferred into national parks, national forests, and national monuments—land which is not included when calculating this ratio for clause A States, such as Alaska.

Alaska was given funds in committee for maintenance of interstate mileage which it does not have.

Alaska is the only State in the Union without Interstate mileage. It already receives Interstate construction money for use on its primary and secondary roads. It is only reasonable that it receive the funds to maintain the roads built with the construction money.

Alaska was discriminated against in the past, which is why there is no Interstate mileage and less than 10,000 miles of road—paved and unpaved—in a State of 586,000 square miles. Only 4,102 miles of Federal-aid highway.

For every $1 Alaska contributes to the highway trust fund, it receives $9.77.

This is a misleading figure. Ratios do not build highways, dollars do. Roads must still connect our 430,000 people and across much more land area than any other State. The population centers are separated.

Alaskans pay a larger per capita Federal income tax than any other State—$3,011. No other State comes close. These go into general Treasury moneys which fund many highway programs. For example, outdoor advertising control, territorial highways, parkways, Indian reservation roads, forest development roads and trails, park roads and trails.

What this amendment says is the State of Alaska or any State, if they have a unique situation of a community that cannot be reached by air and cannot be reached by highways and is only reached by railroad, that you can use highway moneys to help the transportation of vehicles over that railroad system for the part in question.

When and if in the future you can reach this community by air or by highways, then there is a rescission, and you cannot do that with these funds. That is the only flexibility involved.

Let me tell you the community which is affected. It is a community by the name of Whittier, Alaska. It sits in the bowl of Prince William Sound. There is no way to have an airport because it is almost all vertical ground.

It has 2,000 people. It used to be a military base, and it is a port where you bring in materiel into this port and it goes onto the railroad and goes into Anchorage and then out to Fairbanks.

There is a tunnel into this town so there are no roads into the town. All you have is a railroad tunnel. We have a ferry system that goes through all of the Prince William Sound area, hits Valdez and Cordova, and Seward, and then Whittier, and tourists and cars get off the ferry and then drive immediately onto railroad flatcars and then are brought into a place called Portage or taken off of the flatcars and they then drive their way on up to Anchorage or Fairbanks or the Alcan Highway, whatever they choose to do.

So all I am asking for is, because of this unique situation—and we have many unfortunate unique situations in Alaska, because it is a unique part of our national geography—all we are asking for is not any extra money to do this, and I am prepared to put any kind of limitations on this exception that might be reasonable to effect the proposition—one of the possible things we might be able to do is take wood and go inside this trestle and build a wooden highway so cars can drive in and out.

We are not talking about a lot of trains a day—at most, in peak season, one or two a day, and in winter two or three times a week. But it becomes quite a burden; if you come in with a ferry and leave your car, you have to wait two or three days to get out.

That reasonable people cannot come forward with reasonable employment of government resources to transcend these natural difficulties strikes me as odd.

That, essentially, is my amendment. It does not add one single sou to the budget, and when this unique situation disappears, the exception would disappear. I do not know what could be a more reasonable request.

I reserve the remainder of my time, waiting to see the logic of the managers of the bill in opposing what I consider to be a most reasonable amendment to accommodate the many thousands of visitors to my State and those who live in my State.

Mr. BENTSEN. Mr. President, I rise in opposition to the amendment of my good friend from Alaska.

Alaska is a unique State, and we have recognized that time and time again before our committee and before the Senate. Let me give you a few examples of that.

Over the 20-year life of highway trust fund, Alaska has received $9.46 in return for every dollar it has contributed. That, I submit, is not a bad investment for Alaska. It is a rate of return almost 10 times better than that received by the average State; no other State can even approach Alaska in this regard.

Let us also understand that S. 3073 already contains a provision, inserted by Senator GRAVEL in committee, that would further increase Alaska's already disproportionate share of the trust fund dollar. Under this legislation, Alaska will receive $1.25 million in interstate maintenance money, despite the fact that there is not 1 mile of interstate highway in Alaska. Senator GRAVEL has convinced the committee of the wisdom of counting ferry miles for maintenance purposes; if he were to succeed in passing this amendment, so as to also include rail miles, Alaska would receive more interstate 3R funds than eight States; States like West Virginia and Vermont and Delaware.

I acknowledge that rail transportation is particularly important in Alaska. That fact alone argues in favor of a well-maintained system. It does not, however, present an adequate justification for the use of highway trust fund revenues to maintain Alaska's rail system.

Users of the Alaska railroad pay fees for use of the system, but they do not contribute to the highway trust fund. If revenues from the railroad are insufficient to cover operating costs, then the people of Alaska can determine whether they should increase the fees or subsidize the railroad from State funds.

I see no good reason for making the Alaska Railway a ward of the Federal

Government, especially at the expense of the highway trust fund.

Mr. CHAFEE. Mr. President, I would like to stress a couple of the points that the Senator from Texas has made.

Alaska has no interstate roads; yet it receives interstate funds. Currently Alaska has received $16.8 million in interstate construction funds, although it has no interstate mileage, and this money can be used for primary, secondary, or urban roads.

As has been mentioned, this authorization has been used not only for good road needs, but extended to include the purchase of ferries. There has not been a limit on where they can go with this.

Under this amendment, the money would not go for the purchase of railroads or the construction of railroads, but for the operation of a railroad. Mr. President, I share with the chairman of the subcommittee the view that that is just going too far. The purpose of the primary highway program is to provide Federal assistance chiefly for needs of the Nation's major highways, and I join in opposition to the amendment.

Mr. BENTSEN. Mr. President, if the proponent of the amendment is prepared to yield back his time, I am prepared to yield back the remainder of mine.

Mr. GRAVEL. No, I am not prepared to yield back the remainder of my time.

I might say that neither one of you has addressed yourself to this amendment. You make a big case as to what I got in committee and what Alaska is receiving. Let me tell you, we pay twice as much tax per capita as anyone else in the United States. Many times we get put upon by saying Alaska is getting so much of this and so much of that.

We do not have interstates in Alaska. All you have to do is drive the roads to find out we do not have any interstates.

It is not my fault that Alaska is one-fifth the size of the United States, and that it costs us more to build roads than anyone else.

You give me all the ratios you want, but let me tell you, ratios do not build roads, dollars build roads. If you want to build a road from Anchorage to Fairbanks, it costs a lot more than it costs to build a road from Dallas or Houston to San Antonio, by a big factor.

I do not think you can argue what you have given me and not address yourself to what the amendment does. It does not cost anybody one penny. All it is saying is that in Alaska we get a little flexibility because we have an unusual situation. You have not responded to that argument.

So often we are quick to beat on the bureaucracies because they are inflexible, unresponsive, and have rigor mortis. But what about what is being demonstrated here? I am not asking for anything. If you want to limit it to one community, you can limit it. But here is a community that cannot get an airport because of the configuration of its location; you cannot get a highway to it; all it has is a railroad tunnel, and you people are all upset because of the principle that you cannot use highway moneys to fix up the inside of this railroad tunnel.

You have not addressed yourselves to the simpleness of this amendment, except to say how much Alaska is getting. Alaska is not getting all that much.

I would remind my colleagues that we were left out of the highway funds all through our territorial days, and at one time were were authorized $70 million of highway money, but we were rescinded 2 years ago, and now you have a program to pay for everybody else's highways, but you say we are getting too much money. I admit the numbers do look unusual on a per capita basis, because unfortunately when you measure distances in Alaska in numbers of people, these are very unusual numbers, and there is nothing I can do about it.

Mr. LONG. Mr. President, will the Senator yield for a question?

Mr. GRAVEL. I yield.

Mr. LONG. Am I to understand that if the Senator's amendment is agreed to, Alaska would not get $1 of additional revenue?

Mr. GRAVEL. Not one penny more.

Mr. LONG. Do I understand also that Alaska has no interstate highways?

Mr. GRAVEL. That is correct.

Mr. LONG. Then, if Alaska has no interstate highways and it cannot benefit from that program, would it not stand to reason that whatever money might be made available should be made available the way the Alaskans think they can use it?

Mr. GRAVEL. I thank my colleague for making a very simple point. That is all we are asking, and I am prepared to limit it to just this one community. In fact, the amendment limits it to the extent that if the community later develops a road where you can get to it, you rule out the money in conjunction with the railroad.

You have to see this community. You can get in and out of it by railroad three times a week in the wintertime. That means you walk out. Or if you have a friend on the railroad, you ride out on the railroad car, you know the kind I mean, a little bus-like thing. This is preposterous, to make life so inflexible to these people. For what? I do not see the principle involved.

Mr. LONG. The Senator and I are together. I heard Alaska was using some money for a ferry boat rather than building a bridge. My impression was that if you had a choice, you would build a bridge. But if you cannot find enough money for a bridge, you would have a ferry boat. I cannot understand why Alaska would be using a ferry boat, when anyone would prefer a bridge if you had the money to built it with.

Mr. GRAVEL. We have ferries because the cost of building roads are preposterous and the cost of building bridges is preposterous. We do not get any extra money for the ferries. This charge that because we use highway moneys for ferries violates something is ridiculous. We get money through a formula like anybody else, and we choose to use it for ferries because it is preposterous to build roads.

In the bill, and this is something really unusual for Alaska—well, it is not in this bill. Hopefully, we hope to use hover craft to be able to use the Yukon River for a ferry system that will stop us from building roads, so that we would not have to build an expensive road. We cannot afford it and we know it.

We come in asking for the same kind of formula anybody else has, but we ask for flexibility in using the money. What we are fed up with is a reference that we are ripping off something that, one, we do not deserve, and, two, it is unfair we are getting it. That is the argument we have just heard.

There was no addressing this amendment that is trying to help out 2,000 people—well, it is more than 2,000 people because this is part of our tourist system when people come in on tours and come into this community, get off the ferry, and then have to get on a train, put their cars on flat cars, and come out.

I cannot understand why anybody would be opposed to flexibility in governmental action so people can do something intelligent.

It would be different if I were standing here asking for money to do this which really altered principle, which was mixing railroads with roads. I am not. I am being very precise in this amendment saying if you have a community anywhere in the United States that meets the criteria of Whittier, then you ought to have this intelligent flexibility.

I hope my colleagues will vote for me. There is such a thing as opposing an amendment because it should be opposed and there is a reasonable argument for opposing it. But when there is rigor mortis and you oppose it just because you do not want to pick up the amendment, then I think there is something vitally wrong in the legislative process.

Mr. MATSUNAGA. Will the Senator yield?

Mr. GRAVEL. I yield.

Mr. MATSUNAGA. I rise in support of the amendment because I find Alaska's situation is very much like the situation in Hawaii. We are not connected to the mainland United States. We find ourselves uniquely situated as noncontiguous States, both Alaska and Hawaii. As the Senator has stated, he is not asking for additional funds, but he is simply asking that those funds allocated to Alaska be allowed to be used for the improvement of railroad service to provide access to this town of 2,000 people.

May I pose this question to the Senator from Alaska: As I understand it, that railroad is used by tourists from other States of the Union. Is that correct?

Mr. GRAVEL. Very much so, and this would provide a convenience to those people from Texas, Rhode Island, and Louisiana who come to Alaska in the summertime, and Hawaii.

Mr. MATSUNAGA. So, in fact, the proposal does affect interstate commerce.

Mr. GRAVEL. Very much so.

Mr. MATSUNAGA. Would it, in fact, promote better relations between Alaska and the other States of the Union?

Mr. GRAVEL. I would hope it would with the State of Texas as we have a considerable number of Texans who come to Alaska.

Mr. MATSUNAGA. I thank the Senator.

Mr. GRAVEL. I want to add that whenever one stands here from Alaska and pleads flexibility with respect to highways, our highways in Alaska minimally cost $300,000 a mile. Now you can begin to believe that we try to find new ways of moving people.

Mr. BENTSEN. Will the Senator yield?

Mr. GRAVEL. I would be happy to yield.

Mr. BENTSEN. My concern is precedent in the user tax. If the Senator will limit this to Whittier, I would be happy to talk to the minority manager to see if we can accept the amendment.

Mr. GRAVEL. I would be happy to do that.

Mr. BENTSEN. And we would vitiate the yeas and nays?

Mr. GRAVEL. Yes.

Mr. BENTSEN. The manager from the minority is agreeable to that.

Mr. GRAVEL. I will yield back the remainder of my time and work out the language.

The PRESIDING OFFICER. Does the Senator from Alaska seek to modify his amendment?

Mr. GRAVEL. I do, but I will need a few minutes to find a location.

The PRESIDING OFFICER. Is there objection to vitiating the yeas and nays which have been ordered on the amendment?

Hearing no objection, it is so ordered.

Mr. GRAVEL. I would consider this a technical amendment. If the body would be willing, I will ask unanimous consent that the exclusion in this amendment be to Whittier, Alaska, because of its unusual arrangement. There is probably no other city in the United States which could meet this requirement. We could then treat this as a technical amendment.

Mr. BENTSEN. The manager of the bill is agreeable to that.

The PRESIDING OFFICER. The Senator now has the right to modify his amendment, and it will be so modified when we receive the modification.

Mr. BENTSEN. Mr. President, I ask unanimous consent that the following members of the Committee on Environment and Public Works be added as cosponsors of the pending measure, S. 3073: Senators RANDOLPH, MUSKIE, GRAVEL, BURDICK, CULVER, HART, MOYNIHAN, HODGES, STAFFORD, BAKER, MCCLURE, DOMENICI, CHAFEE, and WALLOP.

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

UP AMENDMENT NO. 1701, AS MODIFIED

Mr. GRAVEL. Mr. President, I send my modification to the desk.

The PRESIDING OFFICER. The modification will be stated.

The legislative clerk read the modification.

The amendment, as modified, is as follows:

At the end of the bill insert a new section as follows:

RAIL OPERATION PROJECTS IN NON-HIGHWAY AREAS

Sec. 146. (a) Chapter 1 of title 23, United States Code, is amended by adding at the end thereof the following section:

"157. Rail operation projects in non-highway areas

"The Secretary may approve for Federal financial assistance from funds apportioned under section 104, projects to provide such assistance for the operation of those portions of the Alaska Railroad from Whittier to Portage, Alaska for the purpose of linking highways or other transportation modes receiving Federal financial assistance from funds apportioned under such section. Any such approval shall be subject to the conditions that—

"(1) fares or other charges made in such operations shall be under the control of a Federal or State agency or official; and

"(2) all revenues derived from operation of such portions shall be used to pay for the cost of construction or acquisition of the railroad (including equipment) involved in such operation, debt service thereon, and actual and necessary costs of operation, maintenance, repair, and replacement.

"(b) A project authorized by this section shall be subject to and carried out in accordance with all provisions of this title, except those provisions which the Secretary determines are inconsistent with this section.".

(b) The analysis of chapter 1 of title 23 is amended by inserting at the end thereof the following:

"157. Rail operation projects in non-highway areas.".

The PRESIDING OFFICER. Is all time yielded back?

Mr. GRAVEL. I yield back the remainder of my time.

Mr. BENTSEN. I yield back the remainder of my time.

The PRESIDING OFFICER. The question is on agreeing to the amendment, as modified.

The amendment, as modified, was agreed to.

The PRESIDING OFFICER. Are there further amendments to title I?

If not, the Senator from Nevada is recognized to call up title II of the bill.

UP AMENDMENT NO. 1702

(Purpose: To add Highway Safety (S. 2541) as Title II of the Highway Aid bill)

Mr. CANNON. Mr. President, I send to the desk S. 2541, to be designated as title II of the bill S. 3073, pursuant to the unanimous-consent agreement entered into on August 15.

Mr. BENTSEN. Mr. President, would it be in order to ask unanimous consent that title I be agreed to?

The PRESIDING OFFICER. The Chair will inform the manager that title I does not have to be agreed to. The Senate has now moved on to title II of the bill.

Mr. BENTSEN. And there would be no further amendment to title I, as I understand it?

The PRESIDING OFFICER. Under the unanimous-consent agreement, no further amendments to title I are in order, the Senate now having moved on to title II.

The clerk will state the amendment.

The legislative clerk read as follows:

The Senator from Nevada (Mr. CANNON) proposes an unprinted amendment numbered 1702.

Mr. CANNON. I ask unanimous consent that further reading of the amendment be dispensed with.

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

The amendment is as follows:

On page 58, immediately after line 7, insert the following:

TITLE II—HIGHWAY SAFETY

SEC. 201. Chapter 4 of title 23 of the United States Code is amended to read as follows:

"Chapter 4.—HIGHWAY SAFETY

"Sec.
"401. Authority of the Secretary.
"402. Highway safety programs.
"403. Apportionment.
"404. State highway safety agency.
"405. Local programs.
"406. Program submission and approval.
"407. Federal share payable.
"408. Federal agency assistance.
"409. Indian programs.
"410. Highway safety research and development.
"411. National Highway Safety Advisory Committee.
"412. Authorization of appropriations.

"§ 401. Authority of the Secretary

"The Secretary is authorized and directed to assist and cooperate with other Federal departments and agencies, State and local governments, private industry, and other interested parties, to increase highway safety. For the purposes of this chapter, the term 'State' means any one of the 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, and American Samoa.

"§ 402. Highway safety programs

"Each State shall have a highway safety program designed to reduce traffic deaths and injuries by identifying the causes of motor vehicle accidents, by adopting measures to reduce the frequency and severity of accidents, and by evaluating the effectiveness of such measures. As part of its highway safety program, each State shall achieve uniformity in the collection of data related to highway safety through compliance with standards to be issued by the Secretary on such subjects as driver licensing, vehicle titling and registration, theft prevention, and traffic records. Each State shall also achieve uniformity in laws and practices that affect interstate motorists, through compliance with standards to be issued by the Secretary on such subjects as the rules of the road, traffic control devices, and highway design, construction, and maintenance. As part of its highway safety program, each State shall also consider guidelines which the Secretary is authorized to issue on all aspects of highway safety, including traffic safety education, motorcycle safety, pedestrian safety, emergency medical services, traffic adjudication systems, vehicle inspection and maintenance, pupil transportation, and identification of high accident rate locations. The Secretary shall develop the standards and guidelines specified in this section in cooperation with the States, their political subdivisions, appropriate Federal departments and agencies, and such other public and private organizations as the Secretary deems appropriate.

"§ 403. Apportionment

"(a) Funds authorized to be appropriated to carry out section 402 of this chapter shall be used to aid the States to conduct the highway safety programs approved in accordance with section 406 of this chapter. Funds authorized to be appropriated to carry out section 402 shall be subject to a deduction not to exceed 5 percent for the necessary costs of administering the provisions of the section, and the remainder shall be apportioned among the several States. Such funds shall be apportioned 75 percent in the ratio which the population of each State bears to the total population of all the States, as shown by the latest available Federal census, and 25 percent in the ratio which the public road mileage in each State bears to the total public road mileage in all States. For the purposes of this section, the term 'public road' means any road under the jurisdiction of and main-

tained by a public authority and open to public travel. Public road mileage as used in this subsection shall be determined as of the end of the calendar year preceding the year in which the funds are apportioned and shall be certified to by the Governor of the State and subject to approval by the Secretary. The annual apportionment to each State shall not be less than one-half of 1 percent of the total apportionment, except that the apportionments to the Virgin Islands, Guam, and American Samoa shall not be less than one-third of 1 percent of the total apportionment.

"(b) Notwithstanding the apportionment specified by subsection (a) of this section, up to 25 percent of the funds to be appropriated for any fiscal year may be separately apportioned by the Secretary to the States for carrying out high priority safety programs, including expanded enforcement of the 55 mile per hour speed limits and programs to increase safety belt use, in accordance with an apportionment formula to be determined by the Secretary.

"(c) On October 1 of each fiscal year, the Secretary shall apportion the highway safety funds in accordance with subsection (a) of this section, at which time the funds shall be available for obligation under the provisions of section 406.

"(d) Sums apportioned to a State for its highway safety program shall continue to be available for obligations in that State for a period of 3 years after the close of the fiscal year for which such sums are authorized and any amounts remaining unexpended at the end of such period shall lapse.

"(e) Nothing in this chapter authorizes the appropriation or expenditure of funds for highway construction, maintenance, or design (other than design of safety features of highways to be incorporated into standards).

"§ 404. State highway safety agency

"Each State shall provide that the Governor shall be responsible for the highway safety program and shall administer the program through a highway safety agency which shall have the authority, facilities, and organization to carry out the highway safety program to the satisfaction of the Secretary.

"§ 405. Local programs

"(a) Each State shall authorize its political subdivisions to develop and carry out local highway safety programs within their jurisdictions as a part of the State highway safety program if such local highway safety programs are approved by the Governor and are in accordance with this chapter, and shall assist political subdivisions in identifying highway safety problems and developing measures to reduce the frequency and severity of accidents.

"(b) Each State shall provide that from the Federal funds apportioned under section 403 to such State for any fiscal year, not less than 40 percent shall be expended by the political subdivisions of such State in carrying out local highway safety programs developed by the political subdivisions in accordance with subsection (a) of this section.

"(c) The Secretary is authorized to waive the requirement of subsection (b) of this section, in whole or in part, for a fiscal year for any State whenever he determines that there is an insufficient number of local highway safety programs to justify the expenditure in such State of such percentage of Federal funds during such fiscal year.

"§ 406. Program submission and approval

"(a) In each fiscal year, the State highway safety agency shall submit to the Secretary for his approval a proposed highway safety program for the ensuing fiscal year together with a projection of future highway safety efforts. The program shall describe the highway safety activities to be undertaken by the State with such specificity as the Secretary may require. The Secretary shall promptly review the State's compliance with the program development process specified by section 402 of this chapter and its compliance with the uniform requirements issued pursuant to such section. He may approve the program in whole or in part, on the basis of his review. His approval of the program, or portions of the program, shall be deemed a contractual obligation of the Federal Government for the payment of its proportional contribution thereto, subject to the availability of funds.

"(b) Concurrent with the obligation of Federal funds, the Secretary shall enter into a formal Federal-Aid agreement with the State. Such agreement shall designate the Federal, State, and local pro rata shares required for the execution of the program.

"(c) The Secretary shall not withhold approval of a State's program in its entirety except upon a finding that the State is failing to make reasonable progress toward implementation of the requirements specified in section 402, considered as a whole, or upon a finding that the State's performance has been substantially deficient in identifying highway safety problems, developing countermeasures, and evaluating results.

"§ 407. Federal share payable

"(a) Except as provided in section 409 of this chapter the Federal share payable on account of any program shall not exceed 70 percent of the total cost of such program.

"(b) The Secretary may, in his discretion, from time to time as work progresses, make payments to any State for the Federal share of costs incurred by the State or its subgrantee.

"(c) The Secretary may advance to any State, out of existing appropriations, the Federal share of costs incurred. Such advance financing shall be through letter of credit in conformity with United States Treasury Department regulations.

"(d) Such payments or advances of Federal funds shall be made to such official or officials or depository designated by the State and authorized under the laws of the State to receive public funds of the State.

"(e) The aggregate of all expenditures made during any fiscal year by a State and its political subdivisions for carrying out the State highway safety program shall be available for the purpose of crediting such State during such fiscal year for the non-Federal share of the cost of any program under this chapter without regard to whether such expenditures were actually made in connection with such program, except that if any funds apportioned under section 403 are to be expended by the State for the planning and administrative functions of the State highway safety agency, the State shall provide matching funds for such functions of at least 20 percent of the total funds so expended.

"§ 408. Federal agency assistance

"The Secretary may make arrangements with other Federal departments and agencies for assistance in the preparation of uniform requirements for the highway safety programs contemplated by section 402 and in the administration of such programs. Such departments and agencies are directed to cooperate in such preparation and administration, on a reimbursable basis.

"§ 409. Indian programs

"For the purpose of the application of this chapter on Indian reservations, the terms 'State' and 'Governor of a State' includes the Secretary of the Interior; and the term 'political subdivision of a State' includes an Indian tribe except that, notwithstanding the provisions of section 405(b) of this chapter, 95 percent of the funds apportioned to the Secretary of the Interior after the date of enactment of this chaper shall be expended by Indian tribes to carry out highway safety programs within their jurisdictions.

"§ 410. Highway safety research and development

"(a) The Secretary is authorized to use funds appropriated to carry out this subsection to carry out safety research which he is authorized to conduct by section 307(a) of this title. In addition, the Secretary may use the funds appropriated to carry out this section, either independently or in cooperation with other Federal departments or agencies, for making grants to or contracting with State or local agencies, institutions, and individuals for (1) training or education of highway safety personnel, (2) research fellowships in highway safety, (3) development of improved accident investigation procedures, (4) emergency service plans, (5) demonstration projects, and (6) related activities which the Secretary deems will promote the purposes of this section.

"(b) In addition to the research authorized by subsection (a) of this section, the Secretary, in consultation with such other Government and private agencies as may be necessary, is authorized to carry out safety research on the following:

"(1) The relationship between the consumption and use of drugs and their effect upon highway safety and drivers of motor vehicles.

"(2) Driver behavior research, including the characteristics of driver performance, the relationships of mental and physical abilities or disabilities to the driving task, and the relationship of frequency of driver accident involvement to highway safety.

"(c) The research authorized by subsection (b) of this section may be conducted by the Secretary through grants and contracts with public and private agencies, institutions, and individuals.

"(d) The Secretary may, where he deems it to be in furtherance of the purposes of section 402 of this chapter, vest in State or local agencies, on such terms and conditions as he deems appropriate, title to equipment purchased for demonstration projects with funds authorized by this section.

"(e)(1) In addition to the other demonstration programs authorized by subsection (a) of this section, the Secretary shall make grants each fiscal year to those States which develop the most innovative approaches to highway safety problems in accordance with criteria to be devised by the Secretary in consultation with the States, their political subdivisions, appropriate Federal departments and agencies, and private sector organizations.

"(2) There are authorized, to carry out the purposes of paragraph (1) of this subsection, not to exceed $5,000,000 for the fiscal year ending September 30, 1980, not to exceed $10,000,000 for the fiscal year ending September 30, 1981, and not to exceed $15,000,000 for the fiscal year ending September 30, 1982.

"§ 411. National Highway Safety Advisory Committee

"(a)(1) There is established in the Department of Transportation a National Highway Safety Advisory Committee, composed of the Secretary or an officer of the Department appointed by him, the Federal Highway Administrator, the National Highway Traffic Safety Administrator, and thirty-five members appointed by the President, no more than four of whom shall be Federal officers or employees. The Secretary shall select the Chairman of the Committee from among the Committee members. The appointed members, having due regard for the purposes of this chapter, shall be selected from among representatives of various State and local governments, including State legislatures, of public and private interests contributing to, affected by, or concerned with highway safety, including the national organizations of passenger cars, bus, and

truck owners, and of other public and private agencies, organizations, or groups demonstrating an active interest in highway safety, as well as research scientists and other individuals who are experts in this field.

"(2)(A) Each member appointed by the President shall hold office for a term of three years, except that (i) any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remaider of such term, and (ii) the terms of office of members first taking office after the date of enactment of this section shall expire as follows: Twelve at the end of 1 year after the date such committee members are appointed by the President, 12 at the end of 2 years after the date such committee members are appointed by the President, and 11 at the end of 3 years after the date such committee members are appointed, as designated by the President at the time of appointment, and (iii) the term of any member shall be extended until the date on which the successor's appointment is effective. Any member appointed by the President who is not a Federal officer or employee and who has served on the Committee for 3 years shall not be eligible for reappointment as a member of the Committee during the 1 year immediately following the last year during which he served as such a member.

"(B) Members of the Committee who are not officers or employees of the United States shall, while attending meetings or conferences of such Committee or otherwise engaged in the business of such Committee, be entitled to receive compensation at a rate fixed by the Secretary, but not exceeding $100 per diem, including traveltime, and while away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized in section 5703 of title 5 of the United States Code for persons in the Government service employed intermittently. Payments under this section shall not render members of the Committee employees or officials of the United States for any purpose.

"(b) The National Highway Safety Advisory Committee shall advise, consult with, and make recommendations to, the Secretary on matters relating to the activities and functions of the Department in the field of highway safety. The Committee is authorized (1) to review research projects or programs submitted to or recommended by it in the field of highway safety and to recommend to the Secretary, for prosecution under this title, any such projects which it believes show promise of making valuable contributions to human knowledge with respect to the cause and prevention of highway accident; and (2) to review, prior to issuance, requirements proposed to be issued by order of the Secretary under the provisions of section 402 of this chapter and to make recommendations thereon. Such recommendations shall be published in connection with the Secretary's determination or order.

"(c) The National Highway Safety Advisory Committee shall meet from time to time as the Secretary shall direct, but at least once each year.

"(d) The Secretary shall provide to the National Highway Safety Committee from among the personnel and facilities of the Department of Transportation such staff and facilities as are necessary to carry out the functions of such Committee.

"§ 412. Authorization of appropriations

"(a) There is authorized to be appropriated, for carrying out the provisions of section 402 of this chapter (relating to highway safety programs), by the National Highway Traffic Safety Administration, out of the Highway Trust Fund, $175,000,000 for the fiscal year ending September 30, 1979, $175,000,000 for the fiscal year ending September 30, 1980, $200,000,000 for the fiscal year ending September 30, 1981, and $200,000,000 for the fiscal year ending September 30, 1982.

"(b) For carrying out the provision of section 402 of this chapter (relating to highway safety programs), by the Federal Highway Administration, funds shall be provided in accordance with provisions of section 151 of this title.

"(c) There is authorized to be appropriated, for carrying out the provisions of section 411 of this chapter (relating to highway safety research and development), by the National Highway Traffic Safety Administration, out of the Highway Trust Fund $50,000,000 for the fiscal year ending September 30, 1979, $50,000,000 for the fiscal year ending September 30, 1980, $50,000,000 for the fiscal year ending September 30, 1981, and $50,000,000 for the fiscal year ending September 30, 1982.".

SEC. 3. Section 154 of title 23 of the United States Code is amended by adding at the end thereof the following new subsections:

"(e) Each State shall certify to the Secretary before January 1 of each year that it is enforcing all speed limits on public highways in accordance with this section. The certification statement shall consist of such data as the Secretary determines by rule is necessary to support the statement for the 12-month period ending on September 30 before the date the statement is required, including data on the percentage of motor vehicles exceeding 55 miles per hour on public highways with speed limits posted at 55 miles per hour in accordance with criteria to be established by the Secretary.

"(f)(1) For the 12-month period ending September 30, 1979, if the data submitted by a State pursuant to subsection (e) of this section show that the percentage of motor vehicles exceeding 55 miles per hour is greater than 60 per centum, the Secretary shall reduce the State's apportionment of Federal-aid highway funds under each of sections 104(b)(1), 104(b)(2), and 104(b)(6) of this title in an aggregate amount of up to 5 percent of the amount to be apportioned for the fiscal year ending September 30, 1981.

"(2) For the 12-month period ending September 30, 1980, if the data submitted by a State pursuant to subsection (e) of this section show that the percentage of motor vehicles exceeding 55 miles per hour is greater than 50 percent the Secretary shall reduce the State's apportionment of Federal-aid highway funds under each of sections 104(b)(1), 104(b)(2), and 104(b)(6) of this title in an aggregate amount of up to 5 percent of the amount to be apportioned for the fiscal year ending September 30, 1982.

"(3) For the 12-month period ending September 30, 1981, if the data submitted by a State pursuant to subsection (e) of this section for that year show that the percentage of motor vehicles exceeding 55 miles per hour is greater than 40 percent, the Secretary shall reduce the State's apportionment of the Federal-aid highway funds under each of sections 104(b)(1), 104(b)(2), and 104(b)(6) of this title in an aggregate amount of up to 5 percent of the amount to be apportioned for the fiscal year ending September 30, 1983.

"(4) For the 12-month period ending September 30, 1982, and for each succeeding twelve-month period thereafter, if the data submitted by a State pursuant to subsection (e) of this section for that year show that the percentage of motor vehicles exceeding 55 miles per hour is greater than 25 percent, the Secretary shall reduce the State's apportionment of Federal-aid highway funds under each of sections 104(b)(1), 104(b)(2), and 104(b)(6) of this title in an aggregate amount of up to 10 percent of the amount to be apportioned for the fiscal year ending September 30, 1984, and for each succeeding fiscal year thereafter.

"(g) The Secretary shall promptly apportion to a State any funds which have been withheld pursuant to subsection (f) of this section if he determines that the percentage of motor vehicles in such State exceeding 55 miles per hour has dropped to the level specified for the fiscal year for which the funds were withheld.".

SEC. 4. There are authorized to be appropriated, for carrying out sections 307(a) and 410 of title 23, United States Code (relating to highway safety research and development), by the Federal Highway Administration, out of the Highway Trust Fund, $10,000,000 for the fiscal year ending September 30, 1979, $10,000,000 for the fiscal year ending September 30, 1980, $10,000,000 for the fiscal year ending September 30, 1981, and $10,000,000 for the fiscal year ending September 30, 1982.

The PRESIDING OFFICER. Under the agreement, the amendment now before the Senate is agreed to as original text and will be called title II.

Will the Senator suspend until we have order in the Chamber? Will Senators clear the aisle and take their seats?

The PRESIDING OFFICER. On this title, there is a 1-hour time limit. Who yields time?

Mr. CANNON. Mr. President, I yield myself 5 minutes. I have no intention of asking for the yeas and nays on this amendment, but I cannot insure that someone else may not ask for them.

The PRESIDING OFFICER. The Senator from Nevada is recognized for 5 minutes.

Mr. CANNON. Mr. President, I have offered S. 2541, the Highway Safety Act of 1978 as title II of S. 3073. Title II provides the authorizations for funding of the various States' highway safety programs. Pursuant to Senate Resolution No. 4, the Senate Committee on Commerce, Science, and Transportation has been designated the jurisdictional responsibility for highway safety matters.

As my colleagues know, the Highway Safety Act was passed as a response to the increasing carnage on our Nation's highways, which spiraled to more than 53,000 highway deaths per year in 1966. Since the institution of this program, although vehicle miles traveled and number of registered motorists have continued to increase, the death toll has decreased during the last decade.

In order to accelerate this trend, S. 2541 provides a number of important changes to the Highway Safety Act, which the committee believes will significantly strengthen this legislation. These changes are an outgrowth of a comprehensive review of the Highway Safety Act mandated in 1976 by the Congress. Howard Dugoff, Deputy Administrator of the National Highway Traffic Safety Administration, discussing this review of the Highway Safety Act stated:

> The report's principal recommendations which is incorporate in S. 2541, is that the time has come to shift the emphasis of the program away from compliance with standards and towards the development by the states of methods to identify their own most pressing safety problems and to develop their own specific solutions. . . . In view of the greater sophistication and experience of the states in highway safety, insistence on nationwide uniformity and standards no longer serves the remedial purposes these standards once served in the past.

The Senate Commerce, Science, and Transportation Committee, responding

to the need to allow the States to play a larger role in developing their own highway safety programs to meet their specialized needs, reduced the areas and number of mandatory highway safety standards required under the Highway Safety Act. The committee determined that highway safety standards should be continued as mandatory standards only in the following two circumstances:

First, in those areas of data collection and analysis in which uniformity is critical, such as traffic records, drivers licensing, and vehicle registration;

Second, in those areas where uniform rules of the road and uniform traffic control devices should be required in order to facilitate safe interstate driving.

However, in order to provide greater flexibility to the States in identifying their own needs and solutions and to assist the States in responding to their unique highway safety problems, the committee accepted the Department of Transportation's recommendations and changed a number of previously mandatory highway safety standards into guidelines for the States.

This action to change mandatory standards into guidelines received broad support in the committee's hearings. The American Association of Motor Vehicle Administrators, for example, stated:

> The AAMVA feels that one of the most significant provisions of S. 2541 is the one which would permit states substantially more flexibility in administering their highway safety programs by moving away from mandatory highway safety program standards. We are convinced that the states are able to draw from their own experience—experience gained in the decade that the Highway Safety Act has been in effect—and identify their own problems, devise their own remedies, and to evaluate the results.

The Highway Users Federation also supported this approach by stating:

> The bill wisely provides that each state be permitted to identify their priorities and develop accident countermeasures, in accordance with their specific needs. . . . We believe that the states and communities have developed sufficient administrative and technical skills to carry out a flexible program effectively.

The National Association of Governors' Highway Safety Representatives and Citizens for Highway Safety also supported the guidelines approach.

Mr. President, allowing certain mandatory safety standards to become guidelines does not mean that these programs where appropriate will not continue to be emphasized. Under the provisions of the Highway Safety Act, each State is required to develop a highway safety program designed to reduce traffic deaths and injuries by identifying the major causes of motor vehicle accidents in their particular State and by targeting measures to reduce the frequency and severity of accidents to meet their special needs.

The States, in developing these plans, are to take careful cognizance of the guidelines promulgated by the Secretary of Transportation. It was at the specific request of the National Association of Governors' Highway Safety Representatives that each of these guidelines was to be specifically made a part of the act.

The Secretary of Transportation is directed to evaluate each State's safety program and may "approve the program in whole or in part." The Secretary cannot disapprove a State program merely because it does not meet a specific guideline but only if the program clearly fails to provide adequate highway safety protection.

The guideline approach does not place a State in a straitjacket where it must emphasize a long set of standards whether these standards meet the primary safety needs of that particular State or not. The States, by being required to identify their own priority highway safety needs, will provide the context for an evaluation of their own safety programs.

The committee's actions in regard to the modification of certain mandatory safety standards into highway safety guidelines is, as Howard Dugoff, Deputy Administrator of NHTSA, pointed out in our hearings, merely the completion of a long-term trend by the Congress. Mr. Dugoff stated:

> In our view, S. 2541's treatment of the standards continues a process that has been underway for some time. The Highway Safety Act of 1976 began the move away from the requirement of the strict compliance with the uniform standards by reducing the sanctions which could be imposed for noncompliance with the standards and by making it clear that the Secretary did not have to insist on compliance with every element of every standard. S. 2541 carries the process a step further—an appropriate step further.

The committee believes that providing the States added flexibility in the highway safety area will lead to a more innovative and invigorated program. The States deserve the opportunity to develop their own programs to meet their own special needs, and the fiction that all expertise in the highway safety area resides in Washington, if it ever had currency, should be dispelled once and for all.

To carry out the purposes of the Highway Safety Act of 1978, the committee has provided for a slight increase in the level of authorizations for the various highway safety programs.

Furthermore, the authorizations have been designed to permit a concentration of effort on innovative and high-priority safety programs to be developed and carried out by the States. S. 2541 provides $175 million for fiscal year 1979, $175 million for fiscal year 1980, $200 million for fiscal year 1981, and $200 million for fiscal year 1982 to carry out the purposes of section 402 of the act relating to the authorization of funding of State highway safety programs.

The Secretary of Transportation is provided discretionary authority to provide up to 25 percent of the funding appropriated for the section 402 State highway safety programs to assist the States in carrying out the so-called high-priority highway safety projects.

Although there is no limitation placed on the States in developing other high-priority programs, the Highway Safety Act specifically lists State programs to encourage automobile safety belt use and to expand the enforcement of the national maximum speed limit as high-priority safety programs.

S. 2541 also authorizes the Secretary of Transportation to facilitate highway safety research and development through the National Highway Traffic Safety Administration and the Federal Highway Administration. Continuing research and development in the highway safety area is critical if we are to improve our ability to avoid unnecessary deaths and injuries on our highways.

Also, S. 2541 provides a new program to encourage innovative highway safety programs within the States. This program replaced the incentives grant program that had been previously instituted by the Highway Safety Act. The American Association of Motor Vehicle Administrators strongly supported this new approach stating:

> Incentive grants were one of the methods proposed in the Highway Safety Act in 1973 as a positive means of offsetting the negative concepts inherent in funding sanctions. However, states have found that decreases in traffic fatalities and mileage death rates are not necessarily appropriate measures of a States overall commitment to highway safety. The incentive program has beeen controversial from the outset and has evolved into a virtual lottery for the funding that has been appropriated. Therefore, our Association supports the concept of authorizing the Secretary of Transportation to award grants for innovative approaches to highway safety problems to supplant the incentive programs.

The legislation also provides a program for increased enforcement of the 55 mph national maximum speed limit. It has been shown that the maximum national speed limit not only saves energy, but lives as well. The legislation provides for graduated minimum standards to measure the effectivness of States speed limit programs. The Secretary of Transportation is directed to reduce the States apportionment of its noninterstate highway construction funds in the amount of up to 5 percent in fiscal year 1981 through 1983 and up to 10 percent in fiscal year 1984 and all succeeding fiscal years, in the event that a State does not meet the minimum compliance goals of the 55 mph speed limit.

To assist the States in meeting these minimum standards. The compliance standards have been delayed for a year and the final compliance level has been lowered from 85 percent, as originally provided to a 75 percent compliance level beginning in 1982. Furthermore, the Secretary of Transportation is directed to promptly apportion to a State any funds which have been withheld due to failure to meet the percentage requirements if subsequently the Secretary determines that the percentage of motor vehicles in such State exceeding 55 miles per hour has dropped to the level specified for the fiscal year for which the funds were withheld.

The 55 mph maximum national speed limit has imposed a new and significantly increased enforcement responsibility on the State agencies charged with assuring compliance. Therefore, the committee has provided a funding mechanism to assist the States in carrying out this important program. The Department of Transportation has reported that their studies demonstrate that to an ever increasing degree motorists are ignoring the 55 mph maximum speed

limit. If the Federal Government does not provide assistance to the States in order to enforce these provisions, it is likely that the life saving and energy saving protections of the speed limit will be seriously diminished.

The International Association of Chiefs of Police have strongly argued that the States will need assistance from the Federal Government if they are to be able to meet these requirements. Mr. Richard L. Burke, the general chairman of the International Association of Chiefs of Police, has stated:

The national maximum speed limit program will fail if the required Federal assistance is not forthcoming." Thus, State police organizations strongly support authorizations of funding to assist the States in carrying out their 55 mph maximum speed limit enforcement programs as provided in our legislation. Joe Howell, Vice President for Government Relations of the All State Insurance Company, has also written in support of this need for funding stating, "Without adequate Federal assistance to the States, it is unlikely that this program can accomplish the needed results.

There is no question in regard to the safety impact of the 55 miles per hour maximum speed limit. Vincent L. Tofany, President of the National Safety Council testified at our hearings that:

The National Safety Council was one of the most ardent proponents of the 55 mph speed limit when it was initially proposed. Council studies in 1974 and 1975 after the speed limit became national—demonstrate conclusively that speed reduction accounted for more than half of the fatality reductions.

But if the 55 miles per hour program is allowed to become a mockery, which is ignored by the vast majority of motorists, then its salutary effects will be completely destroyed. These provisions will assist in assuring its adequate enforcement.

Mr. President, I believe that S. 2541 provides the basis for a well balanced and strengthened highway safety program. I strongly urge my colleagues to lend it their support.

Mr. President, I now yield to the Senator from New Mexico, minority manager on this subject.

Mr. SCHMITT. Mr. President, I want to congratulate the Committee on Commerce and its distinguished chairman (Mr. CANNON) for their action on this measure. There is no question, as the distinguished Senator from Nevada has said, that the Federal Government and the States must work together and share the responsibility to the people of their States to seek ways to make our highways more safe. Thousands die on the highways each year, and many, many more are injured. It has always troubled this Senator to see the care with which we treat, for example, our activities in space in order to prevent the loss of even one life and yet continue to allow, as the Senator has indicated, in 1977, 49,200 persons killed and 1,900,000 injured on our highways.

Mr. President I feel, as I am sure all Americans feel, that this toll of death and injury on our highways is totally unacceptable.

I believe that if the people of this country, the States, and the Congress work together, there is no question that we can make great progress in reducing these far too great numbers.

In 1966, Congress enacted the Highway Safety Act. This act directed the Secretary of Transportation to issue standards for State highway safety programs. The amount of Federal funding a State received under this program depended upon its compliance with the standards issued by the Secretary. As a result, the States have developed a framework for their highway safety programs which has helped to reduce highway fatalities and injuries.

States are now seeking more flexibility for their highway safety programs. The National Highway Traffic Safety Administration has been most responsive to the recommendations that the Highway Safety Act be amended to allow for such flexibility. The Senate Committee on Commerce, Science, and Transportation has worked with the National Highway Traffic Safety Administration to develop a bill which has the support of the National Safety Council, the Highway Users Federation, Citizens for Highway Safety, the American Driver and Traffic Safety Education Association, and many State transportation departments.

S. 2541, the Highway Safety Act of 1978, will strengthen State highway programs by encouraging States to identify and pursue programs which are most suitable for their needs.

The bill requires each State to have a highway safety program to reduce traffic deaths and injuries. However, the areas in which uniformity through compliance with Federal standards is required is restricted to those areas for which State-by-State uniformity is essential.

Mr. President, I cannot emphasize that particular aspect of this bill too much.

Apportionment of Federal funds under S. 2541 is the same except for two important differences. One difference is that the Secretary is not allowed to withhold funds for a State highway program if he approves the program in whole or in part. The prior act allowed the Secretary to reduce a State's apportionment if the State did not have an approved program or was not implementing the approved program.

Another difference is that S. 2541 allows the Secretary to apportion up to 25 percent of the funds appropriated to the States for carrying out high priority safety programs.

S. 2541 requires that States apportion funds to its political subdivisions and that they assist their political subdivisions in the effective use of funds.

The bill provides authorization for appropriations for highway safety research and development. It also authorizes appropriations allowing the Secretary to make grants to those States which develop the most innovative approaches to highway safety problems.

S. 2541 is a progressive step in highway safety and reflects the Federal Government's responsiveness to the individuality of the States. I urge the Senate to approve this measure.

Mr. President, I want to thank Senator FORD, who is chairman of the Consumer Subcommittee which held hearings on this bill, and Senator RIEGLE, who, in particular, was active in hearings on this bill, for their efforts.

I thank the Senator from Nevada for yielding.

AMENDMENT 1703

(Purpose: To delete section 3 of the bill relating to the 55 m.p.h. speed limit. To clarify that appropriations for grants relating to innovative highway safety problem resolution are from the Highway Trust Fund)

Mr. CANNON. Mr. President, I send to the desk two technical amendments and ask that they be stated and treated en bloc.

The PRESIDING OFFICER. The amendment will be read.

The legislative clerk read as follows:

The Senator from Nevada (Mr. CANNON) proposes an unprinted amendment numbered 1703

Strike all from page 17, line 17, through page 20, line 11, and on page 20, line 12, strike "4" and insert "202".

On page 12, line 24, insert immediately after "subsection," the following "out of the Highway Trust Fund".

Mr. CANNON. Mr. President, the first technical amendment would effectuate the colloquy which Senator RANDOLPH and I held earlier regarding the deletion of the provisions from the second title (relating to highway safety) of the 55-mile-per-hour national maximum speed limit enforcement standards. This deletion is requested by the committee due to the fact that an identical provision is already contained in title I. This deletion will, therefore, avoid duplication.

The second technical amendment to the Highway Safety Act is offered in order to clarify that authorizations for appropriations from the Highway Safety Act for grants to States for innovative safety programs in section 410(e)(2) of the act would be derived from the highway trust fund. This amendment would conform these provisions to the rest of the act.

The PRESIDING OFFICER. Is all time yielded back?

Mr. CANNON. I yield all time back on the amendments.

Mr. SCHMITT. Mr. President, I yield back the time of the Senator from New Mexico.

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

The amendment was agreed to.

Mr. CANNON. Mr. President, I am prepared to yield all time back on title II.

Mr. SCHMITT. Mr. President, I yield back my time, also.

The PRESIDING OFFICER. Are there further amendments to title II? There being no further amendments, the bill is automatically set aside.

● Mr. HATHAWAY. Mr. President, I very much appreciate the work of the Committee on Environment and Public Works with regard to the authorization measure for Federal-aid highway programs through fiscal year 1980, the Senate report of which is now pending.

I particularly appreciate the efforts of the committee with respect to section 139 which authorizes a discretionary bridge fund from which the Secretary may pro-

vide assistance for costly, high traffic volume bridges over major waterways.

As the committee acknowledged in its report language, a prime example of the need for this discretionary fund is the drawbridge across the Fore River between Portland and South Portland, Maine. The present bridge has four traffic lanes and provides the major transportation link between Portland, Maine's largest city, and the cities and towns to the south and southwest.

The Fore River under the bridge is an important commercial waterway. Tankers carrying the vast majority of petroleum products for the State pass through the navigation opening in the bridge for offloading at receiving docks upriver and subsequent distribution throughout the State. The navigation opening in the bridge consists of two bascule leaves which are raised to create a maximum horizontal opening of 98 feet. This clearance restricts the size of the vessels which can navigate the upper portion of the Fore River. The heavy traffic through the narrow passage in the bridge has resulted in many collisions with damages to the bridge structure and to ships. Each collision brings problems and causes prolonged delays for vehicular traffic across the bridge, including ambulances and emergency equipment.

The threat of oil spills and the potential for permanent closing of the bridge and blockage of the channel providing almost all of the petroleum products consumed in Maine are of great concern. Collision with the bridge or malfunctions in the drawbridge have already caused extensive traffic congestion. Each time the bridge is closed for repairs approximately 30,000 vehicles daily are detoured.

The Portland bridge was included on the inventory of structurally deficient and functionally obsolete bridges prepared by the U.S. Department of Transportation. Officials in the Maine Department of Transportation, and the communities of Portland and South Portland have recognized the need for a new high-level bridge which can accommodate the increased volume of both vehicular and ship traffic. The lack of funding for the project has been the major concern of those faced with replacing the bridge. Present estimates for replacement costs have been as high as $70 million.

I am hopeful that the discretionary fund established under section 139 will enable the communities of Portland and South Portland to address a problem which otherwise might be beyond their financial capability.●

BIKEWAY PROGRAM

● Mr. PACKWOOD. Mr. President, today the Senate will enact new legislation to correct two longstanding defects in U.S. transportation policy. Not only have we not encouraged bicycle use as an alternative to energy guzzling cars, we have not developed, to any significant extent, the means for bicycle safety.

Countless cycling deaths and injuries are caused each year, because of this country's past failure to plan ahead for safe bicycle use. Only today the Washington Post reported two additional fatalities caused by car/bicycle collisions.

The bicycle program, section 134 of S. 3073, of the Federal Aid Highway Act of 1978 is a significant advance in U.S. transportation alternatives. It creates for the first time in our history a commitment to expanded use of bicycles and bike safety.

In brief, the Secretary of Transportation would accept applications from State and local governments for deserving projects to advance bicycle use. Seventy percent of approved projects would be funded by the Federal Government and 30 percent would come from the applicant. The $20 million authorized under this plan would be available only for bikeway projects, not highways or other transportation.

Several people deserve our gratitude for this provision. First, the members of the Senate Environment and Public Works Committee who unanimously accepted the concepts of my original bill, S. 1495. Second, I would like to thank the 23 cosponsors of that bill who have continually helped me gain support for the plan. They are Senators ABOUREZK, BELLMON, CASE, CHAFEE, DOMENICI, DURKIN, GRAVEL, HART, MARK HATFIELD, HATHAWAY, JAVITS, JOHNSTON, LEAHY, MCGOVERN, MOYNIHAN, PELL, RIBICOFF, SARBANES, SPARKMAN, STAFFORD, STEVENS, STONE, and THURMOND.

More importantly, I should thank the many cycling enthusiasts of Oregon to whom I dedicate this new measure. The State has spent 1 percent of its highway budget on bikeways for several years now and with this Federal legislation the benefits of that expenditure could be tripled.

I ask that the bicycle program, section 134 of S. 3073, be printed at this point.

The material follows:

BICYCLE PROGRAM

SEC. 134. (a) Not more than one year after the date of enactment of this Act, the Secretary shall publish guidelines for the submission of applications for grants under subsection (b) of this section. Such guidelines shall include, but are not limited to, information on—

(1) improvements to elements of existing transportation systems such as roads and shoulders, traffic control devices, and transit vehicles, which improvements enhance the safety of bicycling and enourage the use of bicycles as a means of transportation; and

(2) design criteria for bikeways, including criteria for pavements, adequate widths, sight distances, lighting and maintenance, and appropriate design speeds and grades.

(b) The Secretary is authorized to make grants to States and to political subdivisions thereof for projects and programs which (1) are consistent with guidelines published pursuant to subsection (a), or (2) prior to publication of such guidelines, reflect current state of the art design or educational standards, and which can reasonably be expected to enhance the safety and use of bicycles.

(c) The Federal share of any project or program for which a grant is made under subsection (b) shall not exceed 70 per centum.

(d) Grants made under this section shall be in addition to any sums available for bicycle projects under section 217 of title 23, United States Code.

(e) There is authorized to be appropriated to the Secretary to carry out subsection (b), for each of the fiscal years ending September 30, 1979, and September 30, 1980, $20,000,000 out of the Highway Trust Fund, to remain available until expended.

(f) Section 109(f) of title 23 United States Code, is amended by adding after the words "median strips", the following: "accommodation of bicycle and pedestrian traffic,".

(g) Section 109 of title 23, United States Code, is amended by adding a new subsection as follows:

"(l) The Secretary shall not approve any project which reduces bicycle or pedestrian access to or use of routes for travel from one place to another to any greater extent than access to motorized vehicles is reduced unless the project includes or unless there already exists a safe, direct, and convenient alternative route for bicyclists and pedestrians.".

(h) Section 217 (a) of title 23, United States Code, is amended to read as follows:

"(a) To encourage energy conservation and the multiple use of highway rights-of-way, including the development, improvement, and use of bicycle transportation and the development and improvement of pedestrian walkways on or in conjunction with highway rights-of-way, the States may, as Federal-aid highway projects or in conjunction or connection with other Federal-aid highway projects, construct new or improved lanes, paths, or shoulders; traffic control devices; shelters; and parking facilities to serve bicycles and persons using bicycles, and pedestrian walkways. Sums apportioned in accordance with paragraphs (1), (2), and (6) of section 104 (b) of this title shall be available for bicycle projects and pedestrian walkways authorized under this section and such projects shall be located and designed pursuant to an overall plan which will provide due consideration for safety and contiguous routes.".

(i) Section 217(d) of title 23, United States Code, is amended to read as follows:

"(d) The Secretary shall establish by regulation, design and construction standards for bicycle projects authorized under this section including criteria for pavements, adequate widths, sight distances, lighting, appropriate design speeds and grades, and provisions for adequate maintenance to be set forth in the project agreement entered into pursuant to section 110 of this title. No motorized vehicles shall be permitted on trails and walkways authorized under this section except for maintenance purposes and, when snow conditions and State or local regulations permit, snowmobiles.".●

THE ESSENTIAL GAP PROGRAM OF THE FEDERAL HIGHWAY ADMINISTRATION (FHWA) AND S. 3073

● Mr. INOUYE. Mr. President, my distinguished colleagues, I would like to bring an issue of great importance to my State, the 50th State of the United States, Hawaii, to the attention of the chairman of the Transportation Subcommittee of the Environment and Public Works Committee, Mr. LLOYD BENTSEN of Texas.

The executive branch of Hawaii's State government recently completed a review of Federal laws and regulations, in response to my request and that of Governor Ariyoshi, which may be discriminatory toward Hawaii.

One of the programs targeted, as a result of this study, is the interstate gap program of the Federal Highway Administration (FHWA), under the Federal-aid Highways Act of 1976.

Although this matter is thoroughly discussed in a memorandum from the State director of transportation, Dr. Ryokichi Higashionna, to the State director of the department of budget and finance, Ms. Eileen Anderson, I would like to highlight a few pertinent items from this document and I ask that the document,

itself, be made a part of the RECORD at the appropriate place.

Section 102(b) of the Federal-aid Highway Act of 1976 requires that at least 30 percent of the interstate apportionments made to each State for each of the fiscal years ending September 30, 1978 and 1979, be expended for the construction of intercity portions. These portions are intended to close what are termed, "essential gaps." The objective of this provision is to expedite the construction of gaps on a basic system of interconnected interstate routes to accommodate long-distance interstate travel in order to provide a continuous system.

The report to the Congress, dated October 1976, on the interstate gap study prepared by the Federal Highway Administration (FHWA), indicated that Hawaii does not have essential segments on its interstate system. The report determined this on the basis that—

All interstate routes in Hawaii were excluded from consideration in this report, since they are not connected to the continental portion of the Interstate System.

I believe that this action on the part of the Federal Highway Administration is blatantly unfair. I do not agree with this criteria as I believe, along with Hawaii's officials, that insularity alone should not automatically preclude Hawaii from qualifying for essential segments.

Mr. BENTSEN. Mr. INOUYE, it is my understanding that this matter could then be resolved administratively by the Federal Highway Administration. That is, FHWA officials could simply make a determination in-house that Hawaii could qualify for funding under the essential gap program. Is that not correct?

Mr. INOUYE. Mr. BENTSEN, it is my understanding that responsible officials in the State of Hawaii have appealed to the FHWA to add the uncompleted portions of H–1 and H–3 to the subject gap program and that their appeals have been rejected by the FHWA.

Their principal reason for the rejection is that the gap program is to complete interstate rather than intrastate gaps.

FHWA has stated that it will hold its position on rejection based on their initial interpretation of section 102(b) of the Federal-aid Highway Act of 1976. They have suggested, in fact, that any further appeal would best be made through Hawaii's congressional delegation.

Mr. BENTSEN. Mr. INOUYE, for the record, if Hawaii were a contiguous State, do you believe that it would qualify for funding under the essential gap program?

Mr. INOUYE. Yes, I believe that it would for several reasons.

In regard to the unconstructed portions of Interstate Routes H–1 and H–3 the reasons are as follows:

A. H–1: Pearl Harbor Interchange to Kahauiki Interchange (Middle Street).

One. This is the last remaining link on H–1 to be implemented. Portions of it are under construction now, and others will be ready for construction soon.

As indicated in the "Report to Congress" of October 1976, page 1, last paragraph, titled "Route Selection and Criteria," some of the principal criteria are:

A. Connecting routes to major transportation terminals such as International seaports, airports . . .

B. In urban areas portions already open to traffic or portions with the highest probability of early completion or the least unconstructed mileages . . .

I believe that this section of H–1 more than meets these two criteria. In addition, there are other pertinent reasons:

Second. The completion of this final "link" will also relieve the heavily congested traffic that currently exists on Moanalua Road. Moanalua Road, is the only other major facility that parallels H–1, which interconnects Leeward and central Oahu with Metropolitan Honolulu.

Third. With the center of population being shifted toward central Oahu (which is consistent with the city's growth policy), closing of this essential gap will provide the needed service to the motorists between leeward and central Oahu, and urban Honolulu.

Fourth. This "link" has the potential of providing multimodal service. In the high occupancy vehicle (HOV) context and specifically in terms of the pending action to dedicate exclusive HOV lanes from Kunia Interchange all the way to the vicinity to Aiea, the essentiality of this link cannot be overstated. This would be particularly relevant should the fixed guideways system not materialize for whatever reasons.

B. H–3 TRANS-KOOLUA SECTION

First. This is the portion that was delayed for many years. The final environmental impact statement (EIS) is now being finalized, and the State will be ready for preparation of construction plans immediately after approval of the EIS.

With Hawaii (specifically Oahu) being the defense center of the Pacific, the completion of H–3 will be vital in that it will provide the most direct connection with the major military installations of Schofield Barracks, Hickham Air Force Base, Pearl Harbor Naval Shipyard, and the Kaneohe Marine Corps Air Station, as well as with the CINCPAC Headquarters in Camp Smith.

Second. Completion of H–3 will relieve the present congestion on Pali and Likelike Highways.

Third. H–3 will provide the mass transit capability. Pali and Likelike Highways lack the flexibility for such a transportation mode.

Fourth. Windward Oahu will continue to develop, because the Oahu general plan permits further development.

Fifth. H–3 will provide the needed intercity connectivity between the two major population centers—Metropolitan Honolulu and Kailua-Kaneohe.

Based on the above reasons, I feel that the exclusion of Hawaii from the essential gap program may not be fair from the standpoint of application of the FHWA's own criteria, as well as the potential of delaying needed transportation services to our citizens.

In addition, the situation, from the standpoint of the State government, may be much more critical if the final 1978 highway-transit legislation continues to contain the stipulation that 50 percent of the interstate apportionment will be based on cost to complete essential gaps.

Mr. BENTSEN. Well, I can see your point about H–1 and I think that the Federal Highway Administration should make an about-face on its determination, because it appears that it does discriminate against Hawaii solely on the basis of its uniqueness as an island State and a noncontiguous State. In addition, it is my understanding that FHWA officials have approved as essential gaps every other route connecting cities with major airports.

With regard to your points about H–3 and the justification for its consideration as an essential gaps based on, I believe, national security reasons, we will have to have the FHWA look into the matter further.

I thank the Senator for bringing these matters to my attention.●

● Mr. HOLLINGS. Mr. President, in matters of fundamental justice and human rights involving the citizens of our Nation, there should be no left or right, liberal or conservative. But today, under the Constitution and laws of the United States there exists an injustice, a denial of democracy so blatant that it can no longer be ignored. Over 700,000 Americans living in the District of Columbia have no voice in the decisions of the U.S. Senate and House of Representatives.

This should not be a Democratic issue or a Republican issue. It should be an American issue. At least 115 nations of the world have elected national legislatures. Virtually without exception, they do not discriminate against residents of their capital cities with respect to representation in the national legislature. Of 17 nations with Federal systems of government, only 3 have capital cities unrepresented in the legislature and one of these, Nigeria, is currently formulating plans to provide representation. That leaves only Brazil and the United States in the position of denying their citizens a basic tenet of liberty.

This very sad commentary on the political rights of Americans in the Nation's Capital needs to be corrected without delay.

The goal I favor is full voter representation in Congress for the District of Columbia—two Senators and two Representatives based on the area's current population. The proposal has been endorsed by both parties and national polls show strong support for this action across the country. A look at the alternative brings home the necessity of passage of this bill.

Enfranchisement of the District was not an issue our Founding Fathers had to face. They could hardly foresee that the sparsely settled marshy area along the Potomac River selected in 1800 for our National Capital would one day be home to over 700,000 people. In the late 1700's, there were only a few thousand residents, who came to Washington on short-term basis while keeping their voting rights in their native States.

But today, the District of Columbia pays more Federal taxes than 19 of our States and more per capita than the residents of 47 States. District citizens have fought and died in all the Nation's wars. They have endured both taxation and conscription without representation.

Yet, what do the opponents of this amendment offer the District residents in lieu of full voting representation? They want to carve up the area and "return" the non-Federal land to Maryland. But the District has not been a part of Maryland since 1800. Its people do not identify with Maryland. They want and deserve representation in their own right, not as an artificial combination in a State with which they have no historical attachment.

Thanks to the dedicated efforts of bipartisan supporters in the House of Representatives, the U.S. Senate has an opportunity to renew our commitment to the fundamentals upon which our Nation was founded. Two hundred years ago, Edmund Burke warned Parliament that:

> Taxation without representation is injustice and oppression. It brought on the American Revolution and gave birth to a free and mighty nation.

Perhaps we need to pause and reflect on these words of wisdom as we have a chance to once again end injustice and oppression in the capital of freedom.●

HIGHWAY BRIDGE REPLACEMENT

● Mr. CULVER. Mr. President, I would like to ask Mr. RANDOLPH, the distinguished chairman of the Committee on Environment and Public Works and author of the special bridge replacement program to clarify for the record the legislative intent concerning the use of funds under this program to replace structures that accommodate both vehicular and railroad traffic.

The No. 2 priority for replacement in the State of Iowa under the special bridge replacement program is the bridge at Keokuk. The Federal Highway Administration considers this bridge—which is only 17 feet, 10 inches wide—to be functionally obsolescent for vehicular traffic. The Iowa Department of Transportation (IDOT) is in the final stages of selecting a consultant for preliminary planning of a new bridge and will soon undertake the necessary environmental impact statement study. IDOT's timetable calls for construction of a new bridge to begin in 1981.

IDOT has entered into an agreement with the city of Keokuk to allow continued use of the present bridge as a railroad crossing. This is possible since the bridge, although obsolete for motor vehicle traffic, is capable of accommodating railroad traffic in an effective and orderly fashion.

There has been concern that special bridge replacement funds might not be used to construct a new replacement bridge if the existing one is to remain in use. The special bridge replacement program was instituted to enable States to replace their worst structurally deficient or obsolete bridges. the Federal Highway Administration program manual, Transmittal 50, August 7, 1974, states:

> Whenever a deficient bridge is replaced by a new bridge under the special bridge replacement program the deficient bridge will be closed to vehicular traffic at the earliest possible date following the opening of the replacement bridge.

These guidelines clearly indicate that only vehicular traffic must be phased out on the existing bridge. Nothing in these guidelines, or the legislative history of the special bridge replacement program, suggests that an existing bridge must be closed to nonvehicular traffic such as railroads.

The continued ability of the Keokuk bridge to safely and efficiently accommodate railroad traffic is unquestioned. The Senate's consideration of the Federal-aid highway legislation provides a good opportunity to reaffirm that a new bridge can be constructed with special bridge replacement program funds while the existing structure can remain open to railroad traffic.

I would appreciate the thoughts of the distinguished chairman of the Committee on Environment and Public Works on this subject.

Mr. RANDOLPH. Mr. President, I say to the distinguished Senator from Iowa (Mr. CULVER) that he raises an important question. Under the special bridge program, we have not addressed the issue of joint use bridges. It is not the intent under this program to force the closing of a bridge which could be used for a nonhighway transportation mode.

The Keokuk bridge certainly should not be closed when it can be used for rail transportation across the Mississippi River.●

ORDER OF PROCEDURE

Mr. ROBERT C. BYRD. Mr. President, there will be no more rollcall votes today. There will be rollcall votes beginning early tomorrow on the District of Columbia representation amendment, however.

ROUTINE MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that there now be a period for the transaction of routine morning business, and that Senators may speak during routine morning business for up to 5 minutes each.

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

MESSAGES FROM THE PRESIDENT

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

REPORT ON INTERNATIONAL TRANSFERS OF TECHNOLOGY—MESSAGE FROM THE PRESIDENT—PM 212

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report, which was referred to the Committee on Foreign Relations:

To the Congress of the United States:

I transmit herewith the report on international transfers of technology required by section 24(c) of Public Law 95–92, the International Security Assistance Act of 1977.

JIMMY CARTER.

THE WHITE HOUSE, *August 21, 1978.*

COMMUNICATIONS

The PRESIDING OFFICER laid before the Senate the following communications, together with accompanying reports, documents, and papers, which were referred as indicated:

EC–4211. A communication from the Acting Director, Defense Security Assistance Agency, reporting, pursuant to law, on the Navy's proposed Letter of Offer to Iran for Defense Articles estimated to cost in excess of $25 million; to the Committee on Armed Services.

EC–4212. A communication from the Deputy Assistant Secretary of Defense (Installations and Housing), reporting pursuant to law, on five construction projects to be undertaken by the Air National Guard; to the Committee on Armed Services.:

EC–4213. A communication from the Deputy Assistant Secretary of Defense (Installations and Housing), reporting, pursuant to law, on a construction project to be undertaken by the Naval and Marine Corps Reserve; to the Committee on Armed Services.

EC–4214. A communication from the Acting Secretary of the Navy, transmitting a draft of proposed legislation permitting ten persons, citizens and subjects of the Kingdom of Saudi Arabia to receive instruction at the United States Naval Academy, and for other purposes; to the Committee on Armed Services.

EC–4215. A communication from the Acting Secretary of the Navy, transmitting a draft of proposed legislation to amend title 10, United States Code, to remove the statutory restriction on the strength and distribution in grade of officers designated for limited duty on the active lists of the Navy and the Marine Corps; to the Committee on Armed Services.

EC–4216. A communication from the Secretary of Transportation, transmitting, pursuant to law, a report entitled "Highway Needs to Solve Energy Problems"; to the Committee on Environment and Public Works.

EC–4217. A communication from the Secretary of Agriculture, reporting, pursuant to law, on review of primitive areas in the National Forest System and appropriate areas for redesignation to Class I where air quality related values are important attributes of the area; to the Committee on Environment and Public Works.

EC–4218. A communication from the chairman, Agricultural Technical Advisory Committee for Trade Negotiations on Dairy, transmitting, pursuant to law, the committee's report on the Agreement on Trade Matters Between the United States and the United Mexican States, signed in Washington, D.C., on December 2, 1977; to the Committee on Finance.

EC–4219. A communication from the Assistant Secretary (Legislative Affairs), Department of State, transmitting, pursuant to law, project performance audit reports prepared by the International Bank for Reconstruction and Development (IBRD), the Group of Controllers' evaluation reports by the Inter-American Development Bank (IDB), and post-evaluation reports by the Asian Development Bank (ADB); to the Committee on Foreign Relations.

EC–4220. A communication from the Assistant Administrator for Legislative Affairs, Agency for International Development, Department of State, transmitting, pursuant to

law, notification of an increase in the funding level of the proposed 1978 Caribbean Regional program; to the Committee on Foreign Relations.

EC–4221. A communication from the Assistant Administrator for Legislative Affairs, Agency for International Development, Department of State, transmitting, pursuant to law, notification of an increase in the funding level of the proposed fiscal year 1978 program in Guyana; to the Committee on Foreign Relations.

EC–4222. A communication from the Acting Assistant Legal Adviser for Treaty Affairs, Department of State, transmitting, pursuant to law, international agreements other than treaties entered into by the United States within 60 days after the execution thereof; to the Committee on Foreign Relations.

EC–4223. A communication from the Deputy Assistant Secretary, Policy, Budget, and Administration, Department of the Interior, reporting, pursuant to law, modification to a system of records for personnel research records, Interior OS–98, published April 14, 1978; to the Committee on Governmental Affairs.

EC–4224. A communication from the Assistant Secretary for Administration, Department of Housing and Urban Development, transmitting, pursuant to law, a report on a Privacy Act System of Records; to the Committee on Governmental Affairs.

EC–4225. A communication from the Comptroller General of the United States, transmitting, pursuant to law, a report entitled "Import Duties and Taxes: Improved Collection, Accounting, and Cash Management Needed," August 21, 1978; to the Committee on Governmental Affairs.

EC–4226. A communication from the Comptroller General of the United States, transmitting, pursuant to law, a report entitled "U.S. Economic Assistance for Israel," August 18, 1978; to the Committee on Governmental Affairs.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. LONG, from the Committee on Finance, with an amendment and an amendment to the title:

H.R. 1337. An act to amend the Internal Revenue Code of 1954 with respect to excise tax on certain trucks, buses, tractors, et cetera (Rept. No. 95–1127).

By Mr. CANNON, from the Committee on Commerce, Science, and Transportation, without amendment:

H.R. 13235. An act for the relief of James Thomas Lantz, Jr., David D. Bulkley, and Arthur J. Abshire (Rept. No. 95–1128).

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. ROBERT C. BYRD (for Mr. EASTLAND), from the Committee on the Judiciary:

William E. Pitt, of Utah, to be U.S. marshal for the district of Utah.

(The above nomination from the Committee on the Judiciary was reported with the recommendation that it be confirmed, subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

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. RIEGLE:

S. 3438. A bill for the relief of Sonia Maria Alvarado Marin and Maria Virginia Alvarado Marin; to the Committee on the Judiciary.

By Mr. CHAFEE:

S. 3439. A bill to amend the Controlled Substances Import and Export Act to exercise more fully the jurisdiction of the United States; to the Committee on the Judiciary.

By Mr. LAXALT:

S. 3440. A bill to transfer the administration of Ruby Lake National Wildlife Refuge, Nevada, in the State of Nevada; to the Committee on Energy and Natural Resources.

By Mr. ZORINSKY (for himself, Mr. ANDERSON, Mr. ABOUREZK, and Mr. MELCHER):

S.J. Res. 155. A joint resolution to increase the price support for milk, wheat, corn, soybeans, and cotton to not less than 90 per centum of the respective parity prices therefor, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. CHAFEE:

S. 3439. A bill to amend the Controlled Substances Import and Export Act to exercise more fully the jurisdiction of the United States; to the Committee on the Judiciary.

CONTROLLED SUBSTANCES IMPORT-EXPORT ACT AMENDMENTS OF 1978

● Mr. CHAFEE. Mr. President, I was astounded to discover that loopholes in U.S. drug laws have prevented U.S. authorities from prosecuting nearly all drug smugglers apprehended beyond the territorial waters of the United States. This has opened the door to the safest and most lucrative smuggling techniques now used by international drug runners.

One of the primary reasons we find ourselves in this situation is that Congress left gaps in the law when it passed the Controlled Substances Import and Export Act in 1970 (Public Law 91–513).

Under that law, the United States has authority over any individual apprehended within the U.S. territorial waters which extend 3 miles off our coast. We also have criminal jurisdiction over American citizens or anyone aboard an American-owned vessel on the high seas if it can be proved that there was intent to smuggle contraband into the United States. But because intent is difficult to prove in a court of law, there are few successful prosecutions in such cases.

We do not, however, have jurisdiction over U.S. citizens or foreign nationals who simply possess drugs in international waters. While the law permits seizure of contraband and seizure of vessels transporting it, there are virtually no prosecutions of individuals apprehended for smuggling on the high seas.

Mr. President, today I am introducing S. 3439, the Controlled Substance Import and Export Act Amendments of 1978, a bill which will bring many of these international smugglers under jurisdiction of U.S. criminal law for the first time. No longer will drug runners be able to lurk outside the arbitrary line of a 3- or 12-mile territoral line and operate with inpunity.

I think most Americans would be amazed to know the magnitude of these smuggling operations. There is a well-organized, well-financed multibillion dollar a year industry in the import of illicit drugs. We are not talking any more about kids who drive across the border to Mexico and come back with a few pounds of marihuana and cocaine stuffed under the floorboards of their van.

We are now seeing a new kind of smuggling operation involving full scale, commercial freighters known as "mothership." These vessels range from 100 to 300 feet in length. Their primary cargo, loaded on the coast of Colombia, is commonly 50 to 60 tons of marihuana and smaller, though valuable, quantities of cocaine. The vessels are usually registered in a foreign country, and some of them, while not officially registered, fly the flags of a number of nations. The crews are usually of South American nationality.

Typically, these "motherships" take one of several routes from Colombia, between or around the Carribean Islands, to the United States. They remain carefully outside the 12-mile Customs enforcement zone, and thereby, outside U.S. criminal jurisdiction. At various designated points along the coast, anywhere from Brownsville, Tex., to the tip of Maine, the "motherships" rendezvous with smaller, faster boats which pick up portions of the cargo and run them back to shore. The runner boats are usually owned and operated by U.S. citizens and easily blend in with the thousands of pleasure craft and fishing boats along our coastline.

Obviously, Mr. President, the slim risk of being caught and prosecuted does not deter many individuals from the enormous profits that are made from a successful operation. Despite the fact that U.S. drug enforcement officials have confiscated more than 3.1 million pounds of marihuana during the first three-quarters of fiscal year 1978—twice as much as was seized all last year—there has been no noticeable effect on its price at the retail level. And U.S. officials estimate that they intercept only about 10 percent of the flow.

In testimony presented before a House Subcommittee on July 27, 1978, Stuart Seidel, Assistant Chief Counsel for the U.S. Customs Service, commented on the new style of operation:

> There are several factors accounting for this new trend by the marijuana smuggler—the continuing Mexican eradication program has made the Colombian marijuana more attractive, the use of large vessels enable the smuggler to transport vast quantities of the bulky marijuana relatively cheaply, the extensive Southeastern coastline offers easy, undetected access to the United States, and gaps and inadequacies in our present law make successful prosecutions difficult. Thus, smuggling by vessel has become the new modus operandi of the drug smuggler.

It is interesting to note that as recently as 1976, marihuana seizures along our Mexican border accounted for 60 percent of the total seizures made by Customs in the United States. By 1978, however, that figure dropped to a mere 7 percent, while seizures in the Gulf and Southeastern Atlantic equaled 89 percent of the national total. It is also interesting that, while the actual number of seizures

of heroin, cocaine, and marihuana have decreased in the first three-quarters of fiscal year 1978 from the same time a year ago, the quantities seized have increased dramatically.

No other single incident has illustrated this trend more vividly than the August 6, 1978 seizure of a stateless vessel called the "Heidi". The vessel, 165 feet in length, contained a record 225,469 pounds of marihuana. The crew members, all South Americans, will simply be deported and given a free plane ride back home.

In a coordinated enforcement action called Operation Stopgap earlier this year, the U.S. officials confiscated 900,000 pounds of Colombian marihuana, 33 vessels, 6 aircraft, 18 land vehicles, 3 hydraulic presses and $15,000 in cash in a 45-day period. The brilliant success of Operation Stopgap is only dimmed by the fact that of the 220 persons apprehended, only 4 have been or will be prosecuted—all Americans arrested in U.S. territory. The rest have been deported. Some of these individuals, Mr. President, have been apprehended five times before under similar circumstances. They are sent home and they are back up here on the next boat.

So, what does all this mean? What are we being called upon to do about it?

I do not have any visions about ridding the world of heroin, cocaine, marihuana, and other contraband. But I do think that we in Congress have the responsibility to bring the individuals who manufacture, possess or distribute illegal drugs for import to the United States, both our citizens and foreign nationals, as far within the grasp of U.S. criminal law as possible.

The legislation I have introduced will accomplish a large part of that objective. I am also happy to be a cosponsor of a bill by Senator CULVER which takes other important steps in that direction.

My bill has been carefully worked out over the past 6 weeks with officials of the U.S. Customs Service and with the Senate Legislative Counsel, and I would like to take a moment to outline its provisions.

DEFINITIONS

My bill first adds new definitions to the opening section of the Controlled Substances Import and Export Act. In its current form, the act fails to include the broadest possible definition of a "vessel under the jurisdiction of the United States," and herein lies one of its major weaknesses.

My language would bring under U.S. jurisdiction the following:

First. Any vessel documented under laws of the United States, or owned in whole or in part by a citizen or corporation of the United States;

Second. Any vessel on the high seas registered in a foreign country if that country authorizes the United States to assert jurisdiction;

Third. Any vessel without nationality;

Fourth. Any vessel within U.S. customs waters, which currently extend 12 miles off shore, or within a U.S. customs enforcement area which may be established pursuant to the Anti-Smuggling Act of 1935 (49 Stat. 517);

Fifth. Any vessel which is a hovering vessel, described in the Tariff Act of 1930 as a vessel which is kept off the U.S. coast, either inside or outside customs waters, if it is reasonable to believe that it is being or may be used for smuggling; and

Sixth. Any vessel which flies more than one flag and thereby loses the right to claim any nationality under article 6 of the Convention on the High Seas.

TRANSPORTATION

Section 3 of my bill tightens the Controlled Substances Import and Export Act by adding a prohibition against transporting illegal drugs into or within U.S. customs waters. This accompanies the current provision against importing contraband into U.S. territory.

POSSESSION

Section 4 of my bill is perhaps the key provision. For the first time, it makes possession of illicit drugs on board any vessel, aircraft or vehicle that is subject to jurisdiction of the United States a Federal offense, regardless of where it may be located.

UNLAWFUL TRANSFER

Section 5 makes it unlawful for any person to transfer a controlled substance to any vessel under jurisdiction of the United States or any vessel bound for the United States.

UNLAWFUL IMPORTATION

Section 6 makes it illegal to manufacture, possess or distribute any controlled substance intending or knowing that it will be unlawfully imported into the United States.

PENALTIES

Section 7 simply brings the new factors introduced by my bill—the transportation, the transfer from one vessel to another, and the possession of controlled substances—under the penalties of the existing law. In the case of narcotic substances, it calls for the person committing a violation to be imprisoned up to 15 years, or fined $25,000, or both.

Mr. President, I believe my bill presents the most complete set of amendments to the Controlled Substances Import and Export Act yet devised for the purpose of closing loopholes in the law which inhibit the prosecution of professional, large-scale drug smugglers. I strongly urge the Senate to adopt my proposal along with others which are being developed for a coordinated approach to the growing problem of international drug trafficking.

I ask unanimous consent that the text of my bill be printed in the RECORD.

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

S. 3439

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 "Controlled Substances Import and Export Act Amendments of 1978".

DEFINITIONS

SEC. 2. Section 1001(a) of the Controlled Substances Import and Export Act is amended by adding at the end thereof the following:

"(3) The term 'high seas' includes all parts of the sea included in such term by Article 1 of the Convention on the High Seas, done on April 29, 1958.

"(4) The term 'vessel of the United States' means—

"(A) any vessel documented under the laws of the United States, or numbered as provided by the Federal Boat Safety Act of 1971;

"(B) any vessel owned in whole or in part by the United States, by any citizen of the United States, or by any corporation created by or under the laws of the United States, or by or under the laws of any State, territory, district, commonwealth, or possession thereof; or

"(C) any vessel of United States nationality within the meaning of Article 5 of the Convention on the High Seas, done on April 29, 1958.

"(5) The term 'vessel subject to the jurisdiction of the United States' includes—

"(A) any vessel without nationality;

"(B) any vessel assimilated to a vessel without nationality in accordance with the provisions of paragraph (2) of Article 6 of the Convention on the High Seas, done on April 29, 1958;

"(C) any vessel within the customs waters, as defined in section 401 of the Tariff Act of 1930, of the United States and any vessel within a customs enforcement area established pursuant to section 1 of the Act entitled 'An Act to protect the revenue of the United States and provide measures for the more effective enforcement of the laws respecting the revenue, to prevent smuggling, to authorize customs-enforcement areas, and for other purposes', approved August 5, 1935 (49 Stat. 517);

"(D) any vessel on the high seas registered in a foreign country if such country authorizes the United States to assert jurisdiction on such vessel for the purposes of enforcing this title;

"(E) any vessel of the United States; or

"(F) any vessel which is a hovering vessel within the meaning of section 401 of the Tariff Act of 1930.".

UNLAWFUL IMPORTATION OR TRANSPORTATION

SEC. 3. Section 1002 of the Controlled Substances Import and Export Act is amended—

(1) by amending the heading to read as follows:

"IMPORTATION OR TRANSPORTATION OF CONTROLLED SUBSTANCES";

(2) in subsection (a), by striking out "It shall be unlawful to import into the customs territory of the United States from any place outside thereof (but within the United States), or to import into the United States from any place outside thereof," and inserting in lieu thereof "It shall be unlawful for any person within or without the United States to import or transport into the customs territory of the United States from any place outside thereof, or for any person within or without the United States to import or transport into the United State from any place outside thereof,";

(3) in subsection (b), by striking out "It shall be unlawful to import into the customs territory of the United States from any place outside thereof (but within the United States), or to import into the United States from any place outside thereof," and inserting in lieu thereof "It shall be unlawful for any person within or without the United States to import or transport into the customs territory of the United States from any place outside thereof, or for any person within or without the United States to import or transport into the United States from any place outside thereof,"; and

(4) by adding at the end thereof the following:

"(d) It shall be unlawful for any person within or without the United States to aid or facilitate the commission of any offense de-

scribed in subsection (a) or (b) of this section.".

POSSESSION ON BOARD VESSELS, AIRCRAFT, OR VEHICLES

SEC. 4. Section 1005 of the Controlled Substances Import and Export Act is amended—

(1) by amending the heading to read as follows:

"POSSESSION ON BOARD VESSELS, AIRCRAFT, OR VEHICLES";

(2) by inserting immediately after "customs territory of the United States," the following: "or on board any vessel or aircraft, or on board any vehicle of a carrier, subject to the jurisdiction of the United States, wherever such vessel, aircraft, or vehicle is located,".

UNLAWFUL TRANSFER

SEC. 5. The Controlled Substances Import and Export Act is amended by inserting after section 1005 the following:

"UNLAWFUL TRANSFER

"SEC. 1005A. It shall be unlawful for any person outside the United States to transfer a controlled substance from any vessel to a vessel bound for the United States and for any person within or without the United States to transfer any such substance from any vessel to a vessel subject to the jurisdiction of the United States.".

MANUFACTURE, DISTRIBUTION, OR POSSESSION FOR PURPOSES OF UNLAWFUL IMPORTATION

SEC. 6. Section 1009 of the Controlled Substances Import and Export Act is amended—

(1) by striking out in the heading "MANUFACTURE OR DISTRIBUTION" and inserting in lieu thereof "MANUFACTURE, DISTRIBUTION, OR POSSESSION";

(2) by inserting in the first sentence immediately after "schedule I or II" a comma and the following: "or to possess a controlled substance in schedule I or II aboard a vessel subject to the jurisdiction of the United States"; and

(3) by striking out in the second sentence "manufacture or distribution" and inserting in lieu thereof "manufacture, distribution, or possession".

PROHIBITED ACTS—PENALITIES

SEC. 7. Section 1010 of the Controlled Substances Import and Export Act is amended—

(1) by striking out "imports or exports" and inserting in lieu thereof "imports, transports, or exports" in paragraph (1);

(2) by striking out "or" at the end of paragraph (2); and

(3) by striking out paragraph (3) and inserting in lieu thereof the following:

"(3) contrary to section 1005A, transfers from one vessel to another a controlled substance, or

"(4) contrary to section 1009, manufactures, distributes, or possesses a controlled substance.".

By Mr. LAXALT:

S. 3440. A bill to transfer the administration of Ruby Lake National Wildlife Refuge, Nevada, to the State of Nevada; to the Committee on Energy and Natural Resources.

● Mr. LAXALT. Mr. President, today, I am introducing legislation which will transfer management authority of the Ruby Lake National Wildlife Refuge, Nevada, from the U.S. Fish and Wildlife Service to the State of Nevada's Fish and Game Department. A recent permanent restraining order issued by the U.S. District Court, District of Columbia, prohibiting the use of powerboats unless they are 10 horsepower or less in the Ruby Lake Wildlife Refuge has compelled me to take this action.

Mr. President, this decision to severely restrict recreational boating activities at the refuge, resulted from the environmental impact assessment on boating at the Ruby Marshes completed by the U.S. Fish and Wildlife Service. The EIA maintained that boating is adversely affecting the nesting canvasback and redhead ducks with conflicts occurring during site selection, initial and renesting attempts, and the brooding period. Since that time, Mr. President, my eastern Nevada constituents as well as myself, have been wrangling constantly over the past several years with the U.S. Fish and Wildlife Service over regulations sharply restricting recreational powerboating on the Ruby Marshes.

At this point, I would like to point out that all Nevadans agree that the wildlife at the Ruby Marshes should be protected, and that the Fish and Wildlife Service, after listening to State and local concerns, had drawn up regulations that would have protected the wildlife and its habitat and still allowed some recreational opportunities for my eastern Nevada constituents. Additionally, my discussions with people who have long experience with the Ruby Marshes, and whose judgment I have always considered to be sound, has led me to the opinion that this proposed action is taken without justification or valid scientific supporting data. Information provided to me about waterfowl populations at the Ruby Marshes reveals that waterfowl production has not been adversely impacted by the recreational usage as claimed.

The Fish and Wildlife Service released figures which prove that there has been no significant interference with waterfowl production. Waterfowl production figures prepared by the then Ruby Marsh Wildlife Refuge manager during January 1976, show that the redhead and canvasback duck production has increased 209 percent over the 10-year period 1964 to 1974. Mr. President, I ask that the Ruby Lake National Wildlife Refuge waterfowl production figures be printed in the RECORD at the end of my statement.

Further, Mr. President, I directed my staff to research this matter. A book was brought to my attention entitled "Ducks, Geese, and Swans of North America". It is a textbook written by Frank C. Belrose, a research associate in the Illinois National History Survey and author of more than 60 articles and papers devoted to waterfowl, makes some pertinent points.

The book, sponsored by the Wildlife Management Institute, maintains there are only about 900 canvasbacks breeding in Nevada, of about 10,000 breeding in the intermountain region. Although the text is no more specific, a chart in the book, which breaks down breeding population areas to locations of 5,000 canvasbacks, areas less than 5,000 are "minor breeding areas". The book shows eastern Nevada with "less than 5,000", thus the Ruby Marshes barely qualifies as a "minor breeding areas."

Concerning redheads, the book says that only "minor breeding populations occur in the Ruby Mountains of eastern Nevada." This indicates fewer than 1,000 birds. Here again, the accompanying charts in the text indicates the Ruby Marshes as only a "minor breeding area."

Further, it was brought to my attention that the duck population figures used by the U.S. Fish and Wildlife Service and others are highly misleading and are a result of airplane flights over the marshes, which the birds were eyeballed by "trained" observers. Consequently, as a result of this research I could not support the conclusions of the U.S. Fish and Wildlife. I feel the Environmental Impact Assessment is biased. It is without adequate factual data upon which a sound decision for a policy change can be based, and it is without solid evidence of any need for such a change.

Mr. President, the restraining order prohibiting the use of powerboats unless they are 10 horsepower or less will practically eliminate boating at the Ruby Marshes. It will eliminate use of the marshes by women, small children, disabled people, and senior citizens who do not want to risk the hazard of small boat usage or the physical strain of rowing.

As I previously mentioned, Mr. President, the Fish and Wildlife Service has persisted in this campaign to restrict recreational boating at the Ruby Marshes for the past several years, and the recent maneuver in the district court is obviously, at least to me, a result of a collusion between the U.S. Fish and Wildlife Service and the defenders of wildlife. Quitely frankly, my eastern Nevada constituents and I did not expect the Fish and Wildlife Services to perform a very admirable job of defending our interests in the Washington court, which has proved to be the case.

Almost every one of my eastern Nevada constituents that I have talked to in regard to this matter is seriously concerned about the recreational loss that will be suffered. They are not only disturbed, but angry about this action which will deny them access to one of the two areas within reasonable travel time providing them with water recreational activities. It is obvious to me that eastern Nevadans want the policies regarding the management of the Ruby Marshes to be in terms of a multiple-use concept. I, as their elected representative, am concerned with their desires, and wish to go on record at this time supporting policies and procedures that will develop a multiple-use concept at the Ruby Marshes.

At this point, I would like to point out that on a national scale the Ruby Marshes are not significant in size. On the local level, however, the Ruby Marshes is extremely significant in view of the lack of sufficient water resources for recreational use in the area. It contains only 37,631 acres, which is insignificant when compared to the total refuge system. And of these 37,631 acres, boating is allowed in the 7,000-acre south sump. Powerboating is effectively permitted on only about 3,500 acres, with 30 acres used as a ski pond. Mr. President, I cannot believe this could cause any serious disruption of the whole marsh or disrupt waterfowl populations.

Let me assure my colleagues, Mr. Pres-

ident, that my eastern Nevada constituents are interested in the wildlife and the waterfowl aspects of the Ruby Marshes and are not attempting to harm the wildlife or reduce the production of waterfowl. Rather, we mutually believe that the Ruby Marshes can accommodate wildlife habitats, waterfowl production, powerboat fishing, and recreational boating without an impact of serious consequences on the wildlife and waterfowl.

Mr. President, the EIA used for the district court's restraining order was inconclusive as far as determining the effects of boating recreational use on duck production and brood survival at the Ruby Marshes. The EIA gave no consideration to the fact that fluctuations in nesting and brood survival are also related to weather conditions, food availability, predator loss, and alternative routes. It is also my understanding that the majority of canvasback and redhead nesting is completed by the time powerboating is allowed and becomes popular at the Ruby Marshes. There is just a lack of solid evidence that can positively identify boat disturbances as the cause of canvasback and redhead nesting or brood failure. Thus, Mr. President, it is my view that the court's decision was prejudiced and not based on adequate information.

Mr. President, the legislation I am now introducing will insure that the problems of the Ruby Marshes will be dealt with by Nevadans who are familiar with these problems. In my view, the Nevada Department of Fish and Game is well qualified to deal with these problems rather than Washington bureaucrats. There is no doubt in my mind that both ducks and eastern Nevada sportsmen will benefit from this proposal to transfer authority for managing the Ruby Marshes to the State of Nevada.

Mr. President, I sincerely hope that the committee and the Senate will act expeditiously on this legislation. I ask unanimous consent that the bill be printed in the RECORD.

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

RUBY LAKE NATIONAL WILDLIFE REFUGE WATERFOWL PRODUCTION

Year	Redheads	Canvasbacks	Total other ducks	Coots
1938	(1)	(1)	(1)	(1)
1939	(1)	(1)	(1)	(1)
1940	(1)	(1)	(1)	(1)
1941	(1)	(1)	(1)	(1)
1942	2,000	2,500	7,660	7,500
1943	1,000	3,000	5,514	9,000
1944	800	3,500	4,150	2,000
1945	800	5,000	4,150	2,000
1946	400	200	1,550	200
1947	(1)	(1)	(1)	(1)
1948	100	150	1,150	1,500
1949	200	100	600	500
1950	694	587	1,320	793
1951	600	700	1,245	500
1952	600	500	1,365	800
1953	1,000	800	1,830	3,000
1954	600	700	1,310	1,200
1955	450	500	1,190	1,000
1956	450	400	1,110	1,000
1957	379	340	983	3,290
1958	622	556	1,124	3,870
1959	500	800	4,145	3,000
1960	1,800	1,050	2,640	6,500
1961	500	150	3,225	2,000
1962	90	28	1,190	2,500
1963	500	1,000	2,030	5,170
1964	300	800	2,200	6,000
1965	1,100	600	1,980	4,000
1966	1,170	850	4,395	8,000
1967	1,000	750	3,860	6,500
1968	900	2,500	4,300	7,000
1969	1,860	1,220	2,780	3,000
1970	2,635	2,550	2,680	7,500
1971	1,687	1,778	3,274	1,739
1972	3,870	2,350	7,110	4,400
1973	2,000	2,255	4,410	1,790
1974	1,280	2,035	3,035	3,670
1975	800	1,200	1,430	2,500

(1) No data.

S. 3440

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That on or before the expiration of the twelve-month period following the date of submission to the Secretary of the Interior of an application by the State of Nevada requesting the Secretary of the Interior to take such action as may be necessary to transfer to the State of Nevada all control and jurisdiction over tne area comprising Ruby Lake National Wildlife Refuge, Nevada, the Secretary of the Interior shall transfer such control and jurisdiction over such Wildlife Refuge to the State of Nevada and such refuge shall be administered by such State agency as may be designated by the Governor of the State of Nevada, and in accordance with the applicable laws of the State of Nevada.

SEC. 2. The following laws and conventions shall not be applicable to Ruby Lake National Wildlife Refuge, Nevada:

(1) Act of September 28, 1962, as amended (16 U.S.C. 460k);

(2) Endangered Species Act of 1973;

(3) Migratory Bird Conservation Act;

(4) Migratory Bird Treaty Act;

(5) Chapters 5 and 7 of title 5, United States Code;

(6) Fishery Conservation and Management Act of 1976;

(7) Marine Mammal Protection Act of 1972;

(8) Minnesota Valley National Wildlife Refuge Act;

(9) National Wildlife Refuge System Administration Act of 1966;

(10) Executive Order Numbered 7923, dated July 7, 1938;

(11) Convention for the Protection of Migratory Birds of August 16, 1916;

(12) Convention for the Protection of Migratory Birds and Game Mammals of February 7, 1936; and

(13) Convention for the Protection of Migratory Birds and Birds in Danger of Extinction, and Their Environment of March 4, 1972.

By Mr. ZORINSKY (for himself, Mr. ANDERSON, Mr. ABOUREZK, and Mr. MELCHER):

S.J. Res. 155. A joint resolution to increase the price support for milk, wheat, corn, soybeans, and cotton to not less than 90 per centum of the respective parity prices therefor, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

● Mr. ZORINSKY. Mr. President, today I am introducing a joint resolution to dictate price supports of at least 90 percent of parity for several major commodities.

Congress long ago gave the Secretary of Agriculture authority to raise price support loan levels to 90 percent of parity for wheat, corn, soybeans, cotton, and milk. Until the Agricultural Act of 1949, as amended, he has the necessary authority to adjust Commodity Credit Corporation loan levels to keep pace with inflation and increasing costs of production. However, the administration has chosen not to use this authority. Instead the President and Secretary Bergland have elected to maintain inadequate and outdated price supports for these vital commodities.

The American Agriculture Movement has worked tirelessly during this past year to convince Congress and the American consumer that the survival of the family farm depends upon higher prices for their produce. The movement's efforts were in many ways successful. They have publicized the plight of American agriculture. They have won public backing for higher farm prices. Surveys conducted this spring by a national pollster indicated that most American consumers would be willing to pay a few more cents for basic food stuffs so that the farmer could receive an adequate price for his goods. The AAM gained Senate approval of a scheme to provide farmers with 100 percent of parity.

Nevertheless, farm prices remain abysmally low. The administration has done nothing to raise price support levels. American farmers still wonder how they can scrape together enough cash to eke out a living one more year.

Today, Mr. President, I raise once again the need for more realistic price supports. America's farmers cannot afford to let this critical issue die. At the request of the American Agriculture Movement I am introducing this joint resolution, which parallels a resolution introduced in the House by Congressman RICHARD NOLAN of Minnesota.

There is little need to reiterate here the arguments in favor of parity prices. It suffices to say that the cogent reasons presented by our Nation's farmers only a few months ago are the same today. Despite the claims of the Carter administration, grain, cotton, and milk prices remain depressed. Production costs continue to climb well above current prices.

American farmers want and need parity prices. They deserve them. The economic health of the Nation and one of our largest and most productive industries depends on more realistic price supports. We have delayed long enough. We now should hasten to support the hand that feeds us.●

ADDITIONAL COSPONSORS

S. 2388

At the request of Mr. JAVITS, the Senator from Montana (Mr. MELCHER), the Senator from California (Mr. HAYAKAWA), and the Senator from Indiana (Mr. BAYH) were added as cosponsors of S. 2388, a bill to amend the Internal Revenue Code of 1954 to provide for the exclusion from gross income of certain employer educational assistance programs.

S. 3285

At the request of Mr. TOWER, the Senator from Idaho (Mr. MCCLURE) was added as a cosponsor of S. 3285, a bill to amend the Internal Revenue Code by extending the investment tax credit to certain agricultural structures.

AMENDMENT NO. 3241

At the request of Mr. FORD, the Senator from South Carolina (Mr. HOLLINGS), the Senator from Texas (Mr. BENTSEN), the Senator from Montana (Mr. MELCHER), the Senator from Missouri (Mr. DANFORTH), and the Senator from New Hampshire (Mr. DURKIN) were added as cosponsors of amendment No. 3241, intended to be proposed to S. 3229, a bill to amend title 39 of the United States Code to improve the organizational structure of the U.S. Postal Service, and for other purposes.

AMENDMENT NO. 3409

At the request of Mr. PERCY, the Senator from Ohio (Mr. METZENBAUM), the Senator from Idaho (Mr. CHURCH), and the Senator from Colorado (Mr. HASKELL) were added as cosponsors of Amendment No. 3409 intended to be proposed to S. 991, to prevent the transfer of child nutrition programs from USDA to the Department of Education.

AMENDMENT NO. 3458

At the request of Mr. MUSKIE, the Senator from Indiana (Mr. BAYH), the Senator from New Mexico (Mr. DOMENICI), the Senator from Tennessee (Mr. SASSER), and the Senator from North Carolina (Mr. MORGAN) were added as cosponsors of Amendment No. 3458 intended to be proposed to S. 2441, a bill to amend the Urban Mass Transportation Act of 1964.

SENATE RESOLUTION 431

At the request of Mr. PERCY, the Senator from Oklahoma (Mr. BELLMON) was added as a cosponsor of Senate Resolution 431, the Lee Metcalf Fair Employment Relations Resolution.

AMENDMENTS SUBMITTED FOR PRINTING

CIVIL SERVICE REFORM ACT OF 1978—S. 2640

AMENDMENT NO. 3514

(Ordered to be printed and to lie on the table.)

Mr. PELL submitted an amendment intended to be proposed by him to S. 2640, a bill to reform the civil service laws.

● Mr. PELL. Mr. President, the Senate will soon be considering S. 2640, the Civil Service Reform Act of 1978. Legislation to modernize the civil service is long overdue, and I support this bill. I believe, however, that the Foreign Service should be exempted from its provisions just as the uniformed military services, the intelligence agencies, and the FBI are. I am, today, submitting an amendment to accomplish that objective; and I ask unanimous consent that the text of my amendment as well as an analysis of it be printed in the RECORD immediately following my remarks.

The Foreign Service is an "excepted service" established originally under the Rogers Act of 1924 and now governed by the Foreign Service Act of 1946, as amended. The centerpiece of S. 2640 is the creation of a new Senior Executive Service (SES), a governmentwide senior management pool consisting of civil servants above GS–15 or its equivalent, which in the Foreign Service is FSO–3. In the case of the Foreign Service, the SES would be superimposed on an existing personnel structure that is totally different from the Civil Service. Such an action, I submit, would do severe damage to the Foreign Service and undermine the conduct of American diplomacy.

The fundamental difference between the Foreign Service and the civil service is that the former is a vertically oriented career service organized along the lines of the military services with a comparable rank structure with grades equivalent to second lieutenants and ensigns on up to to four-star generals and admirals. The Foreign Service, along with the military services, operates on the basis of a rank-in-person system with mandatory rotation among jobs on a worldwide availability basis and with recruitment at the bottom and advancement up the career ladder as the individual officer's experience and performance merit it. The civil service, on the other hand, is organized laterally on the basis of categories such as "senior management"; and its personnel are recruited to fill a particular job in a particular location. Advancement is accomplished in the civil service's rank-in-job structure by applying for and obtaining a higher ranked position.

The SES would embody a rank-in-person system allowing—but not mandating as does the Foreign Service—periodic reassignments, and then only at the senior levels. This is a step forward as compared with the present civil service system, but there is no need to impose it on an already existing Foreign Service system which employs these concepts at all grade levels.

Not only is there no need to superimpose the SES on the Foreign Service, but to do so would destroy the unified nature of the Foreign Service and thus weaken it as a tool for the conduct of our country's diplomacy.

The pursuit of our national objectives in the area of foreign policy requires a Foreign Service system which trains people in diplomacy throughout their careers, which provides essential experience in service abroad, and which can count on the availability of professionally trained and experienced personnel to senior positions in Washington and abroad. This, of course, requires the availability of senior positions to be filled by personnel who spend their professional lives developing the necessary skills and experience to assume senior responsibilities. If, in addition to political appointees, another non-Foreign Service route to the top in the foreign affairs field is created, I fear that much of the incentive for able people to enter and then to put up with the many hardships of Foreign Service life would disappear.

A decrease in opportunities for Ambassadors would be particularly harmful. In recent years, about 70 percent of our Embassies have been headed by career Foreign Service officers, and the remaining 30 percent by political appointees. Application of the SES system to the Foreign Service could further reduce the percentage of Ambassadorships held by Foreign Service officers. Such a reduction would not only reduce the incentive for people to enter and remain in the Foreign Service, but it would also further dilute the ranks of professionally trained and experienced diplomats holding Ambassadorships. That, in my view, would be harmful to the conduct of American diplomacy.

It could be argued that for every lost opportunity for ambassadorships or senior posts in the Washington foreign affairs agencies a new opportunity would be opened elsewhere in the Government for Foreign Service personnel entering the SES. Once, however, a Foreign Service officer is appointed to a position in another agency under the SES system, there is no guarantee that he will ever return to his parent foreign affairs agency; thus his or her skills could be lost forever to the Department of State, the International Communication Agency, or the Agency for International Development. I favor assignments of Foreign Service personnel to other agencies, but it would be better, in my view, to continue with the present system whereby a certain number of Foreign Service officers are detailed to other agencies for a specific, limited period of time and then return to Foreign Service positions.

In addition to the SES, other provisions of S. 2640 should not apply to the Foreign Service, because comparable provisions already apply to the Foreign Service under the Foreign Service Act of 1946. These other provisions of S. 2640 relate to merit system principles, prohibited personnel practices, personnel oversight, grievance handling, and adverse actions. My amendment would exempt the Foreign Service from these provisions as well.

Mr. President, the need for a disciplined and unified Foreign Service is as strong today as it was when the Foreign Service Act of 1946 was passed. Unless the Foreign Service is exempted from S. 2640, it would face the same problem that would confront the military services if their senior ranks above colonel and Navy captain were put into a separate organization. A disciplined service has to be a unified service. The congressional founders of the Foreign Service realized that, and my amendment will serve to keep intact the structure which they considered so important to the conduct of our foreign relations.

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

ANALYSIS OF AMENDMENT TO S. 2640

(1) On page 133, line 21, immediately before the semicolon, insert ", the Foreign Service of the United States".

ANALYSIS

This amendment excludes the Foreign Service from the chapter on merit system principles, prohibited personnel practices, and General Accounting Office responsibilities. The Foreign Service has its own merit system, personnel practices, and oversight under separate statute and regulations directed toward the special needs and responsibilities of the Service. The Foreign Service is a rank-in-person system requiring different approaches to achievement of merit and

other personnel objectives than those based upon a rank-in-job system such as the Civil Service.

(2) On page 167, after line 7, insert the following new section:

"S. 1208. Exception for the Foreign Service

"This chapter shall not apply to the Foreign Service of the United States.".

ANALYSIS

This section would except the Foreign Service from the authority of the Merit Systems Protection Board and Special Counsel since the Foreign Service has its own such body (the Board of the Foreign Service) and officer (Director General of the Foreign Service) to oversee personnel policies and practices. This includes disciplinary authority (section 637 of the Foreign Service Act) and a special grievance system for protection of employees (sections 691–694 of the Foreign Service Act).

(3) On page 175, line 15, strike out ", and" and insert in lieu thereof:

"; or"

"(D) an individual whose position is in the Foreign Service of the United States; and".

ANALYSIS

This amendment would exempt the Foreign Service from the adverse action provisions of the bill carrying a penalty of suspension for 30 days or less. The Foreign Service differs from the Civil Service both in what may constitute adverse actions and in procedures for initiating and appealing them. Under section 637 of the Foreign Service Act separation for cause procedures include a hearing and other special steps designed for the Service. In addition, the provisions of the bill would duplicate remedies available to the Service through the statutory grievance system designed for it.

(4) On page 178, line 14, strike out the period and insert in lieu thereof:

"; or

"(5) whose position is in the Foreign Service of the United States.".

ANALYSIS

The first amendment excludes members of the Foreign Service from the Senior Executive Service. The second is consequential to the first. The Foreign Service is by law an excepted, rank-in-person service already, but it is subject to special requirements and has its own oversight body, disciplinary provisions, and performance incentives which make inclusion of some of its members in the Senior Executive Service undesirable. The inclusion of top Foreign Service officers in the Senior Executive Service, for example, would disrupt the Foreign Service promotion system, which is designed to move people from entry level to the top through competition with their peers in the Foreign Service.

(5) On page 203,

(a) at line 2, immediately after "position", insert: "(other than a position in the Foreign Service of the United States)".

(b) at line 17, strike out "Except for a position in the Foreign Service" and capitalize "the" immediately after the deleted phrase.

ANALYSIS

The first amendment excludes members of the Foreign Service from the Senior Executive Service. This makes the exception at line 17 unnecessary, so the second amendment deletes it. The Foreign Service is by law an excepted, rank-in-person service already but it is subject to special requirements and has its own oversight body, disciplinary provisions, and performance incentives which make inclusion of some of its members in the Senior Executive Service undesirable. The inclusion of top Foreign Service officers in the Senior Executive Service, for example, would disrupt the Foreign Service promotion system, which is designed to move people from entry level to the top through competition with their peers in the Foreign Service.

(6) On page 258, line 13, immediately after "individual" insert "(other than an individual in the Foreign Service of the United States)".

ANALYSIS

This amendment excepts individual members of the Foreign Service from the categories subject to personnel research and demonstration projects under the direction of the Office of Personnel Management.

These provisions are directed toward improvement of the Civil Service System, and their application to members of the Foreign Service is inappropriate.●

ELEMENTARY AND SECONDARY EDUCATION AMENDMENTS OF 1978—S. 1753

AMENDMENT NO. 3515

(Ordered to be printed and to lie on the table.)

Mr. HEINZ submitted an amendment intended to be proposed by him to S. 1753, a bill to extend the Elementary and Secondary Education Act of 1965, and for other purposes.

● Mr. HEINZ. Mr. President, today I am submitting an amendment to S. 1753, the Elementary and Secondary Amendment of 1978. This amendment seeks to educate our children to employ energy conservation measures in their normal daily activities.

The energy problem facing our Nation today will only worsen as time passes. In the face of our growing dependence on foreign sources and our dwindling supplies, the uncontrollable American appetite for energy must be addressed. I believe it is essential that we instill in our children during their early, formative years the importance of conserving our precious resources whenever possible.

Youngsters can be taught to be less wasteful of energy at home, in the classroom, at play. They can be taught to close the door while the air conditioner is running; to turn out the light when leaving a room; to conserve water. There are hundreds of practical, useful energy saving measures that can be taught to our children. Energy conservation measures can also be woven into regular high school coursework in such classes as home economics and drivers' education. For example, I am aware of high school students in Delaware County, Pa., who have been taught to do energy audits of existing buildings. It has also been demonstrated that young people taught to drive using energy efficient techniques repeatedly exceed the EPA mileage estimates for miles per gallon of gasoline.

The amendment I introduce today would place specific emphasis on use of the discretionary fund of the Commissioner of Education for the purpose of making grants and contracts to develop curricula and disseminate information on energy conservation and to train personnel to teach energy conservation subject matter to elementary and secondary school children.

I believe the adoption of this amendment, which addresses one of the most critical concerns of our Nation today, will help to insure that our Nation's energy supplies will be used in the wisest, most efficient way.

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

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

AMENDMENT No. 3515

On page 134, between lines 15 and 16 insert the following:

"(c) The Commissioner is also authorized, from the amount available for the purpose of this section, to make grants and enter into contracts for the development of curricula, and the dissemination of information relating to the improvement of teaching energy conservation to elementary and secondary school children and for the training of personnel to teach energy conservation to such children. In carrying out the provisions of this subsection, the Commissioner shall use to the maximum extent practicable materials developed by the Department of Energy, the Community Services Administration, and the Department of Housing and Urban Development.

On page 134, line 16, strike out "(c)" and insert in lieu thereof "(d)".●

AMENDMENT NO. 3516

(Ordered to be printed and to lie on the table.)

Mr. HEINZ submitted an amendment intended to be proposed by him to S. 1753, supra.

● Mr. HEINZ. Mr. President, the amendment which I submit today to the Elementary and Secondary Education Act amendments, S. 1743, is intended to insure that television programs developed under title VI, the Emergency School Aid Act, be of high quality.

I am aware that over the past several years the Office of Education has been successful in the production and development of children's television programs under this act. A recent report from the Office of Education indicated that more than 400 hours of children's television programing have already been produced. This is a sincere effort on the part of OE to employ the most effective medium of instruction in this country to eliminate or prevent segregation and discrimination. It is my intention by this amendment to see that this fine effort continues.

We are all aware that television is having a tremendous impact on our children today. TV competes with us for the attention of our children. TV entertains them; TV instructs them; and TV sometimes misinforms them.

Every week young children in this country spend an average of 23 hours watching TV, and according to a 1976 report, black children watch TV more than white. Much of that time is spent with "adult" rather than "children's" shows. And I am concerned about the unknown effects TV is having on our children.

Our school systems do a fine job of teaching children to comprehend and critically evaluate what they read in books. Book reports are a regular part of a fourth grader's learning activities. But our children are not taught to critically analyze or interpret what they see and hear on TV. I am concerned that TV is

teaching our children that most problems can be solved by violence, and those that are not can be solved by guessing the "Secret Square" and winning a lifetime of prizes.

Considering that TV plays such a crucial role in shaping the emotional and intellectual development of our children, we have a duty to seek and stimulate the highest quality in TV developed and supported by the Government on our children's behalf. TV can be sensitive to the special needs and vulnerabilities of those whom we seek to strengthen.

Mr. President, I hope that by adding the words "high quality" to this section of ESEA, the Office of Education will be encouraged to continue in its quest for excellence in the use of this incredibly effective learning tool.●

AMENDMENT NO. 3517

(Ordered to be printed and to lie on the table.)

Mr. HEINZ submitted an amendment intended to be proposed by him to S. 1753, supra.

AMENDMENT NO. 3518

(Ordered to be printed and to lie on the table.)

Mr. GLENN submitted an amendment intended to be proposed by him to S. 1753, supra.

● Mr. GLENN. Mr. President, the amendment which I now submit to S. 1753, the Elementary and Secondary Education Act Amendments, would insure that individual not be permitted to unfairly benefit from several duplicative educational assistance programs. In short, it would insure that the tuition tax credit, which the Senate has just recently passed, be reduced by the amount of direct Federal higher educational grant assistance.

My amendment would have the same effect as a provision included in the Senate-passed tuition tax credit bill. However, since the House-passed tuition tax credit bill specifically provided that there not be an offset, it cannot be assumed that the Senate conferees will be successful in retaining that provision. With the Senate passage of both the tuition tax credit and the expanded college grant program, there would be an opportunity to double-dip if both bills are subsequently enacted without an offset provision. I believe that we must insure that double-dipping cannot take place. Therefore, I am offering my amendment in order to provide the Senate with an additional opportunity to enact an offset provision.●

AMENDMENTS NOS. 3519 AND 3520

(Ordered to be printed and to lie on the table.)

Mr. ROBERT C. BYRD (for Mr. ABOUREZK) submitted two amendments intended to be proposed to S. 1753, supra.

Mr. ROBERT C. BYRD. Mr. President, on behalf of Senator ABOUREZK, I submit two amendments intended to be proposed by him to S. 1753, the Elementary and Secondary Education Amendments of 1978.

I ask unanimous consent that a statement by Senator ABOUREZK be printed in the RECORD, together with the text of the amendments and a section-by-section analysis.

There being no objection, the statement, amendments, and analysis were ordered to be printed in the RECORD, as follows:

STATEMENT OF SENATOR JAMES ABOUREZK

INDIAN EDUCATION AMENDMENT

Before long, we will have the opportunity to consider and vote on the bill, S. 1753, the bill extending the Elementary and Secondary Education Act of 1965. I, along with the Ranking Minority Member of the Select Committee on Indian Affairs which I chair, intend to offer a floor amendment to S. 1753 in the form of an additional Title V.

Our proposed amendment contains important provisions designed to constructively address the present deficiencies in Indian educational programs administered by the Departments of the Interior and Health, Education, and Welfare by implementing long-needed reforms, and by providing the direction and support necessary to realize the attainment of equal educational opportunity for all Indian children. A general description of the bill follows:

Part A amends P.L. 81–874, an HEW program commonly referred to as the Impact Aid Act, by directing that regulations be esbtablished to guarantee local parental and tribal involvement in the education of their children provided by local public schools, a responsibility they specifically desire. Regretfully, such guarantees are needed in those instances where Indians have heretofore been ignored or otherwise restricted from equal participation in the development of educational policies and programs in public schools. In conjunction with this are provisions increasing the resources with which public schools can improve the quality of education they offer to Indian children who reside on non-taxable trust land by increasing the entitlement formulas as applied to such children.

Part B would direct that Interior's Bureau of Indian Affairs establish and implement uniform educational standards and policies in all its schools. It requires the BIA to bring all its educational facilities into compliance with health and safety codes, streamlines the BIA's administrative functions with regard to education, and establishes a uniform and objective formula to equitably distribute funds directly to the schools for their local operations. It states the overall BIA educational policy to be that of facilitating Indian control of Indian education and establishes a special education personnel structure designed to increase local control, responsibility, and accountability for the daily operation and management of educational programs. Finally, Part B requires an annual report to Congress on the status of Indian education, sets up a management information system, and calls for a program to encourage the recruitment of Indian educators.

Part C contains several amendments to existing HEW programs, the purposes of which are to generally improve and perfect these programs administered by the Office of Indian Education.

Without doubt, Mr. President the quality of educational programs being offered to Indian children today is simply and unjustifiably bad. Despite the special relationships existing between the Federal government and Indian tribes, and the resulting Federal trust obligations to provide for Indian educational services, being Indian has meant accepting less than equal educational opportunity. The American Indian Policy Review Commission, established by Congress in 1975, found that—

a. Indians are substantially less educated than non-Indians;

b. education provided to Indians is often irrelevant to their needs and culture;

c. Indians in public schools often fall 2 to 3 years behind non-Indians in achievement levels; and

d. the majority of Indian people have no mechanism for input in the education of their children.

The Commission's special Task Force on Indian Education further found that estimates of Indian dropouts from both BIA and public schools ranged from 25 percent to 75 percent.

In a recently released Issue Brief on Indian Education, the Congressional Research Service of the Library of Congress (Issue Brief No. IB 77111, updated 07/21/78) states that an estimated 360,000 Indian children (including Alaska Natives) received elementary and secondary instruction while enrolled in one of four school systems during the 1975–76 school year. These four school systems include:

The BIA (Bureau of Indian Affairs) Federal Indian school system that enrolled approximately 43,000 Indian students;

The public school systems operated by the various States that enrolled over 300,000 Indian students;

A small, but growing number of previously private "contract schools" operated by Indian-controlled school boards, under agreement with the BIA, that enrolled about 3,000 Indian students; and

Various mission and other private schools that enrolled an estimated 12,000 Indian students.

Within the past 10 years, various studies and reports have expressed dissatisfaction with the direction and quality of the Indian education effort in the United States and have offered various suggestions for improvement. In general, such studies and reports have found that the education opportunities and attainments of Indian students have remained below national averages and that assimilation of the Indian student into the majority society has been overemphasized at the expense of cultural heritage. In 1969, the Senate Special Subcommittee on Indian Education in a summary report, Indian Education: A National Tragedy—A National Challenge, sharply criticized both Federal and public school efforts in Indian education and made 60 specific policy, administrative, and programmatic recommendations. The following year, the USOE-supported National Study of American Indian Education evaluated the various sources of problems in Indian education and the kind of education that Indians want. The National Study also included recommendations in areas such as the Federal responsibility in Indian education, strengthening the Indian curriculum, improving career development programs and teacher recruitment, selection, and training, and Indian school finance. In 1972 and again in 1977, the GAO (General Accounting Office) reported that the BIA needed to improve the quality of its Federal Indian schools to meet the needs of Indian students. Also in 1977, the American Indian Policy Review Commission, established by Congress in 1975 to conduct a 2-year, comprehensive study of the Indian relationship with the Federal Government, issued a final Report on Indian Education that detailed the background of the Federal and State involvement in Indian education and criticized the existing education delivery system as inadequate to meet the needs of Indian people. . . .

With respect to the quality and efficiency of the BIA education system, CRS states that:

In 1975–76, the BIA operated 188 schools that enrolled approximately 45,600 students. Of this total enrollment, about 43,000 were elementary and secondary Indian students attending 144 day schools and 71 boarding schools. In addition, 2,600 postsecondary Indian students were enrolled in three BIA postsecondary schools: Haskell Indian Junior College, the Institute of American Indian Arts, and Southwest Indian Polytechnic Institute.

Despite the efforts of a number of BIA teachers and administrators, the BIA educa-

tion record has been marked over the years by the lower than average achievement and retention rates that characterize Indian education in general. For example, the National Study of American Indian Education reported on a 1968 study of Indian achievement in several BIA schools that found that Indian students scored below the national norm at all grades tested (2, 3, 4, and 5).

The BIA has defined "Indian education" in terms of a process designed to fill the gap between Indian and non-Indian cultures. However, a recent GAO report, Concerted Effort Needed to Improve Indian Education (Jan. 17, 1977), concluded that the BIA education system ". . . has not been designed to fill the gap." Specifically, the GAO report and other investigations found that the BIA education effort appears hampered by a number of administrative and organizational problems, including:

Lack of a comprehensive, up-to-date education policy and strategy designed to meet the various educational needs of Indian students in all BIA schools. (Current BIA educational goals and objectives were last revised in 1953.)

An inadequate management information system for pupil and staff accounting, curriculum assessment, and financial management.

Lack of a BIA-funded program for the handicapped and inadequate counseling resources.

A slow and cumbersome teacher recruitment and replacement process that can take from 2 months to over a year to replace a full-time classroom teacher.

Lack of policy direction and leadership from the BIA central office, due, in part, to constant turnover in the position of Director of Education with 15 different individuals holding this position between 1966 and 1976.

Division of responsibility within BIA that places school construction as well as maintenance and repair outside of the Office of Indian Education and beyond the direct control of a local BIA school principal.

Some also argue that the BIA education effort has been hindered by an overall lack of sufficient funds in recent years, whereas others stress that available funds have been used inefficiently . . . .

With regard to the degree of Indian attainment in the public schools, CRS states that: the largest number of school-aged Indian children, over 300,000 in 1975–76, were enrolled in the elementary and secondary public schools operated within the States. As in the case of the BIA schools, Indian students in the public schools are also characterized by lower achievement and high dropout statistics. The 1966 Coleman report (On Equality of Educational Opportunity), for example, found that Indian children achieved at a lower level than white children at all grade levels tested (grades 1, 3, 6, 9, and 12) and at an increasing rate of underachievement. While accurate dropout statistics for Indian students in the public schools are difficult to obtain, recent Indian dropout estimates from several States with concentrations of Indian students have ranged from 25 percent to over 50 percent.

Of the 300,000 Indian students in public schools in 1975–76, approximately 145,000 were from tribes federally recognized as eligible for special educational assistance from the BIA in addition to any other special educational services from the USOE. The remaining 155,000 Indian students in the public schools in 1975–76 were eligible for special educational services from the USOE, but not from the BIA because (1) they came from tribes not recognized by the Federal Government through treaty or other agreement; (2) they were of less than one-quarter degree Indian blood, or (3) they lived in areas, such as some large cities, not presently served by the BIA.

Financial support for the education of Indian students in the public schools is derived from local, State, and Federal sources. Because of the tax-exempt status of Indian land, many school districts with concentrations of Indian students living on Federal Indian reservations derive less school revenue from local property taxes than is the average for the State. In these cases, the State and Federal revenue sources combine to provide a significant majority of the funds for such Indian-land school districts. For many school districts, however, the number of Indian students is a small proportion of the total student body or the amount of the tax-exempt Indian land is insignificant. In these cases, the relative proportions of the local, State, and Federal contributions will more likely reflect the Statewide pattern. . . .

And finally, CBS addressed the question of the effectiveness of the Indian Education Act by stating that: in comparison with the BIA, the USOE contribution to programs that directly or indirectly benefited elementary and secondary Indian students in the public schools in FY76 was an estimated $150 million (out of the USOE total of $211 million for all Indian aid)—or about five times the BIA contribution level from the JOB program. Most of this total in USOE public school assistance resulted from three formula grant programs: P.L. 81–874 impact aid ($58.5 million), ESEA Title I ($43 million), and Part A of the Indian Education Act ($35 million).

The P.L. 874 impact aid program provides financial assistance to local educational agencies in areas affected by Federal activities. In FY76, P.L. 874 distributed approximately $739 million in general school maintenance and operations revenue to over 4,300 public school districts. In that year, about 85,000 students living on tax-exempt Indian lands in 630 school districts were claimed for the purposes of P.L. 874 with most of this total associated with federally recognized reservation lands.

The ESEA Title I program authorizes financial assistance to school districts to meet the special educational needs of educationally disadvantaged children. Indian children in the public schools participate in the ESEA Title I program to the extent to which they attend Title I target schools and need the special educational services provided.

The Indian Education Act (P.L. 93–318, Title IV, as amended) consists of three principal programs: Part A—Grants to local educational agencies, Part B—Special programs and projects, and Part C—Special programs relating to adult education. In FY 76, the Indian Education Act (IEA) received a total appropriation of $57.1 million, the largest portion of which went to Part A—$35 million. The Part A program authorizes formula grants for planning, developing, and operating supplementary programs designed to meet the special educational needs of Indian children in the public schools. In its supplementary purpose, the USOE-administered Part A program is similar to the BIA-administered JOM supplementary assistance program. Unlike JOM, however, the Part A program is governed by a statutory definition of the term "Indian" which includes students from nonfederally recognized tribes or living in areas, such as many large cities, not served by the BIA. Thus, in 1976, over 300,000 public school Indian students were counted as eligible for entitlements under the Part A program, but only 145,000 of such public school Indian students were recognized for assistance by the BIA under the JOM program.

A 1977 GAO report on the Indian Education Act, Indian Education in the Public School System Needs More Direction from the Congress (March 14, 1977), noted problems in identifying and selecting Indian children under the Part A program, in assessing their special educational needs, and in targeting Part A funds to meet such special needs. Among its recommendations to improve the Part A program, the GAO suggested that USOE strengthen the program regulations and guidelines governing Indian eligibility and that Congress provide a clearer definition of the Indian children to be served. GAO also recommended that USOE improve its monitoring of LEA's (Local Educational Agency) needs assessment under the program and that Congress more precisely determine what are the "special educational needs of Indian children." In addition, GAO suggested that USOE establish measurable program goals by which to judge the effectiveness of Part A projects . . .

Our amendment is designed to begin the process of constructively addressing this overwhelming litany of problems which has been documented repeatedly.

It does not, however, address the merits or demerits of the proposed transfer of BIA educational programs to a new Department of Education as contained in S. 991 presently awaiting floor action. The provisions contained in our amendment represent long-needed internal reforms in both HEW and Interior Indian education programs. In our best judgement, passage of our amendment would not bias in any way the overall question of where these various Indian education programs should be located.

The House recently passed H.R. 15, its companion measure to S. 1753, which contains a major section on Indian education, Title XI. Presently, S. 1753 contains no such provisions. Our proposed amendment is quite similar to Title XI of H.R. 15, but differs in what we feel are some significant and necessary respects. The House Education and Labor Committee built an extensive record on two comprehensive Indian education bills which were subsequently incorporated into the ESEA reauthorization bill as one separate title. In any future conference on S. 1753 and H.R. 15, it is clear that the Senate will have no basis upon which to respond to the House Indian education provisions unless our parallel amendment to S. 1753 is accepted by the Senate.

It is my conviction that, in its consideration of this amendment to S. 1753, the Senate has a rare opportunity to constructively address the many serious problems which have so plagued the government's administration of Indian education services. I, along with Senator Bartlett, urge our colleagues to support our proposed Amendment in the form of an additional Title V to S. 1753.

We are also submitting two amendments to the Adult Education Act which we feel would go a long way toward filling the tremendous educational needs of adult Indians. One would allow the USOE to survey and evaluate needs of all Indian adults, not just those residing on reservations. The other amendment would authorize USOE to make grants for the development and establishment of educational services and programs specifically designed for Indian adults. The present legislation provides for demonstration projects in this area. Our amendment would broaden this part of the legislation and allow for service-type programs.

AMENDMENT NO. 3519

On page 355, strike out lines 1 through 23.

On page 356, line 1, strike out "Part C" and insert "Part B".

On page 377, after line 16, insert the following new title:

TITLE V—INDIAN EDUCATION

PART A—ASSISTANCE TO LOCAL EDUCATIONAL AGENCIES

AMENDMENT TO PUBLIC LAW 874

SEC. 501. (a) Effective with respect to fiscal years beginning on or after the date of enactment of this Act, section 3(d)(2) of the Act of September 30, 1950 (Public Law 874, Eighty-first Congress), is amended by adding at the end thereof the following new subparagraph:

"(D) The amount of the entitlements of any local educational agency under this section for any fiscal year with respect to children who, while in attendance at such agency, resided on Indian lands, as described in clause (A) of section 403(1), shall be the amount determined under paragraph (1) with respect to such children for such fiscal year multiplied by 125 per centum.".

(b) Effective with respect to fiscal years beginning on or after the date of enactment of this Act, section 5(a)(2) of the Act of September 30, 1950 (Public Law 874, Eighty-first Congress) is repealed and section 5(a)(1) of such Act is redesignated section 5(a).

(c) Effective with respect to fiscal years beginning on or after the date of enactment of this Act, section 5(b) of the Act of September 30, 1953 (Public Law 874, Eighty-first Congress), is amended by designating the existing provisions as paragraph (1) and adding the following paragraph:

"(2)(A) Payments of entitlements under section 3(d)(2)(D) of this Act shall be made only to local educational agencies which have, within one year of the date of enactment of this paragraph, or when local educational agencies are formed after such date of enactment, within one year of their formation, established such policies and procedures with respect to information received from the Indian parents and tribes as required by this paragraph and which have made assurances to the Commissioner, at such time and in such manner as shall be determined by regulation, that such policies and procedures have been established. The Commissioner shall have the authority to waive this one-year limit for good cause, and in writing to the Indian parents and tribes.

"(B) Each local educational agency shall establish such policies and procedures as are necessary to insure that—

"(i) Indian children claimed under section 3(a) participate on an equal basis in the school program with all other children educated by the local educational agency;

"(ii) applications, evaluations, and program plans are adequately disseminated to the tribes and parents of Indian children claimed under section 3(a); and

"(iii) tribes and parents of Indian Children claimed under section 3(a) are—

"(I) afforded an opportunity to present their views with respect to the application, including the opportunity to make recommendations concerning the needs of their children and the ways by which they can assist their children in realizing the benefits to be derived from the educational programs assisted under this paragraph;

"(II) actively consulted and involved in the planning and development of programs assisted under this paragraph; and

"(III) afforded a general opportunity to present their overall views on the educational program and the degree of parental participation allowed.

"(c) (i) Any tribe, or its designee, which has students in attendance at a local educational agency may file a written complaint with the Commissioner regarding any action of a local educational agency taken pursuant to, or relevant to, the requirements of subparagraph (B) of this paragraph.

"(ii) Within ten working days from receipt of the complaint, the Commissioner shall—

"(I) designate a time and place for a hearing into the matters relating to the complaint at a location in close proximity to the local educational agency involved, or, if the Commissioner determines there is good cause, at some other location convenient to both the tribe, or its designee, and the local educational agency;

"(II) designate a hearing examiner to conduct the hearing; and

"(III) notify the affected tribe or tribes and the local educational agency involved of the time, place, and nature of the hearing and send copies of the complaint to the local educational agency and the affected tribe or tribes.

"(iii) The hearing shall be held within thirty days of the designation of a hearing examiner and shall be open to the public.

"(iv) The complaining tribe, or its designee, and the local educational agency shall be entitled to present evidence on matters relevant to the complaint and to make recommendations concerning the appropriate remedial actions. Each party to the hearing shall bear only its own costs in the proceeding.

"(v) Within thirty days of the completion of the hearing, the hearing examiner shall, on the basis of the record, make written findings of fact and recommendations concerning appropriate remedial actions (if any) which should be taken. The hearing examiner's findings and recommendations, along with the hearing record, shall be forwarded to the Commissioner.

"(vi) Within thirty days of his receipt of the findings, recommendations, and record, the Commissioner shall, on the basis of the record, make a written determination of the appropriate remedial action, if any, to be taken by the local educational agency, the schedule for completion of the remedial action, and the reasons for his decision.

"(vii) Upon completion of his final determination, the Commissioner shall provide the complaining tribe, or its designee, and the local educational agency with copies of the hearing record, the hearing examiner's findings and recommendations, and the Commissioner's final determination. The final determination of the Commissioner shall be subject to judicial review.

"(viii) In all actions under this subparagraph, the Commissioner shall have discretion to consolidate complaints involving the same tribe or local educational agency.

"(D) If the local educational agency rejects the determination of the Commissioner, or if the remedy required is not undertaken within the time established and the Commissioner determines that an extension of the time established will not effectively encourage the remedy required, the Commissioner shall immediately withhold payment of all moneys to which such local agency is entitled under section 3(d)(2)(D) until such time as the remedy required is undertaken, except where the complaining tribe or its designee formally requests that such funds be released to the local educational agency.

"(E) This paragraph is based upon the special relationship between the Indian nations and the United States and nothing in it shall be deemed to relieve any State of any duty with respect to any citizens of that State.".

(d) Effective with respect to fiscal years beginning on or after the date of the enactment of this Act, section 5(c)(2) of the Act of September 30, 1950 (Public Law 874, Eighty-first Congress), is amended by redesignating clauses (B) through (F) as clauses (C) through (G) and by adding after clause (A) the following new clause:

"(B) to each local educational agency which provides free public education for children who reside on Indian land, as described in clause (A) of section 403(1), which equals 75 per centum of the amount to which such agency is entitled under section 3(d)(2)(D);".

PART B—BUREAU OF INDIAN AFFAIRS PROGRAMS

STANDARDS FOR THE BASIC EDUCATION OF INDIAN CHILDREN IN BUREAU OF INDIAN AFFAIRS SCHOOLS

SEC. 511. (a) The Secretary, in consultation with the Assistant Secretary of Health, Education, and Welfare for Education, and in active consultation with Indian organizations and tribes, shall carry or cause to be carried out by contract with an Indian organization such studies and surveys, making the fullest use possible of other existing studies, surveys, and plans, as are necessary to establish and revise standards for the basic education of Indian children attending Bureau schools and Indian controlled contract schools (hereinafter referred to as contract schools). Such studies and surveys shall take into account factors such as academic needs, local cultural differences, type and level of language skills, geographical isolation and appropriate teacher-student ratios for such children, and shall be directed toward the attainment of equal educational opportunity for such children.

(b)(1) Within fifteen months of the date of enactment of this Act, the Secretary shall propose minimum academic standards for the basic education of Indian children, and shall distribute such proposed standards to the tribes and publish such proposed standards in the Federal Register for the purpose of receiving comments from the tribes and other interested parties. Within eighteen months of the date of enactment of this Act, the Secretary shall establish final standards to all the tribes and publish such standards in the Federal Register. The Secretary shall revise such standards periodically as necessary. Prior to any revision of such proposed revision to all the tribes, and publish such proposed revision in the Federal Register, for the purpose of receiving comments from the tribes and other interested parties.

(2) Such standards shall apply to Bureau schools, and, subject to subsection (e), to contract schools, and may also serve as a model for educational programs for Indian children in public schools. In establishing and revising such standards, the Secretary shall take into account the special needs of Indian students, and shall place a special emphasis on the support and reinforcement of the specific cultural heritage of each tribe.

(c) The Secretary shall provide alternative or modified standards in lieu of the standards established under subsection (b), where necessary, so that the programs of each school shall be in compliance with the minimum standards required for accreditation of schools in the State where the school is located.

(d) A tribal governing body, or the local school board if so designated by the tribal governing body, shall have the local authority to waive, in part or in whole, the standards established under subsections (b) and (c), where such standards are deemed by such body to be inappropriate or ill-conceived, and shall also have the authority to revise such standards to take into account the specific needs of the tribe's children. Such revised standards shall be established by the Secretary unless specifically rejected by the Secretary for good cause and in writing to the affected tribes or local school board which rejection shall be final and unreviewable.

(e) The Secretary, through contracting procedures, shall assist school boards of contract schools in the implementation of the standards established under subsections (b) and (c), if the school boards request that such standards, in part or in whole, be implemented. The Secretary shall not refuse to enter into a contract with respect to any contract school on the basis of failure to meet such standards. At the request of a contract school board, the Secretary shall provide alternative or modified standards for the standards established under subsections (b) and (c) to take into account the needs of the Indian children and the contract school.

(f) Subject to subsections (d) and (e), the Secretary shall begin to implement the standards established under this section immediately upon the date of their establishment. Within one year of such date, and at

each time thereafter that the annual budget request for Bureau educational services is presented, the Secretary shall submit to the appropriate committees of Congress a detailed plan to bring all Bureau and contract schools up to the level required by the applicable standards established under this section. Such plan shall include, but not be limited to, detailed information on the status of each school's educational program in relation to the applicable standards established under this section, specific cost estimates for meeting such standards at each school, and specific time lines for bringing each school up to the level required by such standards.

(g) There are hereby authorized to be appropriated such sums as may be necessary, for academic program costs, in order to bring all Bureau and contract schools up to the level required by the applicable standards established under this section.

NATIONAL CRITERIA FOR DORMITORY SITUATIONS

SEC. 512. (a) The Secretary, in consultation with the Assistant Secretary for Health, Education, and Welfare for Education, and in active consultation with Indian organizations and tribes, shall conduct or cause to be conducted by contract with an Indian organization, a study of the costs applicable to boarding arrangements for Indian students provided in Bureau and contract schools, for the purpose of establishing national criteria for such dormitory situations. Such criteria shall include requirements as to adult-child ratios, needs for counselors (including special needs related to off-reservation boarding arrangements), space, and privacy.

(b) Within fifteen months of the date of enactment of this Act, the Secretary shall propose such criteria, and shall distribute such proposed criteria to the tribes and publish such proposed criteria in the Federal Register for the purpose of receiving comments from the tribes and other interested parties. Within eighteen months of the date of enactment of this Act, the Secretary shall establish final criteria, distribute such criteria to all the tribes, and publish such criteria in the Federal Register. The Secretary shall revise such criteria periodically as necessary. Prior to any revision of such criteria, the Secretary shall distribute such proposed revision to all the tribes, and publish such proposed revision in the Federal Register, for the purpose of receiving comments from the tribes and other interested parties.

(c) The Secretary shall begin to implement the criteria established under this section immediately upon the date of their establishment. Within one year of such date, and at each time thereafter that the annual budget request for Bureau educational services is presented, the Secretary shall submit to the appropriate committees of Congress a detailed plan to bring all Bureau and contract boarding schools up to the criteria established under this section. Such plan shall include, but not be limited to, predictions for the relative need for each boarding school in the future, detailed information on the status of each school in relation to the criteria established under this section, specific cost estimates for meeting such criterial at each school, and specific time lines for bringing each school up to the leval required by such criteria.

(d) There are hereby authorized to be appropriated such sums as may be necessary in order to bring each school up to the level required by the criteria established under this section.

REGULATIONS

SEC. 513. The Secretary shall establish such regulations as are necessary to carry out sections 511 and 512 within eighteen months after the date of enactment of this Act.

STUDIES

SEC. 514. There are hereby authorized to be appropriated no more than $1,000,000 for any fiscal year beginning after the date of enactment of this Act to carry out the studies conducted under section 511 (a) and section 512 (a).

FACILITIES CONSTRUCTION

SEC. 515. (a) The Secretary shall immediately begin to bring all schools, dormitories, and other facilities operated by the Bureau or under contract with the Bureau in connection with the education of Indian children into compliance with all applicable Federal, tribal, or State health and safety standards, whichever provide greater protection, and with section 504 of the Vocational Rehabilitation Act (29 U.S.C. 31), except that nothing in this section shall require termination of the operations of any facility which does not comply with such provisions and which is in use on the date of enactment of this Act.

(b) Within one year of the date of enactment of this Act, and at each time thereafter that the annual budget request for Bureau educational services is presented, the Secretary shall submit to the appropriate committees of Congress a detailed plan to bring such facilities into compliance with such standards. Such plan shall include, but not be limited to, detailed information on the status of each facility's compliance with such standards, specific cost estimates for meeting such standards at each school, and specific time lines for bringing each school into compliance with such standards.

(c) Within six months of the date of enactment of this Act, the Secretary shall submit to the appropriate committees of Congress, and publish in the Federal Register, the system used to establish priorities for school construction projects. At the time any budget request for school construction is presented, the Secretary shall publish in the Federal Register and submit with the budget request the current list of all school construction priorities.

(d) There are hereby authorized to be appropriated such sums as may be necessary to carry out subsection (a).

BUREAU OF INDIAN AFFAIRS EDUCATION FUNCTIONS

SEC. 516. (a) The Secretary shall vest in the Assistant Secretary for Indian Affairs all functions with respect to formulation and establishment of policy and procedure, supervision of programs, and expenditure of Federal funds for the purpose of Indian education. Such functions may not be further delegated to an official other than a Deputy Assistant Secretary for Indian Affairs, or the Director of the Office of Indian Education Programs of the Bureau (hereinafter referred to as the "Office") and shall be governed by the provisions of this Act, any other provision of law to the contrary notwithstanding. The Director of the Office may be authorized to redelegate such functions to personnel under his direction and supervision.

(b) The Director of the Office shall direct and supervise the operations of all personnel involved with the provision of educational services by the Bureau. Nothing in this Act shall be construed to require the provision of separate support services for Indian education.

(c) Education personnel located in Bureau agencies, who are under the direction and supervision of the Director of the Office in accordance with the first sentence of subsection (b), shall—

(1) monitor and evaluate Bureau education programs, and

(2) provide technical and coordinating assistance in areas such as procurement, contracting, budgeting, personnel, and curriculum.

However, in the case of boarding schools located off reservation operated by the Bureau, education personnel located in area offices of the Bureau shall provide such services, under the direction and supervision of the Director of the Office.

(d) For the purpose of this section the term "functions" includes powers and duties.

IMPLEMENTATION

SEC. 517. Within six months after the date of enactment of this Act, the Secretary shall establish and publish in the Federal Register the policies and procedures which are necessary to implement the transfer of functions made under section 516.

ALLOTMENT FORMULA

SEC. 518. (a) The Secretary shall establish, by regulation adopted in accordance with section 528, a formula for determining the minimum annual amount of funds necessary to sustain each Bureau or contract school. In establishing such formula, the Secretary shall consider—

(1) the number of Indian students served and size of the school;

(2) special cost factors, such as—

(A) isolation of the school;

(B) need for special staffing, transportation, or educational programs;

(C) food and housing costs;

(D) overhead costs associated with administering contracted education functions; and

(E) maintenance and repair costs associated with the physical condition of the educational facilities;

(3) the cost of providing academic services which are at least equivalent to those provided by public schools in the State in which the school is located;

(4) the cost of bringing the school up to the level of the standards established under sections 511 and 512; and

(5) such other relevant factors as the Secretary determines are appropriate.

(b) Notwithstanding any other provisions of law, Federal funds appropriated for the general local operation of Bureau and contract schools, shall be allotted pro rata in accordance with the formula established under subsection (a), except that, in the case of any such school which is located in a school district of a local educational agency which receives from Federal funds under other provisions of law an average payment per Indian child attending such school in that district which is higher than the amount which would be received by such Bureau or contract school under such formula for each Indian child attending such school, the payment to be received by that school under this section for each such child shall be equal to such average payment for an Indian child in public school in that district.

(c) Notwithstanding subsection (b), the Secretary may provide funds for the general local operation of Bureau and contract schools where necessitated by cases of emergencies or unforeseen contingencies not otherwise provided for under subsection (b). Whenever the Secretary makes funds available under this subsection, the Secretary shall report such action to the appropriate committees of Congress.

UNIFORM DIRECT FUNDING AND SUPPORT

SEC. 519. (a) Within six months after the date of enactment of this Act, the Secretary shall establish, by regulation adopted in accordance with section 528, a system for the direct funding and support of all Bureau and contract schools. Such system shall allot funds, in accordance with section 518, and shall provide each affected school with notification of its approximate allotment not later than the end of the school year preced-

ing the year for which the allotment is to be made.

(b)(1) In the case of all Bureau schools, allotted funds shall be expended on the basis of local financial plans which shall be prepared by the local school supervisor in active consultation with the local school board for each school, and the local school board for each school shall have the authority to ratify, reject, or amend such financial plan, and expenditures thereunder, and, on its own determination or in response to the supervisor of the school, to revise such financial plan to meet needs not foreseen at the time of preparation of the financial plan. The supervisor of the school may appeal any such action by the local school board to the superintendent for education of the Bureau agency, and the superintendent may, for good cause and in writing to the local school board, overturn the action of the local school board.

(2) A local school board shall have financial plan authority under paragraph (1) unless the tribe affected (or in the case of a school serving several tribes, all the affected tribes), by formal action of the tribal governing body, determines that such board shall not have such authority. In the case of such a determination, the tribal governing body (or in the case of a school serving several tribes, all the affected tribal governing bodies) shall have such authority.

(c) In the exercise of its authority under this section, a local school board may request technical assistance and training from the Secretary, and he shall, to the greatest extent possible, provide such services, and make appropriate provisions in the budget of the Office for such services.

POLICY FOR INDIAN CONTROL OF INDIAN EDUCATION

SEC. 520. It shall be the policy of the Bureau, in carrying out the functions of the Bureau, to facilitate Indian control of Indian affairs in all matters relating to education.

EDUCATIONAL PERSONNEL

SEC. 521. (a)(1) Chapter 51, subchapter III of chapter 53, and chapter 63 of title 5, United States Code, relating to the appointment, promotion, removal, leave, and classification of civil service employees, shall not apply to educators or to education positions (as defined in subsection (m),.

(2) Paragraph (1) shall take effect one year after the date of enactment of this Act.

(b) Not later than the effective date of subsection (a)(2), the Secretary shall prescribe regulations to carry out this section. Such regulations shall govern—

(1) the establishment of education positions,

(2) the establishment of qualifications for educators,

(3) the fixing of basic compensation for educators and education positions,

(4) the appointment of educators,

(5) the discharge of educators,

(6) the entitlement of educators to compensation,

(7) the payment of compensation to educators,

(8) the conditions of employment of educators,

(9) the length of the school year applicable to education positions described in subsection (m)(1)(A),

(10) the leave system for educators, and

(11) such other matters as may be appropriate.

(c) (1) In prescribing regulations to govern the qualifications of educators, the Secretary shall require—

(A)(i) that lists of qualified and interviewed applicants for education positions be maintained in each agency and area office of the Bureau from among individuals who have applied at the agency or area level for an education position or who have applied at the national level and have indicated in such application an interest in working at the agency or area level; and

(ii) that a list of qualified and interviewed applicants for education positions be maintained in the Office from among individuals who have applied at the national level for an education position and who have expressed interest in working in an education position anywhere in the United States;;

(B) that a local school board shall have the authority to waive on a case-by-case basis, any formal education or degree qualifications established by regulation pursuant to subsection (b)(2), in order for a tribal member to be hired in an education position to teach courses on tribal culture and language and that subject to subsection (d)(2)(A), a determination by a school board that such a person be hired shall be followed by the supervisor; and

(C) that it shall not be a prerequisite to the employment of an individual in an education position at the local level that such individual's name appear on the national list maintained pursuant to subsection (c)(1)(A)(ii) or that such individual has applied at the national level for an education position.

(2) The Secretary may authorize the temporary employment in an education position of an individual who has not met the certification standards established pursuant to regulations, if the Secretary determines that failure to do so would result in that position remaining vacant.

(d)(1) In prescribing regulations to govern the appointment of educators, the Secretary shall require—

(A)(i) that educators employed in a school (other than the supervisor of the school) shall be hired by the supervisor of the school unless there are no qualified applicants available, in which case the vacant position shall be filled at the national level from the list maintained pursuant to subsection (c)(1)(A)(ii),

(ii) each school superviser shall be hired by the superintendent for education of the agency office of the Bureau in which the school is located, and

(iii) educators employed in an agency office of the Bureau shall be hired by the superintendent for education of the agency office;

(B) that before an individual is employed in an education position in a school by the supervisor of a school (or, with respect to the position of supervisor, by the appropriate agency superintendent for education), the local school board for the school shall be consulted, and that subject to subsection (d)(2), a determination by the school board that such individual should not be so employed shall be followed by the supervisor (or with respect to the position of supervisor, by the agency superintendent for education); and

(C) that before an individual may be employed in an education position at the agency level, the appropriate agency school board shall be consulted, and that, subject to subsection (d)(3), a determination by such school board that such individual should or should not be employed shall be followed by the agency superintendent for education.

(2)(A) The supervisor of a school may appeal to the appropriate agency superintendent for educaton any determination by the local school board for the school that an individual be employed, or not be employed, in an education position in the school other than that of supervisor. Upon such an appeal, the agency superintendent for education may, for good cause and in writing to the local school board, oveturn the determination o fthe local school board with respect to the employment of such individual.

(B) The superintendent for education of an agency office of the Bureau may appeal to the Director of the Office any determination by the local school board for a school that an individual be employed, or not be employed, as the supervisor of the school. Upon such an appeal, the Director of the Office may, for good cause and in writing to the local school board, overturn the determination of the local school board with respect to the employment of such individual.

(3) The superintendent for education of and agency office of the Bureau may appeal to the Director of the Office any determination by the agency school board that an individual be employed, or not be employed, in an education position in such agency office. Upon such an appeal, the Director of the Office may, for good cause and in writing to the agency school board, overturn the determination of the agency school board with respect to the employment of such individual.

(4) Any individual who applies at the local level for an education position shall state on such individual's application whether or not such individual has applied at the national level for an education position in the Bureau. If such individual is employed at the local level, such individual's name shall immediately be forwarded to the Secretary, who shall, as soon as possible but in no event in more than thirty days, ascertain the accuracy of the statement made by such individual pursuant to the first sentence of this subparagraph. If the individual's statement is found to have been false, such individual, at the Secretary's discretion, may be disciplined or discharged. If the individual had applied at the national level for an education position in the Bureau, the appointment of such individual at the local level shall be conditional for a period of ninety days, during which period the Secretary may appoint a more qualified individual (as determined by the Secretary) from the list maintained at the national level pursuant to subsection (c)(1)(A)(ii) to the position to which such individual was appointed.

(5) Except as expressly provided, nothing in this section shall be construed as conferring upon local school boards, authority over, or control of, educators.

(e)(1) In prescribing regulations to govern the discharge and conditions of employment of educators, the Secretary shall require—

(A) that procedures be established for the rapid and equitable resolution of grievances of educators; and

(B) that no educator may be discharged without notice of the reasons therefor and opportunity for a hearing under procedures that comport with the requirements of due process.

(2) The supervisor of a Bureau school may discharge (subject to procedures established under subsection (e)(1)(B)) for cause (as determined under regulations prescribed by the Secretary) any educator employed in such school. Upon giving notice of proposed discharge to an educator, the supervisor involved shall immediately notify the local school board for the school of such action. A determination by the local school board that such educator not be discharged shall be followed by the supervisor. The supervisor shall have the right to appeal such action to the superintendent for education of the appropriate agency office of the Bureau. Upon such an appeal, the agency superintendent for education may, for good cause and in writing to the local school board, overturn the determination of the local school board with respect to the employment of such individual.

(3) each local school board for a Bureau school shall have the right (A) to recommend to the supervisor of such school that an educator employed in the school be discharged, and (B) to recommend to the superintendent of education of the appropriate agency office of the Bureau and to the Direc-

tor of the Office, that the supervisor of the school be discharged.

(f) Subject to the authority of the Civil Service Commission to determine finally the applicability of chapter 51 of title 5, United States Code, to specific positions and employees in the executive branch, the Secretary shall determine in accordance with subsection (a)(1) the applicability or inapplicability of such chapter to positions and employees in the Bureau.

(g)(1) The Secretary shall fix the basic compensation or annual salary rate for educators and education positions at rates comparable to the rates in effect under the General Schedule for individuals with comparable qualifications, and holding comparable positions, to whom chapter 51 is applicable.

(2) Each educator employed in an education position in Alaska shall be paid a cost-of-living allowance equal to 25 per centum of the rate of basic compensation to which such educator is entitled.

(3) The Secretary may pay a postdifferential not to exceed 25 per centum of the rate of basic compensation, on the basis of conditions of environment or work which warrant additional pay as a recruitment and retention incentive.

(h) Any individual—

(1) who on the date of enactment of this Act is holding a position which is determined under subsection (f) to be an education position and who elects under subsection (n)(2) to be covered under the provisions of this section, or

(2) who is an employee of the Federal Government or the municipal government of the District of Columbia and is transferred, promoted, or reappointed, without break in service, from a position under a different leave system to an education position,

shall be credited for the purposes of the leave system provided under regulations prescribed pursuant to subsection (b)(10), with the annual and sick leave to his credit immediately before the effective date of such election, transfer, promotion, or reappointment.

(i) Upon termination of employment with the Bureau, any annual leave remaining to the credit of an individual within the purview of this section shall be liquidated in accordance with sections 5551(a) and 6306 of title 5, United States Code, except that leave earned or included under regulations prescribed pursuant to subsection (b)(10) shall not be so liquidated.

(j) In the case of any educator who is transferred, promoted, or reappointed, without break in service, to a position in the Federal Government under a different leave system, any remaining leave to the credit of such person earned or credited under the regulations prescribed pursuant to subsection (b)(10) shall be transferred to his credit in the employing agency on an adjusted basis in accordance with regulations which shall be prescribed by the Civil Service Commission.

(k) An educator who voluntarily terminates employment with the Bureau before the expiration of the existing employment contract between such educator and the Bureau shall not be eligible to be employed in another education position in the Bureau during the remainder of the term of such contract.

(l) In the case of any educator employed in an education position described in subsection (m)(1)(A) who—

(1) is employed at the close of a school year,

(2) agrees in writing to serve in such a position for the next school year, and

(3) is employed in another position during the recess period immediately preceding such next school year, or during such recess period receives additional compensation referred to in subsection (g)(2) or (g)(3), section 5533 of title 5, United States Code, relating to dual compensation, shall not apply to such educator by reason of any such employment during a recess period for any such receipt of additional compensation.

(m) For the purpose of this section—

(1) The term "education position" means a position in the Bureau the duties and responsibilities of which—

(A) are performed on a school-year basis principally in a Bureau school and involve—

(i) classroom or other instruction or the supervision or direction of classroom or other instruction;

(ii) any activity (other than teaching) which requires academic credits in educational theory and practice equal to the academic credits in educational theory and practice required for a bachelor's degree in education from an accredited institution of higher education; or

(iii) any activity in or related to the field of education notwithstanding that academic credits in educational theory and practice are not a formal requirement for the conduct of such activity; or

(B) are performed at the agency level of the Bureau and involve the implementation of education-related programs other than the position of agency superintendent for education.

(2) The term "educator" means an individual whose services are required, or who is employed, in an education position.

(n)(1) This section shall apply with respect to any individual hired after the effective date of subsection (a)(2) for employment in an education position and to the position in which such individual is employed. Subject to paragraph (2), the enactment of this Act shall not affect the continued employment of any individual employed immediately before the effective date of subsection (a)(2) in an education position, or such individual's right to receive the compensation attached to such position.

(2) Any individual employed in an education position immediately before the effective date of subsection (a)(2) may, within five years of the date of enactment of this Act, make an irrevocable election to be covered under the provisions of this section.

MANAGEMENT INFORMATION SYSTEM

SEC. 522. The Secretary shall establish within the Bureau, within one year after the date of the enactment of this Act, a management information system, which shall provide information to all agency and area offices of the Bureau, and to the Office. Such information shall include but shall not be limited to—

(1) student enrollment;

(2) curriculum;

(3) staff;

(4) facilities;

(5) community demographics; and

(6) student assessment information.

BUREAU EDUCATION POLICIES

SEC. 523. Within one hundred and eighty days of the date of enactment of this Act, the Secretary shall develop, publish in the Federal Register, and submit to all agency and area offices of the Bureau, all tribal governments, and the appropriate committees of the Congress, a draft set of education policies, procedures, and practices for education-related action of the Bureau. The Secretary shall, within one year of the date of enactment of this Act, provide that such uniform policies, procedures, and practices shall be finalized and promulgated. Thereafter, such policies, procedures, and practices and their periodic revisions, shall serve as the foundation for future Bureau actions in education.

UNIFORM EDUCATION PROCEDURES AND PRACTICES

SEC. 524. The Secretary shall cause the various divisions of the Bureau to formulate uniform procedures and practices with respect to such concerns of those divisions and relate to education, and shall report such practices and procedures to the Congress.

RECRUITMENT OF INDIAN EDUCATORS

SEC. 525. The Secretary shall institute a policy for the recruitment of qualified Indian educators and a detailed plan to promote employees from within the Bureau. Such plan shall include opportunities for acquiring work experience prior to actual work assignment.

ANNUAL REPORT

SEC. 526. The Secretary shall submit to each appropriate committee of the Congress a detailed annual report on the state of education within the Bureau and any problems encountered in the field of education during the year. Such report shall contain suggestions for improving the Bureau educational system and increasing local Indian control of such system.

RIGHTS OF INDIAN STUDENTS

SEC. 527. Within six months of the date of enactment of this Act, the Secretary shall prescribe such rules and regulations as are necessary to ensure the constitutional and civil rights of Indian students attending Bureau schools, including their right to privacy under the laws of the United States, their right to freedom of religion and expression and their right to due process in connection with disciplinary actions, suspensions, and expulsions.

REGULATIONS

SEC. 528. Regulations required to be adopted under sections 516 through 527 of this Act shall be deemed rules of general applicability prescribed for the administration of an applicable program for the purposes of section 431 of the General Education Provisions Act and shall be promulgated, submitted for congressional review, and take effect in accordance with the provisions of such section.

DEFINITIONS

SEC. 529. For the purpose of this title—

(1) the term "local educational agency" means a board of education or other legally constituted local school authority having administrative control and direction of free public education in a county, township, independent, or other school district located within a State, and includes any State agency which directly operates and maintains facilities for providing free public education;

(2) the term "Commissioner" means the Commissioner of Education;

(3) the term "Secretary" means the Secretary of the Interior;

(4) the term "Bureau" means the Bureau of Indian Affairs of the Department of the Interior;

(5) the term "local school board", when used with respect to a Bureau school, means a body, the members of which are appointed by the governing bodies of any affected tribes, or if so designated by such tribes, elected by the parents of the Indian children attending the school; and the number of such members shall be determined by the Secretary in consultation with such tribes;

(6) the term "agency school board", means a body, the members of which are appointed by the governing bodies of any affected tribes, or if so designated by such tribes, elected by the parents of the Indian students in Bureau schools under such agency; and the number of such members shall be determined by the Secretary in consultation with such tribes;

(7) the term "supervisor" means the individual in the position of ultimate authority at a Bureau school;

(8) the term "financial plan" means a plan of services to be provided by each Bureau school;

(9) the term "Indian organization" means any group, association, partnership, corpo-

ration, or other legal entity owned or controlled by a federally recognized Indian tribe or tribes, or a majority of whose members are members of federally recognized Indian tribes; and

(10) the term "tribe" means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

PART C—AMENDMENTS TO VARIOUS EDUCATION ACTS

EXTENSION OF PROGRAMS FOR THE EDUCATION OF INDIAN CHILDREN

SEC. 531. (a) Section 810 (g) of the Elementary and Secondary Education Act of 1965 is amended by striking out "July 1, 1978" and inserting in lieu thereof "October 1, 1983".

(b) Section 303 (a) (1) of the Act of September 30, 1950 (Public Law 874, Eighty-first Congress) as added by the Indian Education Act, is amended by striking out "October 1, 1978" and inserting in lieu thereof "October 1, 1983".

(c) (1) Section 422 of the Indian Education Act is amended by striking out "each of the three succeeding fiscal years" and inserting in lieu thereof "each of the succeeding fiscal years ending prior to October 1, 1983".

(2) Section 423 (a) of such Act is amended by striking out "each of the three succeeding fiscal years" and inserting in lieu thereof "each of the succeeding fiscal years ending prior to October 1, 1983".

(3) Section 442 (a) of such Act is amended by striking out "October 1, 1978" and inserting in lieu thereof "October 1, 1983".

CULTURALLY RELATED ACADEMIC NEEDS

SEC. 532. (a) Section 302(a) of the Indian Elementary and Secondary School Assistance Act is amended—

(1) by striking out "special educational needs of Indian students" and inserting in lieu thereof "special educational and culturally related academic needs of Indian students"; and

(2) by striking out "these special educational needs" and inserting in lieu thereof "these special educational or culturally related academic needs, or both".

(b) Section 304 of such Act is amended by striking out "special educational needs" each place it appears in paragraphs (1) and (2) and inserting in lieu thereof "special educational or culturally related academic needs, or both".

DEMONSTRATION PROJECTS

SEC. 533. Section 303 of the Indian Elementary and Secondary School Assistance Act is amended by adding at the end thereof the following new subsection:

"(c) In addition to the sums appropriated for any fiscal year for grants to local educational agencies under this title, there is hereby authorized to be appropriated for any fiscal year an amount not in excess of 10 percentum of the amount appropriated for payments on the basis of entitlements computed under subsection (a) for that fiscal year, for the purpose of enabling the Commissioner to make grants on a competitive basis to local educational agencies to support demonstration projects and programs which are designed to plan for and improve education opportunities for Indian children, except that the Commissioner shall reserve a portion not to exceed 25 per centum of such funds to make grants for demonstration projects examining the special educational and culturally related academic needs that arise in school districts with high concentrations of Indian children.".

PARENT COMMITTEES

SEC. 534. Section 305(b) of the Indian Elementary and Secondary School Assistance Act is amended—

(1) by inserting "(including persons acting in loco parentis other than school administrators or officials)" after "Indian children" in paragraph (2)(B)(i) and after "children participating in the program" in paragraph (2)(B)(ii);

(2) by inserting ", including the hiring of personnel," after "policies and procedures" in parag.aph (2)(C); and

(3) by striking out the period at the end of paragraph (2)(C) and inserting in lieu thereof a semicolon and by adding at the end thereof the following new paragraph:

"(3) provides that the parent committee formed pursuant to paragraph (2)(B)(ii) will adopt and abide by reasonable by-laws for the conduct of the program for which assistance is sought.".

ALLOCATION ADJUSTMENTS

SEC. 535. Section 307(b) of the Indian Elementary and Secondary School Assistance Act is amended to read as follows:

"(b) In the case of any fiscal year in which the maximum amounts for which local educational agencies are eligible have been reduced under the first sentence of subsection (a), and in which additional funds have not been made available to pay in full the total of such maximum amounts under the second sentence of such subsection, the Commissioner may reallot, in such manner as he determines will best assist in advancing the purposes of this title, any amount awarded to a local education agency in excess of the amount to which it is entitled under section 303(a) and subsection (a) of this section, or any amount which the Commissioner determines, based upon estimates made by local education agencies, will not be needed by any such agency to carry out its approved project.".

TRIBAL SCHOOLS

SEC. 536. Notwithstanding any other provisions of law, any Indian tribe or organization which is controlled or sanctioned by an Indian tribal government and which operates any school for the children of that tribe shall be deemed to be a local educational agency for purposes of section 303(a) of the Indian Elementary and Secondary School Assistance Act (title III of Public Law 874, Eighty-first Congress) if each such school, as determined by the Commissioner, operated by that tribe or organization provides its students an educational program which meets the standards established under section 111 for the basic education of Indian children, or is a school operated under contract by that tribe or organization in accordance with the provisions of the Indian Self-Determination and Education Assistance Act.

AMENDMENTS TO TITLE VIII OF THE ELEMENTARY AND SECONDARY EDUCATION ACT OF 1965

SEC. 537. (a) Section 810(c)(1)(E) of the Elementary and Secondary Education Act of 1965 is amended by inserting "and gifted and talented Indian children" after "handicapped".

(b)(1) Section 810(c)(1)(F) of the Elementary and Secondary Education Act of 1965 is amended to read as follows:

"(F) early childhood programs, including kindergarten;".

(2)(A) Section 810(d) of the Elementary and Secondary Education Act of 1965 is amended—

(i) by striking out "children" in paragraphs (1) and (2) of such section and by inserting in lieu thereof "students" each time it appears; and

(ii) by inserting after "teachers" a comma and the following "administrators".

(B) The section heading of section 810 of the Elementary and Secondary Education Act of 1965 is amended to read as follows:

"IMPROVEMENT OF EDUCATIONAL OPPORTUNITIES FOR INDIAN STUDENTS"

(c) Section 810 (e) of the Elementary and Secondary Education Act of 1965 is amended to read as follows:

"(e)(1) The Commissioner is also authorized to make grants to and contracts with public agencies, State educational agencies in States in which more than five thousand Indian children are enrolled in public elementary and secondary schools, Indian tribes, Indian institutions, Indian organizations, or to make contracts with private institutions and organizations, to establish, on a regional basis, information centers to—

"(A) evaluate programs assisted under this part, under the Indian Elementary and Secondary School Assistance Act, under section 316 of the Adult Education Act, and other Indian education programs in order to determine their effectiveness in meeting the special educational and culturally related academic needs of Indian children and to conduct research to determine those needs;

"(B) provide technical assistance upon request to local educational agencies and Indian tribes, Indian organizations, Indian institutions, and parent committees created pursuant to section 305 (b) (2) (B) (ii) of the Indian Elementary and Secondary School Assistance Act in evaluating and carrying out programs assisted under this part, under section 316 of the Adult Education Act through the provision of materials and personnel resources; and

"(C) disseminate information upon request to the parties described in subparagraph (B) concerning all Federal education programs which affect the education of Indian children including information on successful models and programs designed to meet the special educational needs of Indian children.

"(2) Grants or contracts made pursuant to this subsection may be made for a term not to exceed three years (renewable at the end of that period subject to the approval of the Commissioner) provided that provision is made to ensure annual review of the projects.".

(d) Section 810 (f) of the Elementary and Secondary Education Act of 1965 is amended by inserting "(1)" after "(f)", by redesignating clauses (1), (2), (3) and (4) as clauses (A), (B), (C), and (D) respectively, and by adding at the end thereof the following:

"(2) The Commissioner shall not approve an application for a grant under subsection (e) of this section unless he is satisfied that the funds made available under that subsection will be so used as to supplement the level of funds from State, local, and other Federal sources that would, in the absence of Federal funds under this subsection, be made available by the State or local educational agency for the activities described in this subsection, and in no case will be used so as to supplant those funds.".

(e) Section 810(g) of the Elementary and Secondary Education Act of 1965 is amended by inserting "(1)" after "(g)" and by adding at the end thereof the following:

"(2) For the purpose of making grants under subsection (e) of this section there are hereby authorized to be appropriated $8,000,000 for each of the fiscal years ending prior to October 1, 1983. The sum of the grants made to State educational agencies under subsection (e) of this section shall not exceed 15 per centum in any fiscal year of the sums appropriated for that year.".

(f) Section 306(a) of the Indian Elementary and Secondary School Assistance Act is

amended by inserting "estimated to be" after "equal to the amount".

TEACHER TRAINING AND FELLOWSHIPS

SEC. 538. (a) The first sentence of section 422(a) of the Indian Education Act is amended by striking out "children" and inserting in lieu thereof "people".

(b) Section 423(a) of the Indian Education Act is amended—

(1) by striking out "less than three, nor"; and

(2) by striking out "professional or graduate degree in engineering, medicine, law, business, forestry, and related field" and inserting in lieu thereof "postbaccalaureate degree in medicine, law, education, and related fields or leading to an undergraduate or graduate degree in engineering, business administration, natural resources, and related fields.".

On page 20, in the Table of Contents, strike out part B and item section 321.

On page 20, in the Table of Contents, redesignate part C as part B.

On page 21, in the Table of Contents, insert after item Sec. 409, the following:

TITLE V—INDIAN EDUCATION

PART A—ASSISTANCE TO LOCAL EDUCATIONAL AGENCIES

Sec. 501. Amendment to Public Law 874.

PART B—BUREAU OF INDIAN AFFAIRS PROGRAMS

Sec. 511. Standards for the basic education of Indian children in Bureau of Indian Affairs schools.
Sec. 512. National criteria for dormitory situations.
Sec. 513. Regulations.
Sec. 514. Studies.
Sec. 515. Facilities construction.
Sec. 516. Bureau of Indian Affairs education functions.
Sec. 517. Implementation.
Sec. 518. Allotment formula.
Sec. 519. Uniform direct funding and support.
Sec. 520. Policy for Indian control of Indian education.
Sec. 521. Educational personnel.
Sec. 522. Management information system.
Sec. 523. Bureau education policies.
Sec. 524. Uniform education procedures and practices.
Sec. 525. Recruitment of Indian educators.
Sec. 526. Annual report.
Sec. 527. Rights of Indian students.
Sec. 528. Regulations.
Sec. 529. Definitions.

PART C—AMENDMENTS TO VARIOUS EDUCATION ACTS

Sec. 531. Extension of programs for the education of Indian children.
Sec. 532. Culturally related academic needs.
Sec. 533. Demonstration projects.
Sec. 534. Parent committees.
Sec. 535. Allocation adjustments.
Sec. 536. Tribal schools.
Sec. 537. Amendments to title VIII of the Elementary and Secondary Education Act of 1965.
Sec. 538. Teacher training and fellowships.

Amendment No. 3520

On page 352, between lines 15 and 16, insert the following:

"SEC. 311. (a) (1) Section 314(a) (4) of the Act (as redesignated by section 307) is amended by striking out "on Indian reservations" and inserting in lieu thereof "among Indians".

"(2) Section 314 of the Act (as redesignated by section 307) is amended by redesignating subsections (b), (c), and (d) as subsections (c), (d), and (e), respectively, and by inserting immediately after subsection (a) the following new subsection:

"(b) The Commissioner is also authorized to make grants to Indian tribes, Indian institutions and Indian organizations to develop and establish educational services and programs specifically designed to improve educational opportunities for Indian adults."

On page 352, line 16, strike out "Sec. 311." and insert in lieu thereof "(b)".

On page 352, line 16, strike out "(d)" and insert in lieu thereof "(e)".

SECTION-BY-SECTION ANALYSIS

PART A—ASSISTANCE TO LOCAL EDUCATIONAL AGENCIES

Amends P.L. 81–874 (Impact Aid) by establishing a new method of computing entitlements and making payments for children educated in public schools who live on Federal Indian trust property, and by conditioning the payment of such entitlements on the establishment by local school districts of policies and procedures which will ensure the equal participation of Indian children in educational programs and the increased participation of the parents of Indian students and of Indian tribes in the education process.

Section 501(a) amends section 3 of the Act by adding a new paragraph 3(d)(2)(D) under which the entitlement for an Indian "A" child would be an amount equal to the regular entitlement for an "A" child times 125 per centum.

Section 501(b) repeals section 5(a)(2) of the Act. This section, added in 1974, requires local educational agencies, as a part of their application for impact aid funds, to provide assurances that Indian children will participate on an equal basis with non-Indian children in educational programs. The need for this section is superseded by the addition of strengthened provisions under the amendment to section 5(d) below.

Section 501(c) amends sections 5(b) of the Act. Under the amendment, payment of entitlements under section 3(d)(2)(D) shall be made only to local educational agencies (LEA's) which have established policies and procedures to guarantee that (1) Indian children will participate on an equal basis in educational programs, (2) applications, evaluations, and program plans are adequately disseminated to tribes and parents of Indian children, and (3) tribes and parents are afforded an opportunity to make recommendations concerning the needs of Indians students, are actively consulted and involved in the planning and development of educational programs, and have the opportunity to present their overall views on the educational program and the degree of parental participation. The amendment also provides an administrative complaint process whereby the tribe, or its designee, may seek remediation of any action taken by an LEA pursuant to or relevant to the above requirements. If, after the complaint procedure, the Commissioner determines that remedial action by the LEA is required and if the LEA does not undertake the remedial action as required, the Commissioner is required to withhold payments of entitlements under section 3(d)(2)(D) until such time as the remedial action is undertaken, unless the complaining tribe, or its designee, formally requests release of the funds to the LEA.

Section 501(d) amends section 5(c)(2) of the Act to provide that in case appropriations are not sufficient to pay the total amount of entitlements under the Act, an LEA will receive 75% of the amount of its entitlement under section 3(d)(2)(D) in the second tier P.L. 874 payments, effectively guaranteeing 100% payments to schools for all Indian children.

PART B—BUREAU OF INDIAN AFFAIRS EDUCATIONAL PROGRAMS

Section 511 provides for the establishment of standards for the basic education of Indian children in Federal Indian schools.

Under section 511(a), the studies and surveys necessary to establish these standards are to be undertaken by the Secretary of the Interior (Secretary) within the Bureau or by contract with an Indian organization and in consultation with the Assistant Secretary of HEW and Indian tribes and organizations. The studies will take into account academic needs, local cultural differences, type and level of language skills, geographic isolation, and appropriate teacher-student ratios for Indian children, and will be directed toward the attainment of equal educational opportunity for Indian children.

Under section 511(b), the Secretary is required to establish proposed standards based on these studies within fifteen months and to distribute the proposed standards to tribes and other parties for comment. Within eighteen months, the Secretary is required to establish final standards, to distribute and publish the standards, and to revise the basic standards as necessary (after notice and comment from the tribes and interested parties). The basic standards will apply to BIA schools, as modified by subsections (c) and (d), and to Indian schools under contract with BIA, subject to subsection (e).

Subsection (c) provides for modified standards where necessary to meet minimum standards required for accreditation of schools by the State within which the school is located.

Subsection (d) gives Indian tribes, or local school boards if so designated by the tribe, the authority to modify the basic standards to take into account specific needs of the tribe's students, subject to the final authority of the Secretary to approve modified standards.

Subsection (e) provides for the implementation of the basic standards in contract schools to the extent requested by the contract school board.

Subsection (f) provides for the speedy implementation of the basic standards in conjunction with a detailed implementation plan which will be submitted annually to Congress indicating the progress made toward implementation of the standards in each Bureau and contract school, the cost estimate for implementing the standards, and a schedule for complete implementation.

Subsection (g) authorizes the appropriation of such sums as are necessary to implement the academic program required under the basic standards.

Section 512 requires the Secretary, through BIA or by contract with an Indian organization, and in consultation with the Assistant Secretary for HEW and with Indian tribes and organizations, to conduct a study for the purpose of developing national criteria to govern dormitory situations in Bureau and contract schools. The criteria are to be established after notice and comment by the tribes and other interested parties within eighteen months and in the same manner as the standards established under section 511. The criteria must include requirements as to adult-child ratios, needs for counselors, space, and privacy and will apply to dormitory situations in Bureau and contract schools. The Secretary will implement the criteria in conjunction with a detailed implementation plan submitted annually to Congress. Such sums as are necessary to implement the criteria are authorized to be appropriated.

Section 513 requires the Secretary to establish within eighteen months regulations to carry out the studies and implement the standards and criteria established under sections 111 and 112.

Section 514 provides an authorization of up to $1 million for any one fiscal year to conduct the studies under sections 111 and 112.

Section 515(a) mandates the Secretary to bring all schools, dormitories, and facilities operated by or under contract with the BIA which are related to the education of Indian children, into compliance with all applicable Federal, Tribal or State health and safety laws (whichever provides the greatest protection) and with section 504 of the Vocational

Rehabilitation Act, but facilities now in use which are not in compliance are not required to be closed.

Section 515(b) requires the Secretary to transmit to Congress an annual report of the present status and projected costs for compliance.

Section 515(c) requires the Secretary to submit to Congress the system used to establish construction priorities for Bureau schools, along with current lists of those priorities.

Section 515(d) authorizes the appropriations of such sums as are necessary to bring Bureau and contract school facilities into compliance with the health and safety laws under subsection (a).

Section 516 reorganizes the responsibility for education within the Bureau of Indian Affairs. Primary responsibility for the formulation of educational policy and expenditure of funds for education at the present time is under the Area Directors.

Under section 516(a) the functions, powers, and duties of the Secretary with respect to the operation and supervision of Indian education would be carried out by an Assistant Secretary for Indian Affairs or the Director of the Bureau's Office of Indian Education Programs, subject to the authority of the Assistant Secretary for Indian Affairs and the Secretary, and through Bureau employees under the supervision and control of the Director.

Under section 516(b), all Bureau personnel involved with the provisions of educational services are placed under the direction and supervision of the Director. However, separate support services for education are not intended.

The responsibilities of education personnel in the agency and area offices are set forth in section 516(c).

Under Section 517, the Secretary is required to implement the transfer of responsibility for education programs under 516 by regulation within six months.

Section 518 and 519 provide for the uniform funding and support of Bureau and contract schools in accordance with a formula based upon the minimum annual amount of funds necessary to sustain each Bureau or contract school. The allotment formula will take into consideration factors including, but not limited to, (1) the number of Indian students served and size of the school, (2) special cost factors involved in the operation of the school, (3) the cost of providing academic services which are at least equivalent to those provided by public schools in the State in which the school is located, and (4) the cost of bringing the school up to the level of the standards established under sections 511 and 512. Each school is to be allotted the same proportion of the funds appropriated for the general local operation of Bureau and contract schools as its minimum need (determined under the above formula) bears to the total minimum need for all schools. However, in the case of a school located in a school district containing a public school which receives from Federal funds under other provisions of law an average payment per Indian student which is higher than the Bureau or contract school's per student allotment, the school's allotment per student will be equal to the average payment per Indian student received by the public school.

In addition, the Secretary is authorized to provide for necessary funding for schools in case of emergencies or unforeseen contingencies not otherwise provided for by these sections. The allotted funds will be paid directly to Bureau and contract schools and expended in the case of Bureau schools, on the basis of a local financial plan. The financial plan is to be prepared by the local school supervisor in active consultation with the local school board (or the affected tribe(s)). The local board (or affected tribe(s)) has authority to ratify, revise, or reject the plan, unless the agency superintendent for education overturns, in writing and for good cause, the local school board's decision. In the exercise of their authority under section 519, local school boards may request and receive necessary technical assistance and training from the Bureau.

Section 520 re-emphasizes the intent of the Indian Self-Determination and Education Assistance Act and would direct that the Bureau support efforts taken by Indians toward self-determination or control over their education programs.

Section 521 provides that the competitive service provisions of the civil service laws (Title 5, United States Code) shall be inapplicable to persons employed in education positions within the Bureau after twelve months of enactment of this Act. Persons employed in education positions prior to the effective date would not be affected unless they elect inclusion under subsection (n) within five years of the date of enactment of this Act. Civil service retirement and employee benefits would not be affected in any way by the Act. Not later than the effective date of section 521(a), the Secretary is required to prescribe regulations governing the employment of persons in education positions within the Bureau including (1) the establishment of education positions, (2) the establishment of qualifications for educators, (3) the fixing of basic compensation for educators and education positions, (4) the appointment of educators, (5) the discharge of educators, (6) the entitlement of educators to compensation (7) the payment of compensation to educators, (8) the conditions of employment of educators, (9) the length of the school year applicable to education positions, (10) the leave system for educators, and (11) such other matters as may be appropriate.

Under section 521(c), a local school board may waive any formal degree qualifications established by the Secretary under section 521(b) in order for a tribal member to be hired to teach tribal culture and language. The Secretary may also authorize the temporary employment of educators not meeting the qualifications established under regulation where failure to do so would result in the position remaining vacant.

Under section (d), the local and agency school boards are given a voice in the hiring of educators at the local and agency levels. Local school supervisors are generally responsible for hiring educators in the Bureau schools, in consultation with the local school boards. However, the local school board's decision on the hiring of educators in the school is final, unless the agency superintendent for education overturns, in writing and for good cause, the local school board's determination. Similar procedures apply with respect to the hiring of local school supervisors and agency education personnel.

Under section 521(e), educators may be discharged only after notice and opportunity for a hearing. The local school supervisor may discharge educators employed in Bureau schools for cause (and in compliance with due process) only after giving notice to the local school board. The local school board has final authority to prevent the discharge, unless the agency superintendent for education overturns, in writing and for good cause, the local school board's decision.

Under section 521(f), subject to the Civil Service Commission's final authority to determine the applicability of the competitive service laws to specific positions and employees, the Secretary shall determine which positions within the Bureau are education positions covered by this Act.

Section 521(g) requires the Secretary to fix the basic compensation for education positions under this Act at rates comparable to the rates under the General Schedule for comparable positions under the competitive service classification, provides for an additional cost-of-living allowance for educators employed in Alaska, and authorizes a post differential not to exceed 25 per centum of the basic compensation.

Section 521(h) through 521(j) are transfer provisions protecting accrued employee leave rights.

Section 521(k) prevents an educator who voluntarily terminates employment with the Bureau before the expiration of his or her employment contract from being employed in another education position in the Bureau during the remainder of the term of the contract.

Section 521(l) makes section 5533 of Title 25, prohibiting Federal employees from receiving dual compensation, inapplicable to educators receiving additional compensation under subsection (g) or receiving compensation from outside employment during summer recess.

Section 521(m) defines the terms "educator" and "education position."

Section 522 requires the Secretary to establish a management information system including student enrollment, curriculum, staff, facilities, community demographics, and student assessment information with respect to the Bureau's education programs.

Section 523 requires the Secretary to promulgate, after dissemination to Congress, the tribes, and interested parties, policies, practices, and procedures to govern education-related action by the Bureau.

Section 524 requires the various divisions of the Bureau to establish uniform practices and procedures with respect to the concerns of those divisions which relate to education.

Section 525 requires the Secretary to institute a policy for the recruitment of Indian educators.

Section 526 requires the Secretary to submit an annual report on Indian education to the Congress.

Section 527 requires the Secretary to prescribe rules and regulations necessary to ensure the civil and constitutional rights of Indian students.

Section 528 provides that regulations required to be adopted under sections 116 through 117 shall be promulgated, submitted for congressional review, and take effect in accordance with the provisions of section 431 of the General Education Provisions Act.

Section 529 contains definitions of terms used in the Act.

PART C—AMENDMENTS TO VARIOUS EDUCATION ACTS

Section 531 provides for a simple five year extension of various Indian education programs administered by DHEW.

Section 532 adds "culturally related academic needs" to the needs to be addressed by LEA's with funds received under this part.

Section 533 provides authorization for the development of demonstration projects.

Section 534 provides that those persons serving in the role of "parent" (in loco parentis) will be eligible to serve on advisory committees overseeing the functioning of these programs. This section also grants additional input to the advisory committees into the hiring of personnel paid for with Indian Education Act funds and requires advisory committees to adopt and abide by by-laws.

Section 535 allows adjustments in the allocation of funds under this program where the funding would otherwise revert back to the U.S. Treasury unused.

Section 536 qualifies contract and alternative schools for the entitlement program funded under the Indian Education Act, as well as the 10 percent set aside competitive program.

Section 537 amends Title VIII in order to

improve the educational opportunities of Indian students.

Section 538 amends Title IV of the Indian Education Act for the purpose of clarification.

EXCISE TAX ON CERTAIN TRUCKS, BUSES, TRACTORS, ETC.—H.R. 1337

AMENDMENT NO. 3521

(Ordered to be printed and to lie on the table.)

Mr. LONG submitted an amendment intended to be proposed by him to H.R. 1337, an act to amend the Internal Revenue Code of 1954 with respect to excise tax on certain trucks, buses, tractors, et cetera.

STATE-TAX CREDIT AGAINST FEDERAL SLOT MACHINE TAX

● Mr. LONG. Mr. President, the Internal Revenue Code imposes an annual occupational excise tax on slot machines or other coin-operated gaming devices of $250 per machine. If a State imposes a similar tax, the State tax is credited dollar-for-dollar against the Federal tax, except that under present law, the credit for State tax paid cannot exceed 80 percent of the Federal tax.

The availability of the State-tax credit facilitates the raising of revenues through State taxes on slot machines. Under State law in Nevada, an amount equal to the State-tax credit is used for educational purposes. Under that law, the first $5 million is earmarked for capital improvements in the University of Nevada system, including the community colleges. Funds in excess of $5 million go to the State Distributive School Fund, which, under Nevada law, is the principal mechanism for distributing State assistance to local school districts. If the credit is increased to 95 percent, the additoinal amounts made available would be used for the payment of interest and amortization of principal for construction costs of educational facilities of the University of Nevada.

In light of these considerations, the Finance Committee has concluded that it is desirable to raise the limitation on the State-tax credit from 80 to 95 percent of the Federal tax. The increased limitation will apply for years ending June 30, 1979, and June 30, 1980.

In addition, the committee amendment I am submitting today repeals the Federal occupational tax on slot machines, et cetera (imposed by section 4461 of the Code) for years beginning after June 30, 1980. The Treasury Department does not oppose repeal of the tax in view of the increase in the maximum State-tax credit made by the amendment.●

REVENUE LAW TIMING REQUIREMENTS—H.R. 7320

AMENDMENT NO. 3522

(Ordered to be printed and to lie on the table.)

Mr. LONG submitted an amendment intended to be proposed by him to H.R. 7320, an act to revise miscellaneous timing requirements of the revenue laws, and for other purposes.

PUBLIC CHARITY STATUS OF CERTAIN LONG-TERM CARE ORGANIZATIONS

Mr. LONG. Mr. President, this committee amendment I am submitting today excludes from private foundation status, for purposes of the foundation excise tax rules and the charitable deduction income tax rules, certain tax-exempt charitable organizations which have continuously operated since May 26, 1969, facilities for the long-term care of elderly persons, needy widows, children, or permanently and totally disabled persons.

The Internal Revenue Code defines the term "private foundation" to mean any charitable, educational, religious, or other organization described in section 501(c)(3), other than certain specified categories of organizations. These categories (known as "public charities") include churches, schools, hospitals, or certain medical research organizations, certain other organizations which receive specified "public" support, and organizations which are "supporting" organizations to other public charities. For this purpose, under Treasury regulations, the term "hospital" does not include "convalescent homes or homes for children or the aged, nor does the term include institutions whose principal purpose or function is to train handicapped individuals to pursue some vocation." Thus under present law, a privately endowed long-term care organization (such as an orphanage) may not qualify as a public charity.

Public charities are not subject to the private foundation excise taxes. In general, the rules relating to income tax deductions by individuals for contributions to public charities or to private operating foundations are more favorable to the donor than the rules relating to the deductibility of contributions to private nonoperating foundations."

The Finance Committee has concluded that privately endowed charitable organizations which operate long-term care facilities as their principal functional purpose perform public functions and are subject to public attention to the same extent as privately endowed schools, hospitals, hospital-affiliated medical research organizations, and so forth, which are treated under present law as public charities on the basis of their charitable functions. Also, imposition of the annual foundation excise tax on the net investment income of these organizations reduces the amount of such income available for operation of long-term care facilities.

Accordingly the committee amendment excludes from private foundation status an organization, described in section 501(c)(3) of the Code, which, on or before May 26, 1969, and continuously thereafter to the close of the taxable year, operates and maintains as its principal functional purpose facilities for the long-term care, comfort, maintenance, or education of permanently and totally disabled persons, elderly persons, needy widows, or children. The amendment applies retroactively to January 1, 1970.

It is understood that the committee amendment would benefit the Sand Springs Home in Oklahoma and approximately 26 other identified homes around the country. Any other long-term care organization meeting the requirements of the amendment also would be treated under the amendment as a public charity, but only if the organization has operated qualifying long-term care facilities continuously since May 26, 1969.

REVOCATION OF ELECTION OF RETIRED PAY FOR TAX COURT JUDGES—H.R. 8811

AMENDMENT NO. 3523

(Ordered to be printed and to lie on the table.)

Mr. LONG submitted an amendment intended to be proposed by him to H.R. 8811 an act to amend sec. 7447 of the Internal Revenue Code of 1954 with respect to the revocation of an election to receive retired pay as a judge of the Tax Court.

INVOLUNTARY CONVERSION OF SPECIAL USE VALUATION PROPERTY

● Mr. LONG. Mr. President under present law, certain real property used as a farm for farming purposes or in a closely held trade or business may be valued for Federal estate tax purposes by reference to its actual use ("special use valuation"), rather than at its fair market value determined on the basis of highest and best use.

To assure that special use valuation property continues to be used for farming or for other closely held business uses, a recapture rule is provided. In general, this rule results in recapture of the estate tax benefit of the special valuation if the heir disposes of the property or changes its use within 15 years of the death of the decedent (or, if earlier, prior to the death of the heir). The purpose of this recapture rule is to prevent the heir from having the property valued for a special use for estate tax purposes, but then obtaining a higher value by sale or change of use.

Under present law, this recapture rule applies to special use valuation property which is involuntarily converted (such as by condemnation) even if the proceeds of the conversion are reinvested in property used for the same special use.

The Finance Committee has concluded that application of this recapture rule to an involuntary conversion produces an unfair and unnecessarily harsh result in cases where the heir reinvests proceeds in farm or other special use real property. In such a case, the heir's use of the conversion proceeds to acquire property for the same special use is consistent with the basic policy of the recapture rule, and the interruption in the 15-year holding period is not a voluntary act by the heir.

Accordingly the amendment I am submitting today provides that if an involuntary conversion of qualified real property takes place, no recapture of the estate tax benefit will occur if the property is replaced by other real property of at least equal value to be used for the same use. If qualified real property is replaced by property of lesser value, the recapture will apply only in the propor-

tion that the excess of the amount realized in the conversion over the amount reinvested bears to the amount realized on the conversion.

These rules generally give the heir the same time to make a qualified replacement as is permitted under the present income tax involuntary conversion rules; that is, 2 years from the date of the conversion. The amendment also provides that the recapture period (generally, 15 years) will be extended for an additional period equal to the period of any discretionary extensions of time, beyond the normal 2-year period, granted by the IRS for reinvestment. However, any such extension of the recapture period will apply only to the replacement property.

Present law also provides that the basis of "carryover basis property" generally is adjusted by the amount of Federal and State estate and inheritance taxes attributable to appreciation. Although the purpose of the recapture tax is generally to place the estate (and the heir) in essentially the same position as if special use valuation had not been elected, no adjustment is provided under current law for any portion of the recapture tax imposed upon the disposition of special use valuation property.

The Finance Committee has concluded that this result is unduly harsh even in cases where the involuntarily converted property is not fully replaced. Consequently, the amendment provides that if qualified real property subject to an involuntary conversion is carryover basis property, its basis will be increased for Federal income tax purposes in an amount equal to the recapture tax imposed with respect to any appreciation element in the portion of the differential between fair market value and special use value which has been subjected to recapture. These adjustments to basis are to be made on a property-by-property basis.

The following example illustrates the operation of these basis adjustment rules in the case of carryover basis property. Assume that one parcel of special use valuation property is involuntarily converted within the recapture period and that none of the conversion proceeds are reinvested. As of the applicable estate tax valuation date, the fair market value of the property is $1 million and its special use valuation (at which it was included in the decedent's estate) is $700,000. The heir's basis in the property (prior to any adjustment by reason of the involuntary conversion) is $600,000 and the amount of the recapture tax imposed by reason of the involuntary conversion is $129,000. Under these assumptions, all of the recapture tax is attributable to the appreciation element in the differential between the fair market value and the special use value, and thus the basis of the property is increased by $129,000 (from $600,000 to $729,000).

However, if in the example described above, the heir's basis were $800,000 rather than $600,000, then only two-thirds of the recapture tax would be attributable to the appreciation element in this value differential, and the basis of the property would be increased by $86,000 (from $800,000 to $886,000).

The amendment provides that an adjustment resulting from an involuntary conversion is treated as having been made immediately before the property was involuntarily converted. Thus, the adjustment will result in a reduction in the amount of gain (or an increase in the amount of loss) realized on the involuntary conversion.

If the involuntarily converted property is replaced by property of at least equal value to be used for the same use, no recapture tax would be imposed and hence no basis adjustment would be made.

Since this committee amendment would correct technical oversights in the 1976 Tax Reform Act, it would apply to involuntary conversions after December 31, 1976 (the effective date of the estate tax changes for special use property made by the 1976 act).●

DISTRICT OF COLUMBIA REPRESENTATION—HOUSE JOINT RESOLUTION 554

AMENDMENTS NOS. 3524 AND 3525

(Ordered to be printed and to lie on the table.)

Mr. SCOTT (for himself and Mr. WALLOP) submitted two amendments intended to be proposed by him to House Joint Resolution 554, a joint resolution proposing an amendment to the Constitution to provide for representation of the District of Columbia in the Congress.

NOTICES OF HEARINGS

COMMITTEE ON THE JUDICIARY

● Mr. ROBERT C. BYRD. Mr. President, for Mr. EASTLAND and on behalf of the Committee on the Judiciary, I desire to give notice that a public hearing has been scheduled for Friday, August 25, 1978, at 9:30 a.m., in room 2228, Dirksen Senate Office Building, on the following nominations:

Patricia J. E. Boyle, of Michigan, to be U.S. district judge for the eastern district of Michigan vice Damon J. Keith, elevated.

Julian A. Cook, Jr., of Michigan, to be U.S. district judge for the eastern district of Michigan vice Lawrence Gubow, deceased.

Any persons desiring to offer testimony in regard to these nominations shall, not later than 24 hours prior to such hearing, file in writing with the committee a request to be heard and a statement of their proposed testimony.

This hearing will be before the full Judiciary Committee.●

ADDITIONAL STATEMENTS

JACK ANDERSON RETRACTS

● Mr. CURTIS. Mr. President, there are no exceptions to the command "Thou shalt not bear false witness." It applies to all persons. There is no immunity either for members of the press or for politicians.

When falsehoods are spoken or written, they often do great damage. Such was the case with one of our very distinguished men of the Foreign Service, the Honorable Turner B. Shelton.

Ambassador Shelton is an honest and dedicated patriot. He represented the U.S. Government with fairness and honesty and in the best interest of our country. He was our Ambassador to Nicaragua from 1970 to 1975. Ambassador Shelton has rendered distinguished service at several foreign posts including Russia, where he negotiated the cultural exchange, and in Hungary and in the Bahamas.

There are those in our country, and some of them are in government, who have extreme, critical views of Nicaragua, and they seem to prefer that Nicaragua have a "Castro-type Communist government." They fail to speak or write objectively about Nicaragua and the facts relating to that country. This group disregards the questions as to whether or not a country is a dependable friend of the United States. All of this resulted in false and damaging statements being made and written about Turner B. Shelton. After Mr. Shelton's return from Nicaragua, he was under consideration for another post. The falsehoods that were published about him did influence some Members of the Senate and some members of the Committee on Foreign Relations. The result was that this country was deprived of the services that Ambassador Shelton could render, and Ambassador Shelton was treated most unfairly by the publication of these falsehoods and was damaged materially.

Among those who wrote things about Turner B. Shelton that were untrue was the well-known columnist Jack Anderson. I am happy to report that Jack Anderson has retracted his statement. Jack Anderson has admitted that he was wrong. Mr. President, I shall submit for the RECORD that portion of Jack Anderson's column relating to Ambassador Shelton which appeared in the Washington Post on Saturday, August 12, 1978. I commend Jack Anderson for making this retraction. It is unfortunate that a good man was wrongfully damaged by falsehoods, and it is too bad that Turner B. Shelton had to bring a lawsuit against Jack Anderson before this retraction was made.

The article above of August 12, 1978, follows:

ARTICLE BY JACK ANDERSON

Shelton Revisited—The U.S. ambassador to Nicaragua from 1970 to 1975 was Turner B. Shelton. Commencing in 1973, we did a series of articles critical of the ambassador. We have concluded that, to be totally fair to Ambassador Shelton, the following should be added to the record.

Our criticism of Ambassador Shelton was based upon his close relationship with President Somoza, but in light of additional facts we are now convinced he was merely carrying out the Nixon administration's policy in Nicaragua.

On Dec. 22, 1972, a devastating earthquake struck Nicaragua. We reported that the Sheltons were primarily concerned with their own personal problems.

We are now persuaded that the ambassador and his wife were deeply concerned about the devastation. The ambassador worked tirelessly for six days and nights with little more than a few hours sleep and refused to let a broken arm slow him down.

For their efforts, the embassy received a special commendation from the State Department and White House. He also received from President Somoza the highest award of Nicaragua.

After leaving Nicaragua, Shelton became diplomat-in-residence at the Naval War College in Newport, R.I. He retired on March 31, 1977. He is now a successful international consultant representing the interest of U.S. firms abroad.

We did not agree with the Nixon administration's policy toward Nicaragua. Perhaps this influenced our attitude toward Shelton. His 30 years with the government included notable achievements and the Distinguished Service Award. He played a leading role in negotiating the first U.S.-Russian cultural exchange program.●

CZECHOSLOVAKIA

● Mr. STEVENSON. Mr. President, 10 years ago the Soviet Army marched into Czechoslovakia and brutually suppressed the beginnings of liberal and humane government in that unhappy country.

In the brief period of Czechoslovakia's true independence between the two world wars, Americans developed a profound respect for the people of Czechoslovakia. Their courageous and purposeful efforts to build a democracy in their ancient land earned the admiration of peoples everywhere. The Soviet takeover after World War II effectively stifled the growth of democracy in Czechoslovakia for a generation. So it was understandable that, in 1968, after years when liberty in Czechoslovakia was in eclipse, people in the West were encouraged by the signs of a loosening of the repressive controls characteristic of the Czech regime.

Those hopes were destroyed by the raw application of Soviet force, and we salute the courageous leaders of Czechoslovakia who reminded their fellow countrymen and all of us that the longing for freedom cannot be extinguished.

Even though repression has been the rule in Czechoslovakia since 1968, the Charter 77 group has managed to raise its voice to insist that the Czech Government honor its commitment to the principles of the Helsinki Accord. In doing so, the Charter 77 group has once again demonstrated the persistence of the human spirit in its demand for freedom and decency. As Americans, we should bear in mind the heroic efforts of those who put their own safety in jeopardy to achieve freedom for all and conduct our foreign policy in such a way as to enhance the opportunity for freedom and justice for the people of Czechoslovakia.●

GOLD MEDALLION—GOOD ECONOMICS

● Mr. TOWER. Mr. President, I recently joined Senator HELMS in sponsoring a bill which would require the Treasury to sell the first 1.5 million ounces of gold it sells after the date of enactment in the form of gold medallions. After this, the amount of gold minted into medallion form would be adjusted to meet demand.

This bill, the Gold Medallion Act of 1978, would not in anyway limit the amount of gold sold by the Treasury, only the form in which it is sold. Currently U.S. gold is auctioned off in bars which weigh 400 ounces apiece and are valued at about $70,000. Very few citizens can afford to make such a purchase. As a result, very little U.S. gold is sold to Americans. This should not be interpreted to mean that Americans do not want gold. More than 1.6 million ounces of the precious metal were imported last year—from Austria, Mexico, and South Africa—in the form of bullion coins. The American people have clearly demonstrated that they want to own gold, and their Government is clearly demonstrating a reluctance to let them buy it. For this reason, I have become a cosponsor to Senator HELM's Gold Medallion Act.

It is not my purpose here to make an empassioned speech on the American people's right to own American gold, although I believe very strongly in that right. It is not my purpose to bemoan the present situation whereby Americans must buy their gold abroad or not buy it at all. What I wish to do here is to examine, as thoroughly as possible, the economics of this bill; to ask the question, is this bill economically sound?

First of all, does the United States need, in the economic sense of the word, this bill? According to a statement issued by Grover C. Criswell, Jr., president of the American Numismatic Association, the answer is yes. All U.S. gold sales have been aimed at the bulk purchaser; gold bars are sold by weight at the current price of gold, usually to foreign banks. Meanwhile, Americans are importing bullion coins, and paying the current price of gold plus about 8 percent, which is the premium charged for bullion coins by the countries that issue them. Thus, we see gold leaving the country and we see gold coming into the country, in roughly the same quantities. Yet the gold coming into this country costs 8 percent more than the gold leaving it. Clearly this is not helping our balance-of-payments situation any.

The Gold Medallion Act would insure that, instead of leaving the country, this 8-percent premium would remain at home. Even if the Treasury receives less than an 8-percent premium for U.S. medallions, this would mean substantial additional Federal revenues, with the Government standing to gain an estimated $20 million from the sale of 1.8 million ounces at $170 an ounce. Of course, since the price of gold is most likely to be more than $170 an ounce by the time this bill could be enacted, the Government's profits would probably be even higher.

We must also consider the beneficial domestic results derived from utilizing these profits at home. The multiplier effect is, of course, lost when money is spent abroad.

Demand for small gold medallions in the United States is already assured, and may increase in the wake of the Gold Clause Freedom Act, a bill authored by Senator HELMS, cosponsored by myself, and signed into law in October of 1977. As more and more people begin to write contracts stipulating that they be paid in gold, the need for gold in small quantities will skyrocket. Gold medallions issued by the United States would provide the ideal medium of exchange for these contracts, and as a result the Government would profit.

Now, I am sure that many of you will agree that with the Federal debt the way it is now, the Government cannot afford to turn down a profit—be it ever so small in comparison with the debt itself.

So how much would these impressive little medallions cost to produce? Not much. Since the medallions would be made of the 0.900 fine gold which constitutes the bulk of the Treasury's stock, no time and money need be wasted in further refining. Also, it is much easier and cheaper to mint a gold medallion than to create the cupro-nickel sandwich of which our coins are made. The average medallion would probably cost only about 5 cents to manufacture, plus the costs of any added security which might be needed. For special medallions, of course, the cost of production would be much higher, and this cost would be passed along to the purchaser in the form of a large premium.

Gold medallions would cost little to manufacture, and promise an opportunity for considerable profit. Economically they are highly feasible.

I find that I must make one point on the ethics of our present method of selling gold. Foreign banks may be buying our gold, while our own citizens want to but are effectively prevented. This is a grave injustice. The Gold Medallion Act of 1978 is an opportunity for us to amend this injustice. Too rarely, we find, do ethics and good economics walk hand-in-hand, but this is the case with this unique bill. I hope that all in the Senate will join me in supporting it.●

A MODERATE'S VIEW ON TAX CUTS

● Mr. JAVITS. Mr. President, the United States can no longer afford to ignore the seriousness of the economic problems that face our Nation today. The No. 1 culprit is inflation, and this condition threatens the very social fabric of our Nation, breeding a divisiveness and an economics of selfishness among the American people.

A manifestation of this emerging trend over proposition 13, where the American taxpayers in their frustration and anger have struck out at public spending, only to encourage those we can least afford to harm—the poor and the disadvantaged.

A recent article in the Wall Street Journal by David P. Eastburn, president of the Federal Reserve Bank of Philadelphia, specifies in a highly perceptive way some of our Nation's major economic ailments and offers some equally timely changes. In his article, Mr. Eastburn urges us to transcend the traditional barriers presently dividing liberal and conservative doctrines in the field of economics and to work toward the creation of a cohesive social and economic policy that will restore the public's confidence and rally its support.

I share Mr. Eastburn's concern about the insidious nature of inflation, and I believe, with him, that we should avoid

a radical "meat-ax" approach to cutting taxes and choose the "scalpel" approach for specificity and responsibility—an approach that considers the full implications and the social as well as the economic costs. Also I concur in his recommendation that we reexamine the role of Government in fostering or hampering economic growth. Mr. Eastburn very astutely weighs the trade-offs involved in managing an economy of the magnitude of ours and reaffirms our urgent need for sound anti-inflationary fiscal and monetary policies.

Mr. President, I commend this article to my colleagues and ask that it be printed in the RECORD.

The article follows:

[From the Wall Street Journal, Aug. 16, 1978]

MEAT AX APPROACH TO CUTS CAN BE AVOIDED

(By David P. Eastburn)

As the wave of tax-slashing proposals sweeps the nation, economic liberals find themselves with their backs to the wall. Those of us who would use economic policy consciously to alleviate poverty and economic distress (as good a description of liberal economics as any) see the tide of sentiment moving strongly against us. What course should an economic liberal seek?

First, how to deal with the Proposition 13 syndrome? To the extent that the meat-ax approach to taxes is directed deliberately to cutting public services to the poor and disadvantaged, it is, of course, deplorable. But a case can be made for shrinking the size of government that is perfectly consistent with the liberal view. It is that beyond some point intervention by government can hamper the economy so severely as to slow economic growth.

Edward Dennison, a senior fellow at the Brookings Institution, has calculated, for example, that government regulations have cut deeply into productivity growth during the 1970's. He estimates that in 1975 pollution and safety regulations alone reduced the average growth rate in productivity by about one-fifth. Productivity growth is a key element in maintaining economic growth. And since economic growth has been responsible for most of the remarkable reductions of poverty achieved in the past quarter of a century, it is clear that excessive government intervention can be counterproductive to the objectives of liberal economics. What is "excessive," of course, is a matter of judgment. Mine is that we are operating in the danger zone.

But the solution is not to apply the meat ax. Surely the process of government has not become so bankrupt that we cannot still confront the many needs before us and sort out the priorities.

Congress has made good progress in recent years in improving the budgetary procedure. There is new awareness in the Executive Branch of the need to overhaul regulations. These are sensible, selective approaches to limiting the scope of government which still can encourage the private sector to grow and yet leave room for directing some of the taxpayer's dollars to meeting social needs.

Perhaps the proposal most deplorable to liberals is the Steiger plan to slash the capital gains tax. If the motive is simply to give a windfall to the already rich, the proposal is, of course, reprehensible. But there can be honest debate about the effect of the capital gains tax on economic growth. The science of economics is not far enough advanced to tell us exactly what the effect of a cut may be, but it certainly is in the direction of encouraging growth.

Similarly, the tendency recently to stress the importance of other kinds of tax relief for investment—liberalized depreciation allowances and the like—can be perfectly consistent with the liberal view. The "trickle-down" theory may be anathema to the social activist, but in the longer run it may further his cause better than a tax policy that always favors the consumer. What we need to do, obviously, is to make a careful tradeoff between the immediate benefit of such tax changes for the well-to-do and the ultimate welfare of the disadvantaged. Evidence of the past quarter of a century is that there is long-run paydirt in policies that encourage investment. They are not inimical to liberal economics.

The real culprit is inflation. I firmly believe the current taxpayer revolt would not exist were it not for the widespread frustration about inflation. It has been observed that the most insidious thing about inflation is that it tears at the fabric of society, and we are now seeing this happen.

The cry throughout the land is "Hey, what about me?" Group is pitted against group; everybody is out to get his; generous impulses are stifled. I have visions of angry hordes of middle-income consumers in California marching from the supermarket to balloting places to vote for Proposition 13.

What all this tells me is that the best way for those of a liberal persuasion to achieve their ends is to join the fight against inflation. Too often in the past liberals have been identified as being concerned with poverty and economic distress, conservatives with inflation. It is not that simple. Economists don't understand as much as they would like about the connections between the two phenomena and they need to keep working at the problem, but the lesson of the real world is that unless we get inflation under control we are not going to have sufficient public support to deal with economic distress.

This line of thought tells me, too, that we can't look for much success in efforts to talk down inflation. Once people come to feel they are on their own, that the only course is to look out for their own interests, appeals to self-sacrifice for the general good are not likely to be heeded. New approaches are needed and should be tried. One that holds promise is the TIP proposal to give tax benefits to businesses with a good record in holding down inflation. Extreme believers in the free market fear that the plan would interfere in its operation. On the contrary, I see the plan as harnessing market forces to fight inflation. Administrative problems are great but probably not insuperable. Liberals should give vigorous support to TIP.

However, this solution at best is sometime in the future and in any case cannot do the whole job. Given this fact, the most fruitful course is to pursue anti-inflationary fiscal and monetary policies—hold down government spending and keep the money supply from growing too fast.

This kind of action often is not identified with the traditional liberal economic view, but, I suggest, is the most promising route to the liberal goal. Liberals can join at least one hand with monetary and fiscal conservatives with a clear conscience that they are being true to their economic and social ideals.●

NADER ANTI-NUKE CONFERENCE, OCTOBER 6–8

● Mr. GRAVEL. Mr. President, I think it is fair to say that Ralph Nader and I disagree on many energy issues. But there is at least one issue we agree on, and that issue is nuclear power. We both recognize the environmental and economic burden of nuclear power on America and the world.

I am pleased that Ralph Nader is organizing another national gathering of citizens who are trying to prevent proliferation of radioactive wastes. I hope the gathering, to be held in Washington, D.C., October 6 through 8, 1978; will help give Congress the message that there is a rapidly growing constituency of people determined to hasten the demise of unsafe nuclear power and substitute the sensible alternatives like greater energy efficiency and solar energy.

Mr. President, I ask that Ralph Nader's invitation to "Critical Mass '78" be printed in the RECORD.

Mr. President, I also ask that two recent articles from the Washington Post be printed in the RECORD. These articles relate the efforts of Princeton University's plasma physics lab in trying to arrive at resolution of problems concerned with the commercial production of electricity from fusion. Fusion shows great promise for the future, in that it is nonpolluting, nonradioactive, and draws its source of fuel from seawater.

The material follows:

CRITICAL MASS '78

DEAR FRIENDS: Four years ago nearly a thousand citizens gathered to apply their talents, skills and resources on the menace of nuclear power. Since then the safe energy citizens' movement has steadily grown—but so too have the challenges.

When Critical Mass '74 was convened in November, 1974, thirty-six safe energy alliances had not yet formed. New York City and New London, Connecticut had not yet instituted an across-the-board ban on the transportation of radioactive materials. There had not been one hundred and fifty cancellations or postponements of nuclear reactor orders. Robert Pollard and Ronald Fluege had not yet resigned under protest from the U.S. Nuclear Regulatory Commission. Dale Bridenbaugh, Gregory Minor, and Richard Hubbard had not yet decided to quit their high level engineering positions at General Electric. Dr. Thomas Mancuso and Dr. Alice Stewart had not yet released their findings about the cancer-causing risks of low level radiation. State and local officials had not yet demanded "veto power" over the siting of radioactive waste repositories. The geologists at the U.S. Geological Survey had not yet released their reservations about burial of deadly nuclear wastes in geologic salt formations. And Congress had not yet abolished the secretive Joint Committee on Atomic Energy, which authored so much of the nation's pro-nuclear legislation. It is an awesome set of developments that has propelled public awareness about the risks of atomic energy.

Nevertheless there remain many important challenges today—challenges which will be examined and confronted at Critical Mass '78. The nuclear industry, chafing under the burden of mushrooming self-generated costs, the international uranium cartel, and operating difficulties, is moving toward a massive federal/taxpayer bailout. There is also great resistance within the industry to tighter radiation standards. Energy Secretary James Schlesinger wants to accelerate the licensing of nuclear plants despite the attendant safety risks and curb public participation under the guise of a public participation provision. The Department of Energy is considering New Mexico as a site for an ill-conceived radioactive waste repository. And no federal agency is devising a solution for the tons of uranium mill tailings that

pollute the West. . . . Finally, the prospect for a devastating reactor accident still hangs menacingly over the nation.

This year Critical Mass '78 hopes to bring both the new and old issues and the new and old activists together. As the citizens' movement builds momentum and as the nuclear industry faces a crossroads, it is time for all concerned citizens to meet in an educational forum to exchange information, strategies, and skills, about atomic energy, and its alternatives. I hope you join us for Critical Mass '78—it's an opportunity to show that a Critical Mass of people can make the Critical Difference.

Yours,

RALPH NADER.

[From the Washington Post, Aug. 20, 1978]

TAMING FUSION'S FURY

(By Thomas O'Toole)

It all began with Project Matterhorn in 1951. The search for energy from thermonuclear fusion—clean, cheap and without limits, its supply of fuel nothing more than the deuterium found in the earth's seawater.

So optimistic were the scientists who started Matterhorn that they spoke of producing power in five years. Buzz words were: "Burnup by Christmas," meaning they hoped to demonstrate fusion's scientific feasibility by matching the temperature of the sun the first year.

So relaxed was the program in 1951 that its name was chosen because Princeton University's Dr. Lyman Spitzer, Jr., the project's first director, was a mountain climber. A picture of the Matterhorn hung in his laboratory.

Two years later, the dream had dimmed but not by much. The scientists realized that the world of plasma physics where gas behaves like solids and liquids was more complex than they suspected but by then they had built a machine at Princeton to test their understanding of the physics.

The machine was called the Stellerator and some of its builders fully expected to reach fusion temperatures of 100 million degrees centigrade the first time they turned it on. When the day came to test it, the lights were turned out in the Stellerator laboratory so everybody could get a good look at the superheated gas when it ignited and the Age of Fusion began.

Somebody pushed the button that started the machine. There was a sudden, blinding flash. Not from fusion, however. The magnetic coils built into the machine to insulate the hot gas and keep it away from the walls of the machine all burned up because of a massive short circuit.

It's taken them 27 years but the scientists who labor at fusion research are beginning to understand its physics and tame its special fury. It has not been easy. While there have been no more short circuit explosions like the one that struck Princeton 25 years ago, there have been countless small but embarrassing failures along the way. What began as a cakewalk up the Matterhorn has become what the Department of Energy's Dr. Edwin Kintner calls the "greatest technological challenge man has ever undertaken."

A TURNING POINT

On July 24, a piece of that challenge was met. On that day, a younger team of Princeton scientists than the group which started the charge up the Matterhorn reached a milestone which may mark a turning point in technological history.

What the Princeton team did was achieve a temperature of at least 60 million degrees in a machine that might be described as a test-tube grandson of the old Stellerator. The temperature measurements which can be made on the Princeton device have a limit of 60 million degrees. Some scientists believe the real temperatures reached on July 24 at Princeton were upwards of 80 million degrees.

Even 60 million degrees is four times as hot as the interior of the sun. It's true the 60-million mark wasn't sustained for any longer than a 20th of a second, but sustainment time is beside the point. The highest temperature reached in a fusion device like the Princeton machine before July 24 was a paltry 26 million degrees.

"We'd been hoping to get up to 35 million degrees this time," said Dr. Melvin B. Gottlieb, director of Princeton's plasma physics laboratory, "but we went sailing right by it. We saw the temperatures go to 45 million, 50 million, 55 and then 60. It was amazing."

What's the importance of the Princeton achievement? Well, it's a little like breaking the sound barrier for the first time. The scientists have proven they can do it. There's nothing magic about 60 million degrees except that once a fusion device gets through 44 million degrees the heat is so high that the fusion reaction where light elements combine to form a heavier element begins to sustain itself.

The deuterium inside the machine is now so hot it has become a plasma, a gas whose electrons have been stripped away. When that happens, the gas is left with positive and negative charged particles moving at random. So rapid does that motion become that it's almost impossible to slow it down and cool the gas off again. It's like a runaway truck, moving down the steepest of hills.

THE MAGIC NUMBERS

Princeton's Dr. Gottlieb insists that what took place in his laboratory July 24 is not a breakthrough and perhaps it isn't. Gottlieb says that fusion will not be demonstrated until a plasma reaches a confirmed temperature of 100 million degrees for at least one second. These are the magic numbers scientists have talked about for the last 27 years. At those temperatures and for that span of time, more energy is pumping out of the fusion device than must be pumped in. Eureka!

The Princeton Large Torus, as Gottlieb's infernal machine is called, is the forerunner of a much bigger machine now being built at Princeton which will surely demonstrate sustained fusion for the first time. As intricate as fusion physics are, one thing about it is simple. Build a bigger machine and you go to higher temperatures and longer fusion times. It is an axiom of plasma physics.

Why did it take 27 years to prove the power of fusion? To begin with, the physics proved to be a lot more difficult than anybody imagined. Princeton's Gottlieb explains it this way: "People always ask me why we can't solve the fusion question if we put a man on the moon. And I always say that getting to the moon didn't involve any new principles, it was just a question of engineering the machinery to get there. In the fusion business, we're running up against new concepts every day and trying to put together the engineering at the same time."

Engineering the equipment to reach higher temperatures than the sun has turned out to be a task of backbreaking magnitude. Just one part of that job was developing magnets that had enough force to contain plasma at temperatures of millions of degrees. After all, those temperatures melt anything they touch so that any machine built to withstand those temperatures had to have a mechanism that kept the hot gas from touching the walls of the machine.

Magnets can do that because the plasma is electrically charged. The field built up by the magnets along the walls of the machine wrap around the plasma like a great big cloak, keeping all but a tiny fraction of the gas from touching the walls. Put another way, the magnetic fields act like the insulating layer in a thermos bottle and help to keep the heat from escaping.

It took 27 years for the scientists involved to learn what Gottlieb calls the "kitchen tricks" of the business that make fusion work. Start with the "heaters" that raise the temperature of the gas to plasma-like heats. The heaters used in the Princeton experiment are what engineers call "neutral beam injectors," which are a brand new family of devices developed at the Oak Ridge National Laboratory for the purpose of lighting the fires of fusion.

The neutral beams are ingenious "guns" that fire high energy charged particles right into the fusion machine. Along the way, the charged particles pass through a gas cell that strips half of them of their charge so that they're neutral when they enter the machine's magnetic field.

Charged particles would be trapped by a magnetic field. Neutral particles with no charge on them fly through magnetic fields as if they're not there. The result of a steady stream of high speed neutral particles striking a gas like deuterium is that they collide with such force that they get charged again, heating the gas to enormous temperatures in fractions of a second.

The real "kitchen trick" that Gottlieb and his team used last month was to scrub the walls of the fusion machine and make them squeaky clean.

If that sounds oddly unscientific, consider this. It turns out that when an unheated gas first enters a fusion machine some of it escapes the magnetic field and clings to the walls of the machine. When the gas contained by the magnetic field is heated, the gas clinging to the walls tends to cool everything down and slow the fusion reaction. For years, scientists didn't understand this. And their response was to pump more gas into the machine to try to raise the temperature. This slowed down the reaction too, spoiling the experiment.

"It sounds so simple, except a lot of people have been struggling with it and after you've done it you say: 'Why didn't we do it a long time ago?'" Gottlieb said. "Now everybody will be doing it within the year or maybe less."

AN ERRANT MEMO

An enduring irony of the Princeton achievement of last month is that it does nothing to speed up the U.S. program to develop fusion as an energy source.

It proves that fusion is possible but it cuts not one month from the plan to generate electricity from fusion by 2005 and have a commercial network of fusion electric plants in place by 2025.

It doesn't save a penny of the money that's needed to develop fusion either. It's cost more than $2 billion already and it's going to take at least another $15 billion to make the first kilowatt of electricity from fusion.

"I keep on saying to people that if somebody invents a new energy system it will take at least 20 years before there's a 5 percent market effect," Gottlieb said. "You can't make changes in a hurry even if you know how to do it and we don't know how to do it yet."

The politics that followed the Princeton achievement are curious and deserve at least a mention. When the Department of Energy was notified of the 60-million-degree milestone, a mixed reaction ensured. The fusion people were ecstatic, drafting what the federal government calls an "early warning memorandum" for cabinet and agency heads to explain what had happened. Curiously, the memo never reached the White House, presumably the place such memos are aimed at.

There was discussion inside the Energy Department about whether to hold a press conference to announce the achievement. Top management did not want a press con-

ference. They worried that Congress might demand an increase in the fusion budget request, anethema in this year of a forecast balanced budget.

There's another reason Energy Department sources say top management looked askance at the fusion achievement. Energy Secretary James R. Schlesinger believes in the "economics of scarcity," meaning he preaches energy economy because all our fuels are in scarce supply.

Fusion? All fusion does is tell the world that we have all the energy we'll ever need.

[From the Washington Post, Aug. 15, 1978]

LAB FEAT TERMED FIRST STEP TOWARD LIMITLESS ELECTRICITY

(By Thomas O'Toole)

The attainment of a temperature of 60 million degrees for a half second in a Princeton University laboratory was described yesterday as the first step toward a limitless supply of electricity for the entire world.

"We're going to make it, we're going to demonstrate the scientific feasibility of fusion," Dr. Melvin B. Bottlieb, director of Princeton's Plasma Physics Laboratory, said at a press conference held at the Department of Energy. "We're on schedule and we're very confident we will demonstrate fusion . . ."

Gottlieb said the demonstration of fusion could come as early as 1981 or 1982, when the Tokomak Fusion Test Reactor under construction at Princeton will begin to operate. This is a machine twice the size of the laboratory device used at Princeton to achieve fusion temperatures of 60 million degrees.

"We need to reach temperatures of 100 million degrees to demonstrate fusion," Gottlieb said. "There is no reason we cannot reach those temperatures in the next machine, which is a larger machine than we're now operating."

He said the attainment of a 60-million-degree temperature in the present Princeton machine came sooner than he or anybody else expected.

"It took us seven years to go from 5 million degrees to 25 million degrees," he said. "It has taken us six months to go the last 35 million degrees and reach the 60-million-degree mark. The results came in much better than we anticipated."

The most encouraging result of the Princeton achievement is that the 60-million-degree mark was reached without the hot hydrogen-deuterium gas mixture "clumping" together in swirls that would tend to cool the gas and spoil the fusion reaction.

"The fear was that the hot gas would clump up and leave cold spots that would slow down the fusion reaction," Gottlieb said. "To our great joy, we found out that this is not so."

He said this means that the larger machine now being built can be equipped with a much thicker magnetic field to insulate the hot gas and raise its temperature to the desired 100-million-degree mark.

"The invisible layers of magnetic field that confine the gas can be increased in scale in the bigger machine," he said. "The insulation that the magnetic field provides can be steadily improved upon in the next machine."

Calling the attainment of the 60-million-degree mark "extremely gratifying," Gottlieb declined to describe it as a scientific breakthrough.

"Breakthrough is not a scientific term," he said. "I have always avoided the word and I will continue to avoid it."

The way he described it, the Princeton Large Torus machine that achieved the 60 million degrees did so two weeks ago. He gave credit for the achievement to the use of a technique called "neutral beam injection" to help heat the gas confined inside the machine.

The 60-million-degree temperature is more than twice the temperature previously reached by the Princeton machine, a mark it make in December. The new record temperature is four times hotter than the interior of the sun.

The opposite of nuclear fission—the basis for today's nuclear power plants—where heavy atoms like uranium are broken apart to release energy, fusion is the combining of light atoms like hydrogen with an accompanying discharge of energy.

Fusion is clean, producing no radioactive wastes to be disposed of. It is limitless, drawing its fuel from seawater from which the light elements like hydrogen and deuterium (a heavy isotope of hydrogen) can be extracted.

John M. Deutch, director of energy research for the Department of Energy, cautioned yesterday that the Princeton achievement does not change the national timetable for the commercial production of electricity from fusion. He reiterated that the first fusion plant would not be built before 2005 and that fusion would not be commercial before 2025.

"The first fusion reactor won't be seen before the first decade of the next century and it could be another 20 years before fusion goes commercial," Deutch said. "We're talking about a developmental budget of $10 billion or more which we have no assurances that the engineering difficulties involved in generating electricity from fusion will be overcome."●

THE COSMETIC WAR ON INFLATION

● Mr. TOWER. Mr. President, inflation is the most serious economic problem facing this Nation today. It is literally robbing Americans of their income, frustrating efforts to provide jobs, and undermining confidence in the U.S. dollar.

The problem of inflation was addressed by Paul W. McCracken, former Chairman of the Council of Economic Advisers, in an article appearing in the August 18 issue of the Wall Street Journal. In the article, Professor McCracken states that:

The fact is that we are not gaining ground against inflation.

He goes on to say that:

After all the rhetoric about inflation's being the dominant economic problem . . . we are losing ground.

His observations regarding the role of fiscal and monetary policies in causing inflation were particularly insightful. He writes:

That we have not really been willing to bite this bullet is indicated by the demand management (fiscal and monetary) policies that have been deployed. The upward pressure the budget (fiscal policy) exerts on the economy is equal to the rise in expenditures plus the revenue value of any net reduction in tax rates (which indirectly has an expansive effect by increasing after tax incomes). In the period from 1959 to 1965, when the price level was quite stable, this measure of "fiscal pressure" averaged about 1% of GNP. Since 1965 it has been 2% to 3%, and would be close to 3% in 1978–79.

This same fear of facing fundamentals seems to be evident for monetary policy. With the emergence of rates of monetary expansion during the first quarter consistent, if sustained, with more discipline on the price-cost level, nervous protests were heard about the adverse effects on the economy. Those protesting presumably were calling for more rapid rates of monetary expansion (which is the only way the Federal Reserve could relieve pressures on interest rates), which would set the stage for a more rapid and inflationary expansion, which would in the end produce the even higher interest rates that are always the accompaniment of higher rates of inflation.

I wish to submit the complete article for the RECORD.

The article follows:

THE COSMETIC WAR ON INFLATION

(By Paul W. McCracken)

Barry Bosworth's basic trouble is that he has been right. And the rewards in our Babylon on the Potomac for those who insist on speaking the obvious about such unpleasant matters as inflation are not much different from those in ancient times who were disengaged from their heads for bringing to the King bad news from the wars. In Washington, success in Fighting Inflation apparently consists not in such quaint and straightforward things as reducing inflation but in producing pyrotechnics and cosmetics which will persuade the citizenry that there is progress where none in fact is really occurring. Indeed, the danger is not so much that citizenry will be confused, having themselves demonstrated a considerable capacity for clearheadedness, as that managers of policy will mislead themselves.

The fact is that we are not gaining ground against inflation. While the monthly figures will bounce one way or the other, and we might have a few good readings now, there are persuasive reasons for expecting the basic rate of inflation to continue rising. For one thing the underlying trend since the beginning of 1976 has been upward. It is, of course, true that speaking about a "trend" during a 2½ year period will make the careful statistician wince, and food prices have given the CPI a bad upward push. But a 2½-year period contains 30 monthly observations, and some subgroup of prices (about half of them, in fact) will always be rising more rapidly than the average.

UPWARD, EVER UPWARD

Moreover, the underlying "trend" in labor costs per unit of output during the last two years has also been upward. Apart from erratic quarter-to-quarter wobbles, the underlying rate of increase in unit labor costs has itself been rising about a half a percent per quarter—a track which would bring us to double digit rates by 1979.

And it is not easy to make a persuasive case that labor costs will be rising less rapidly. For one thing we are not getting anything like the gains in productivity, to offset the impact of wage increases on costs, that the economy historically delivered. Quarterly gains in output per man hour (annualized) have averaged a 1.6% annual rate in 1976, 1977, and thus far in 1978, and even with the strong, second-quarter gain in real output, productivity in the non-farm private sector rose at the rate of only 0.6% per year. In fact, these sluggish gains in productivity now extend back for a decade, strongly indicating that a fundamentally unfavorable structural problem has emerged in the economy.

If there were reason to expect a moderating trend in the rate of wage increases during the year ahead, that would provide some reason for optimism about the price level. This trend is more apt also to be perverse. Next year will give us a heavy schedule of collective bargaining, and this means a disproportionate share of wage increases will be the large first-year, front-loaded adjustments. And the probability that the average size of the overall packages negotiated will be enlarged further is also uncomfortably high.

All of this might, of course, be consistent with a declining rate of inflation. Some major items that consumers buy might experience a sharp decline in their prices—

though if this were food, while one part of government tried to take credit for progress against inflation another part would be busy viewing with alarm the low level of farm prices.

Rising labor costs also might not fully express themselves in the price level if profit margins were to be squeezed further. Reported profits are now double those of a decade ago, and they have increased almost 50 percent in the last five years. Here is, however, an illustration of the extent to which inflation itself can confuse facts. With a proper accounting for current costs, which conventional procedures fail to do, true profits after taxes are up only one-third from those of a decade ago, which means that in real terms they are down. While some businessmen prefer the comfort of the misleading conventional figures on profits, they could be expected to keep a short leash on their capital budgets if profit margins were to decline further.

After all of the rhetoric about inflation's being the dominant economic problem, a view which surveys show consumers share emphatically, we are losing ground.

What is the problem?

The problem is that our strategy for reducing the rate of inflation is, to borrow an apt phrase from D. H. Robertson, 'a grin without a cat."

While there is plenty for the profession to be humble about when it comes to the economics of inflation, there is one conclusion that is supported both by logic and the facts of historical experience. The rate of inflation will not come down so long as pressures of demand pushing on supplies are strong enough so that higher prices and higher wages have no adverse effect on sales volume and employment. Indeed, holding prices and wages below these market-clearing levels by some sort of brute force or ad hoc process would produce the queue-line economy.

The rate of inflation will embark on a downward trend when the result of posting inflationary price increases or extracting excessive wage increases is a painful loss of sales and employment. Ours is the only major industrial country that has not yet mustered the will to face this basic fact of economic life. And the OECD secretariat now projects the 1978 rise in U.S. labor costs per unit of output in manufacturing to be above the average for the "Big Seven" countries, and significantly lower than the increases projected only for the U.K. and Italy.

That we have not really been willing to bite this bullet is indicated by the demand management (fiscal and monetary) policies that have been deployed. The upward pressure the budget (fiscal policy) exerts on the economy is eqiual to the rise is expenditures plus the revenue value of any net reduction in tax rates (which indirectly has an expansive effect by increasing after tax incomes). In the period from 1958 to 1965, when the price level was quite stable, this measure of "fiscal pressure" averaged about 1% of GNP. Since 1965 it has ben 2% to 3%, and would be close to 3% in 1978–79.

This same fear of facing fundamentals seems to be evident for monetary policy. With the emergence of rates of monetary expansion during the first quarter consistent, if sustained, with more discipline on the price-cost level, nervous protests were heard about the adverse effects on the economy. Those protesting presumably were calling for more rapid rates of monetary expansion (which is the only way the Federal Reserve could relieve pressures on interest rates), which would set the stage for a more rapid and inflationary expansion, which would in the end produce the even higher interest rates that are always the accompaniment of higher rates of inflation.

ANOTHER PART OF THE PROBLEM

A part of our problem is that we have also been reluctant to be realistic about how high the economy's operating rate could be pushed before pressures would begin to build. With the unemployment rate at 6% and the operating rate in manufacturing at only 84% of capacity (according to the Fderal Reserve), plenty of slack seemingly remains available to assure that more demand would translate into employment and output rather than higher prices and costs.

This is far too simplistic. Aftr a decade in which the economy's operating rate has been low, the capacity situation and labor markets are uneven, and bottlenecks are bound to develop at lower average operating rates than after a sustained period adjusted to performing closer to overall capacity. This is particularly evident in the labor market, where lack of skilled and experienced labor may impede that expansion of output which would provide jobs to those who are unemployed.

There is empirical evidence that the economy is in the pressure zone now. The proportion of companies reporting slower deliveries is now in the range reached in late 1972, or 1969, or 1956–66. And the incidence of help-wanted advertising is now higher relative to the labor force than at all cyclical peaks during the last decade including, even 1969).

When we are unwilling to face the fundamental realities of the economy and prefer to deal with symptoms and cosmetics, we should not be surprised that we are losing ground against inflation. Washington should not be confused about this. The citizenry is not.●

SCIENTIFIC MERIT OF NASA'S LUNAR SAMPLE ANALYSIS PROGRAM

● Mr. STEVENSON. Mr. President, the HUD-Independent Agencies Appropriation Act for fiscal year 1979, as passed by the Senate, contained a cut of $5.7 million from the NASA appropriation for lunar sample analysis. Since $5.7 million was the total amount earmarked for this activity, the cut effectively terminates this research.

The lunar sample analysis program is extraordinarily productive and useful. Not only is it important to our understanding of the Sun and its effect on Earth's environment but it has had a significant impact on major engineering programs in the Department of Energy, as discussed in a letter I have received from Dr. Milton Blander of Argonne National Laboratory.

The scientific community agrees that the lunar sample analysis program is a research activity of major importance that has brought distinction to U.S. science. NASA has done an outstanding job in administering this activity.

The conference committee on H.R. 12936 will meet soon. I urge the conferees to agree to the restoration of a significant portion of the $5.7 million for NASA's fiscal year 1979 lunar sample analysis program.

Mr. President, I ask that a number of letters written to me by scientists expressing concern over this reduction be printed in the RECORD.

The material follows:

THE ENRICO FERMI INSTITUTE,
Chicago, Ill., Aug. 3, 1978.

Hon. ADLAI E. STEVENSON III,
Chairman, Science Technology and Space Committee, Committee on Commerce, Science and Transportation, U.S. Senate, Washington, D.C.

DEAR SENATOR STEVENSON: I am deeply concerned upon learning that the Senate Committee has voted to eliminate the entire budget for lunar sample analysis ($5.7 million) from the NASA budget. Few endeavors have brought as much distinction to U.S. science as the lunar program and the analysis of the samples returned from the moon. Several of the best scientists have in the past years and will continue in the future to uncover some of the most significant facts about our earth and the solar system. A sudden cut of this exciting program constitutes, in my view, a serious blow to the scientific community, to NASA and to the scientific enterprise of the country as a whole.

I am seriously concerned with the consequences for our institutions in Illinois. At the University of Chicago's Enrico Fermi Institute three excellent faculty members, Professors Edward Anders, Robert Clayton and Anthony Turkevich, all members of the National Academy of Sciences, have made outstanding contributions to the field of lunar research. Their efforts would be severely cut back if the lunar samples analysis program were removed from NASA's budget.

I would greatly appreciate your efforts to restore this budget cut and to insure the continuing success of this outstanding program.

Sincerely,

PETER MEYER,
Director.

PALOS PARK, ILL.,
August 2, 1978.

Senator ADLAI STEVENSON,
Senate Office Building,
Washington, D.C.

DEAR SENATOR STEVENSON: This letter concerns the Senate appropriation bill for NASA and in particular a 5.7 million dollar item for lunar sample analysis which is in danger of being eliminated. Teams working on lunar sample analysis generally also do research on meteorites (funded I believe, from a separate budget category) so that appropriations for lunar samples impacts on research on all extra-terrestrial materials and a cut in the lunar sample budget would ultimately put most meteorite research in jeopardy. I am employed in the Chemical Engineering Division of the Argonne National Laboratory and am partly supported for about 25 percent of my time as the principal investigator on a grant from NASA for research on meteorites. One of my coinvestigators at Argonne is L. Fuchs. Most of my other research is on energy related fundamental chemistry. The purpose of this letter is to describe two specific instances of where fallout from our research on meteorites has had a significant impact on major engineering programs within the DOE.

The first instance relates to the high temperature battery under development in a multimillion dollar program at the Argonne National Laboratory, General Motor Corporation, the Atomics International Division of Rockwell International Corporation, Gould Incorporated, and Eagle-Picher Corporation. This high temperature battery employs a lithium aluminum alloy as one electrode, an iron sulfide as the other and molten lithium chloride-potassium chloride as the electrolyte. The potential uses of this battery are for motor vehicle (largely automobile) propulsion and central electrical power storage. During the operation of this battery a peculiar phase was formed, later

labelled as "J" phase, which impeded the operation of the battery and decreased its ability to perform up to expectations in a major way. This phase was later identified as the mineral djerrfisherite which had been first discovered and characterized by my meteorite coinvestigator, L. Fuchs in an earlier investigation of meteorites. His earlier characterization and later help was an important cornerstone of the battery related research on this material which all led to measurements (some within my group under DOE funding) to define the chemistry of this material and to devise ways to eliminate it in the operation of the battery. Early tests indicate that performance of laboratory cells has improved 60 percent when our suggestions for eliminating this phase based on our research are used.

A second instance concerns my own work on condensation from a hot "solar gas" to form complex silicates, sulfides and metal phases. The computer program we used for this work was originally a NASA program for the calculation of rocket performance. We adapted and modified it for calculating the possible formation of meteoritic material from a solar nebula. Our modifications of this NASA program, made under our NASA contract for our meteorite research, has generalized the computer program so that it became useful in three DOE programs at the Argonne National Laboratory. It is now in use in our programs on power generation with a magnetohydrodynamic (MHD) generator, on the fluidized combustion of coal, and in a program on energy conservation in industrial electrolytic processes. In the MHD program, it is an important tool for minimizing a major economic factor in the loss of potassium seed and in the coal program it is used to calculate and prevent the formation of corrosive deposits. In the conservation program, it is used to deduce more energy efficient methods for metal (*e.g.* aluminum) production. I anticipate many other uses for this computer program (which parallel the uses of the program for meteorites). For example, the disposition of the pollutants lead and cadmium from coal combustion can be deduced and would be important in the elimination of these contaminants from flue gases.

Overall, these are only two examples of which I am aware. I am certain that there are other examples where research on extraterrestrial materials has aided in applied programs.

I hope that the funding for lunar sample analysis will not be eliminated. It has been a major example of the extremely high quality of American science and, has far surpassed the quality of analogous research in the USSR. Lunar (and meteoritic) research is still very vital. It is getting us closer to understanding our beginnings over four billion years ago and in addition has provided fallout which is an aid in some of our more practical goals.

Sincerely,

(Dr.) MILTON BLANDER,
Senior Scientist and Group Leader, Chemical Engineering Division, Argonne National Laboratory.

CHICAGO, ILL., *August 3, 1978.*

Senator ADLAI STEVENSON,
Senate Office Building,
Washington, D.C.

DEAR SENATOR STEVENSON: This letter is to request your intervention in every way possible to reverse the action of the Senate Appropriations Committee which deleted a $5.7 million appropriation for continuation of lunar sample research in NASA.

This is an extraordinarily grave matter. The action proposed is tantamount to the destruction of one of the best managed, most active and productive research programs in the U.S. This program enjoys extensive and active international involvement and support.

To remove this research activity from NASA will emasculate some of the most creative and productive teams of scientists and create major financial difficulties for their laboratories. In addition, it will seriously affect other scientists and laboratories since the already short NSF funds for earth (and planetary) science will have to be even further subdivided.

The present exciting and enthusiastically supported research program on lunar samples is beginning to help us understand the system we live in and the planet we live on, their origins and evolution. The lunar samples are not only relics of the distant past; they have also monitored the behavior of the sun. Lunar sample research is vital to an organization such as NASA. These samples provide ground truth information for many of the measurements related to fly-bys and spectroscopic observations of objects in the solar system.

Man's utilization of space will be significantly dependent on exploitation of the moon as a base and a materials resource. We must take advantage of the lead time provided by the availability and study of lunar material to acquire the knowledge that will be necessary for this next step by man into space.

Sincerely yours,

GEORGE W. REED, Jr.,
Senior Scientist,
Argonne National Laboratory.

UNIVERSITY OF CHICAGO,
Chicago, Ill., August 3, 1978.

Senator ADLAI STEVENSON III,
The Russell Senate Office Building,
Washington, D.C.

DEAR SENATOR STEVENSON: I am writing to you about the Proxmire Subcommittee's recommendation that 5.7 million dollars for lunar sample analysis should be deleted from the NASA budget and that lunar sample research should be carried out from now on by the NSF but that no new funds should be provided the NSF for this purpose. At the very least, this will result in a drastic reduction in the amount of money available for lunar research, a productive program already operating on a bare-bones budget. Inasmuch as the understanding of the origin and evolution of the planets is the fundamental scientific rationale for NASA's exploration of the solar system and studies of samples returned from distant plants are the most direct means of attaining this understanding, these recommendations are yet another step toward the total emasculation of the United States space program.

My own research is funded by NASA, but from a different program, that which deals with the study of meteorites. As the 1974 recipient of the Geochemical Society's F. W. Clarke Medal in Cosmochemistry, the study of the composition of the universe, I can tell you that the techniques developed in and the scientific return from the lunar sample program have had a major, positive effect on upgrading the quality of scientific research in my field. In addition, deletion of the above funds would close down NASA's lunar sample curatorial facility to which the NSF has turned for the delicate sample preparation techniques required in the study of the Antarctic meteorites which were recovered in two recent, highly-publicized expeditions funded by the NSF.

Some scientists are actively studying possible missions to return samples from Mars around 1990. How will those laboratories best equipped to retrieve the maximum information from those samples exist from now until then? Recent events have taught us the hard way that it is very diffcult to resurrect a high-technology program once it has been dismantled. It is my opinion that Skylab would not be in danger of plummeting prematurely to Earth if the manpower and technology gathered together during the Apollo era were still intact today.

Surely the United States, which spends billions annually on cigarettes, cosmetics and pet food, can afford 5.7 million dollars in the same period to continue the systematic scientific investigation of the lunar rocks which were obtained at a cost of over 20 billion dollars to the U.S. taxpayer. For the past few years, I have sat on the sidelines, watching in frustration budgets in various areas of scientific research dwindle or remain level in the face of a scientific inflation rate which far exceeds that of the consumer price index. The effect on American science is now visible. There are fewer laboratories. There is lower productivity in many of the remaining ones. Most disturbing of all, there is a growing hesitation on the part of U.S. scientists to commit sizeable fractions of their research budgets to exciting, pioneering ventures at the forefront of science because these are the risky ones, where the chance of failure is much higher than in those activities which have always worked in the past. I am sorry I have not written you a letter such as this in the past to urge you to do what you can to increase funding of scientific research.

Each year, I read more and more articles by Russian, German, Japanese, English and French scientists, the quality of whose research is relentlessly pursuing and overtaking our own. Did you know that Germany may very well send a spacecraft to rendezvous with and study Halley's Comet when it returns spectacularly in 1986, but that the U.S. will not because of budgetary constraints on NASA? The loss of U.S. scientific prestige in that event would be very great, but not as devastating as that which would accompany cessation of research on lunar samples.

For countless centuries, man has struggled to understand the universe and its origins. I hope it will not be said in the future that the United States, by these and other actions of the Senate, was instrumental in curtailing efforts to achieve this noble goal. I also hope I can count on your understanding of the importance of these issues and on your courage and leadership ability to stand up in the Senate and fight for what you believe in.

Yours sincerely,

LAWRENCE GROSSMAN,
Associate Professor of Geochemistry.

ENRICO FERMI INSTITUTE,
Chicago, Ill.

Senator ADLAI STEVENSON,
Russell Senate Office Building,
Washington, D.C.

DEAR SENATOR STEVENSON: I have recently learned of Sen. Proxmire's motion in the subcommittee of the senate appropriations committee to eliminate portion of the annual NASA budget dealing with the analysis of lunar and extra-terrestrial samples. I was more than alarmed to hear of this for several reasons that I wish to mention.

The past decade of research in the lunar and planetary sciences has rapidly increased our rather meager knowledge of the theories of solar system and planetary formation. In particular, the past few years have provided us with some of the most fascinating data to date. The techniques that have been developed to enable us to formulate these theories have all been a result of work brought about from the lunar program. It would be tragic at this time to cut off the research at just the time when we are at the point of developing the techniques to understand these complex problems. I might point out that we have not examined anywhere

near the total amount of samples that have been returned from the Apollo missions, due primarily to the great amount of caution and extreme care that not only NASA but all the scientific researchers have applied to the work. Sen. Proxmire has argued that $39 billion dollars have already been spent on the lunar missions and further spending should be eliminated. I believe that this is irrational in that the amount of money spent yearly to study these lunar samples is quite small, not only with respect to the $39 billion but also other budgets. It would seem a great waste considering that large initial cost to not derive full benefit from the program and to get our money's worth so to speak by learning as much as we can from the samples that we went for in the first place.

The NASA lunar and meteorite program has been in the past and still remains an exciting program, not only from the research itself but from the standpoint of the International collaboration that the program has allowed for. The work that is now being carried out by these scientists is of the highest caliber and has evolved into this state from this cooperation among scientists of all parts of the world.

Shifting of funding to NSF would be damaging from two standpoints, first, NASA is a mission oriented agency and as such is best equipped to oversee the research. It would be quite wasteful to throw away all the years of planning and work that has been invested in the Lunar and planetary science institute and shift the funding agency to one which has no expertise in the field. Secondly, the removal of the current NASA funding would require all the presently funded institutions to apply to the NSF. Overburdening of these funds would have the effect of squeezing out many of the smaller institutes funded by both NASA and the NSF. Many of these schools rely on these funds to support both student and faculty research. Certainly the effect would be felt on students who might be considering studying in the life sciences but could not afford to do so without funding. With the growing concern of environmental and energy issues the need for people highly trained in these areas is crucial. Removal of funds that allows us to train these people will result in a direct drop in the number of scientists that may be trained.

I hope that the Senate will act favorably on this issue and the work will continue to be carried on in the Lunar and Planetary sciences at the highest level. I thank you for your time in reading this hastily written letter and hope that we might count on your support.

Sincerely,

Dr. MARK H. THIEMENS,
Research Associate.

UNIVERSITY OF CHICAGO,
Chicago, Ill., August 3, 1978.

Senator ADLAI STEVENSON,
Russell Senate Office Building,
Washington, D.C.

DEAR SENATOR STEVENSON: I wish to express dismay at the action of Senator Proxmire's subcommittee of the Senate Appropriations Committee in deleting the lunar sample analysis program from the NASA budget.

It should be emphasized that the program is first-rate on scientific grounds. The subject of study is important and timely. The international community of scientists involved is a dedicated, productive group of scholars of high calibre. The record of research over the last nine years is vast and impressive in its quality. The prospect of work yet to be done is stimulating and exciting.

When President Kennedy in 1961 set a national goal to put a man on the moon within the decade, his motivations were political, not scientific. Many members of the scientific community were dubious about the value of such a program, myself included. However the fantastic success of the Apollo program clearly served its purpose admirably: to demonstrate American technological superiority to the world at large. But once the engineering feat had been accomplished, the task of reaping the maximum scientific benefit from the returned lunar samples fell to researchers, both here and abroad, most of whom had their backgrounds in the terrestrial earth sciences. New laboratory techniques were developed, new high standards for excellence of experimental methods were established, new patterns for collaborative research and for rapid communication and publication evolved. The prestige of American science in the international community has been greatly enhanced by this program.

A useful measure of the health and vitality of the lunar program is given by the Lunar Science Conferences, held annually in Houston. The excitement of these meetings has not waned over their nine occurrences. They are an annual *must* for about a thousand scientists. The well edited Proceedings volumes from these meetings run to almost 4000 pages a year. The scope of the conferences has evolved so as to include all of solar system science, including the moon, the planets and meteorites.

What lies ahead for research with lunar samples? At the very least one should be aware that a substantial fraction of the lunar samples have not yet been studied at all. These include a number of important core samples collected on the early missions when the pressure of succeeding missions precluded the possibility of the careful opening and dissection of these very important specimens. Furthermore, our understanding of the moon has progressed very considerably since 1970, and powerful new techniques have been developed, so that detailed study of samples from the early missions is necessary to realize their full value. I must emphasize that lunar sample analysis is not a routine application of established techniques to a large number of similar samples. New techniques are continually developed which allow us to address new scientific questions.

Not all aspects of lunar sample studies refer to the moon. Many take advantage of the fact that the moon has been a collector of particles from its space environment for over four billion years. For example, in my laboratory we measure the atoms of nitrogen implanted into grains in the lunar soil from the solar wind. By measuring soils taken from deep cores, we can measure properties of the sun back to two or three billion years ago. The results show a surprising large variation in the relative abundances of the two isotopes of nitrogen, reflecting the nuclear processes which have gone on in the sun. The most important conclusion from this is that we do not yet know how the sun works. This is an obvious case in which lunar sample studies have impact in broader areas of science, and in areas of practical human concern.

Another example of cross-fertilization from lunar sample research to other fields is the development of a new method for the determination of the ages of rocks. This technique, requiring very precise measurements of the isotopes of the rare elements samarium and neodymium, was applied first to lunar rocks in 1975. It has subsequently become one of the most important methods of studying the geological evolution of the crust and mantle of the earth.

Should the study of lunar samples be under the jurisdiction of NSF rather than NASA? From the points of view of the quality and effectiveness of proposal review, and of accessibility to the broad scientific community, I see no major difference. From my experience both as a proposal writer and a proposal reviewer for both agencies, I believe that the NASA lunar science program has a higher average quality than the NSF geochemistry program. However, NASA must determine which scientists have access to lunar samples, and must make that judgment on the basis of scientific proposals. It seems unnecessarily cumbersome to require one agency to evaluate proposals for sample allocation and another to evaluate the sample proposals for funding.

In summary, the lunar sample research program is a thriving, important area of science which makes a major contribution to American scientific prestige in the world. The United States has brought the world into the age of space exploration. Termination of a significant part of this venture could only be read as a signal that we have lost interest in exploring the nature of man and his environment.

Sincerely yours,

ROBERT N. CLAYTON,
Enrico Fermi Institute, Department of Chemistry, Chairman, Department of the Geophysical Science.

ENRICO FERMI INSTITUTE,
Chicago, Ill., Aug. 3, 1978.

Hon. ADLAI E. STEVENSON III,
Chairman, Subcommittee on Science and Space, U.S. Senate, Russell Senate Office Bldg., Washington, D.C.

DEAR MR. CHAIRMAN: I respectfully request that you seek to restore funds for the lunar sample analysis program ($5.7 million) that were deleted from the NASA budget by the Senate Appropriations Committee. I am enclosing my July 27 letter to Senator Magnuson, giving some reasons why this program should be continued. I shall not repeat the arguments in that letter, but focus on two crucial points: why the lunar sample is worthwhile and why it should be continued under NASA rather than NSF auspices.

(1) The lunar sample program has revitalized several areas of the earth sciences. Faced with the challenge of these priceless samples, lunar scientists have improved their instruments and skills by orders of magnitude, with a corresponding gain in information. These advances are now spreading through the earth sciences, often through the medium of young people trained in the lunar program. Having reached the paradoxical state where we have better data on lunar than on terrestrial rocks, many lunar scientists now spend part of their time on terrestrial rocks, applying lessons learned from the Moon to the Earth and thus directly contributing to the earth sciences.

(2) The lunar sample program has brought much distinction to U.S. science. Our world leadership in planetary science, geochemistry, and cosmochemistry is confirmed by every yardstick: professional honors, citations in foreign books and journals, U.S. contributions at international meetings, recognition by the Russians (as mentioned in my letter to Senator Magnuson), etc. A sign of the vitality of the program is the continuing participation of foreign scientists, selected by NASA peer review but funded by their own governments.

(3) The program has brought many scientific and cultural benefits, and will bring more. I think we will be a better and wiser people if we know our past: not only the origins of our nation but also the origins of mankind, life, our planet, and the solar system. The Moon holds many clues to these questions. (a) It differs chemically from the Earth, for reasons that are not yet fully understood. (b) It provides "ground truth" for the understanding of other small planets, such as Mars, Mercury, asteroids, moons of Jupiter and Mars, etc. (c) It contains a record of radiations and objects that struck the Moon since its formation: cosmic rays, par-

ticles from the Sun, meteorites, late building blocks of the planets, etc.

Let me offer two examples from my own work that illustrate the nature of lunar research. My group, consisting of 3 Ph.D.'s analyzes lunar rocks for 20 rare elements, using an exceedingly sensitive and precise but slow and expensive method: neutron activation analysis. We have learned to recognize meteoritic debris in lunar samples by its chemical signature (traces of noble metals, which are rare in pristine lunar rocks but are abundant in meteorites). Of special interest to us are the 20–100 mile bodies that fell on the Moon in the last stages of its formation, and produced the dark scars on the Moon's face. Many more such bodies must have fallen on the primitive Earth, but their traces have been wiped out by geological activity. Some of these bodies presumably were planetesimals (building blocks of the planets) and hence of great importance to an understanding of the planets.

By studying some 200 lunar samples over 5 years, we gradually recognized that 8 different bodies were represented, that 7 of them were unlike any present-day meteorites, and that they apparently fell in the order of their composition: the most Moon-like first, and the least Moon-like last. Obviously, nature is trying to tell us something about the orbits of these bodies, and how they varied with chemical composition. This, in turn, relates to the question why the planets all differ in chemical composition—one of the most basic questions in planetary science. Lunar samples contain at least part of the answer, and if we want to find it, my group will have to be funded to continue this work, and a couple of other groups should also be funded to keep me honest.

Lunar samples can also lead us to the same question by a different route. Combining ideas derived from meteorites and lunar samples, we showed in 1974 how to calculate the complete bulk composition of the Earth and Moon from only 6 chemical clues. This was an improvement over the traditional, trial-and-error method, which gave less complete results from a much greater body of data. Colleagues at other institutions tested our model and found that it came close to the mark, though in need of further tinkering. Encouraged by the success, we now are on the second try of a similar model for Mars, based on a few scraps of data returned by Viking. This model soon will be tested by us and others. If it survives, it will guide future research by making predictions, putting unrelated facts into a framework, extracting more information from a given number of facts, and allowing us to skip pointless experiments. We'll learn more about Mars with less effort and expense than we could without such a model. But this model could not have been conceived without earlier work on meteorites and lunar samples.

(4) The lunar program has brought various practical benefits, as some of my colleagues will report to you. I shall mention two examples from my own work on meteorites, an equally abstruse kind of extraterrestrial material. In 1959, I concluded that the diamonds in certain rare meteorites were made from graphite by high-speed impact; within a few months, two colleagues had duplicated the process in the laboratory and taken out a patent. A chemical company now uses this process to make industrial diamonds.

Between 1963 and 1973, my coworker B. Hayatsu worked on the origin of organic compounds in meteorites. We concluded from simulation experiments that these compounds had formed from carbon monoxide and hydrogen, with clay as a catalyst. Hayatsu now works at the Argonne National Laboratory on coal liquefaction, and found that clay is an excellent catalyst for this process. Unlike the previously used metallic catalysts, clay is not poisoned by the abundant sulfur in Illinois coal, but works even better when sulfur is present.

Let me now turn to the second question, why NASA rather than the NSF should administer the lunar program.

(5) We are not afraid to let the NSF "evaluate (our proposals) competitively with other applications for funding for basic research in the geological sciences", as long as it is done under a strict merit system. The initial selection of lunar sample PI's in the 1960's was strict enough, and the group has been pruned annually since 1970, by a tougher and more thorough peer review than that of the NSF. A number of people rejected by the lunar program are in fact being funded by the NSF.

However, the dumping of the lunar program onto the NSF, without an increase in funds, means that two groups previously funded at $29.8 million suddenly have to scramble for $24.1 million, which is a 19% cut. At this point a difference in research techniques becomes crucial. Geology, using its traditional tools of pick, hammer and microscope, is a low-budget operation; whereas isotope geochemistry, using the tools of physics (mass spectrometers, radiation detectors, etc.) is as expensive as physics. The NSF usually avoids measuring two such fields by the same yardstick, and separates expensive research fields (high energy physics, oceanography) from low-cost fields. But if this principle is breached in the present case, by forcing both groups to compete for the same 81% of their former funding, the temptation will be strong to sacrifice 50 high-cost lunar scientists for the sake of 200 low-cost geologists, or to slash the larger budgets to the point where the research groups are crippled.

(6) NASA is here to stay, as even Senator Proxmire seems to concede. And NASA has a long, unfortunate history of putting its priorities where the money is: 99% for engineering and 1% for science. Scientists have fought this trend in the 60's and early 70's, and though the situation has greatly improved in recent years, it would be unwise to free NASA of this potential swarm of gadflies Hare-brained schemes, such as mining of asteroids and orbital power stations, still need to be opposed, and such opposition is likely to be better-informed and more vigorous if it comes from scientists with a stake in NASA's program and image. In a positive vein, advice on worthwhile missions will also be better-informed and more freely given by scientists supported by NASA.

Let me conclude by paraphrasing a remark by Carl Sagan. We will be remembered as the generation that explored the solar system. Do we also want to be remembered as the generation that decided after spending $30 billion on a brilliant engineering feat that it couldn't afford $5.7 million to extract the scientific message from the lunar rocks that the astronauts returned?

Yours sincerely,

EDWARD ANDERS,
Professor of Chemistry.

CHICAGO, ILL., *Aug. 3, 1978.*

Sen. ADLAI STEVENSON,
Russell Senate Office Building,
Washington, D.C.:

Request that you introduce a Senate floor amendment restoring 5.7 million dollars to the NASA 1978–79 appropriations when the HUD-independent agencies appropriation bill (H R 12936) reaches the floor these funds were in the presidents budget for lunar sample studies and were deleted by the Senate appropriation committee.

Funds are vital to the University of Chicago's major program of basic research in physics and geochemistry and to basic understanding of exterrestrial phenomena would be glad to have the opportunity to discuss this with you personally if you need further material or justification for supporting this proposal.

HANNA HOLBORN GRAY,
President, University of Chicago.

PASADENA, CALIF., *Aug. 5, 1978.*

Hon. ADLAI A. STEVENSON III
Russell Senate Office Building,
Washington, D.C.:

I was sorry to hear that the Senate Appropriations Committee deleted the 4.7 million dollar appropriation for the analysis of lunar samples from the NASA budget. Senator Proxmire's suggestion that the geological branch of the NSF should now support this research would basically represent a 25% cut of the budget of this branch for those researches they are now funding. This seems to me a highly unwise move in the light of the importance of maintaining a high level of research on the problems pertaining to earth sciences whose researches include, earthquake prediction, studies on origins of ore deposits, coal, petroleum, and other natural resources, I therefore urge you that the 5.7 million dollars deleted from the NASA budget for the analysis of lunar samples be put back in the NASA budget and the proposed transfer of the financial responsibility for the analysis of these lunar samples to the NSF be avoided.

SAMUEL EPSTEIN,
Vice-President and President-Elect of the Geochemical Society, California Institute of Technology.

STANFORD, CALIF., *Aug. 4, 1978.*

Mr. ADLAI E. STEVENSON III,
Chairman, Subcommittee Science and Space, Russell Senate Office Building, Washington, D.C.

The proposed transfer of the budget for the lunar sample analysis program from NASA to NSF may have an unintended impact on important NSF programs in Earth science, especially if the combined funding for the lunar research, geology, geochemistry, and geophysics is substantially reduced. As president of the American Geophysical Union I am especially aware that the Earth science research funded by NSF provides the intellectual basis for many important applications including the prediction of earthquakes and other natural hazards and the global search for mineral resources. If the lunar analysis program is transferred to NSF, I hope that it can be done in a way that maintains the vigor of the lunar program without curtailing other important NSF programs in Earth science.

ALLAN COX,
President, American Geophysical Union.

PASADENA, CALIF., *August 2, 1978.*

Senator ADLAI E. STEVENSON,
Russell Senate Office Building, Washington, D.C.

DEAR SENATOR STEVENSON: The proposed deletion of the funds for the research on luner and extra-terrestrial material from the 1978–79 budget of NASA and NSF causes me great concern, the study of these samples is the ultimate scientific reward of the luner missions and a vital part of future explorations of our space environment. It has contributed tremendously to the understanding of our own planet as well as the solar system as a whole. This knowledge is essential not only to the possible future use of the space but also to the continuing effort of assessing man's position in the universe. This type of research is not a one time job but progresses with improving technology. It cannot be substituted by any other work. For a great nation like the U.S. it is definitely a lack of foresight to wipe out an entire field for the reason of saving an already pitifully

small amount of supporting funds, for these reasons I urge you to vote against this deletion.

TYPHOON LEE,
Robert R. McCormick Postdoctoral Fellow University of Chicago.●

THE IMBALANCE IN LABOR RELATIONS

● Mr. LUGAR. Mr. President, the recent filibuster against the labor reform bill was part of an effort to halt the increasing imbalance in labor relations in favor of powerful unions. Fortunately for the welfare of the country, of small businesses, and ultimately, of labor as well, the filibuster was successful.

The labor movement has been an important and necessary political force in the struggle for fair, humane working conditions and benefits. Its accomplishments have been great. It still has much to do.

But this struggle—because of its great success—now imposes different obligations upon labor organizations. The rights of the uninvolved public, and the economic welfare of the Nation as a whole must figure in the calculations of today's labor leaders.

Mr. President, I wish to call to the Senate's attention an excellent article that appeared recently in the Evansville, Ind., Press, written by Elizabeth Brewster of that city.

Ms. Brewster, although she has just graduated from high school, writes with an understanding and perceptiveness beyond her years. I would hope that other citizens of all ages will give her essay thoughtful consideration.

I salute her for a significant contribution to the public debate on a most important issue, and I commend the Evansville Press for affording her the opportunity to express her views.

The article follows:

BRINGING BALANCE TO LABOR RELATIONS

(By Elizabeth Brewster)

The precarious balance of power between American labor groups and American management interests currently seems to be topped in favor of the labor unions, a situation that provides little chance for either side to achieve its goals.

Labor unions are obviously an integral, necessary part of the American labor scenario, as they have been since their first rise to power in the 19th-Century industrial revolution.

Early attempts at organization of workers were usually the laborers' only response to the notoriously unhealthy working conditions and insufficient wages. The need for some type of worker representation then was obvious and urgent; today, labor unions still serve a vital purpose in protecting the rights of many American workers.

The need for protection of these laborers' rights, however, does not rationalize the abuse of power sometimes attempted by various unions.

Strikes, walk-outs and work slowdowns are usually viable and reasonable means of protesting contract settlements or working conditions. When these methods of dissent seriously interfere with the welfare of uninvolved American citizens and violate federal laws, however, the unions may be considered guilty of techniques akin to the 19th-Century management's "shut-out" and "blacklisting" tactics.

This lopsided balance of power can also wreak havoc with economic conditions. The current Washington strategy of combating inflation depends a great deal on keeping wage increases comparatively low during the next several years.

Yet the ever-rising wage demands of many unions seems to bluntly defy this economic plan. The rank-and-file members of a number of these unions seem oblivious to the fact that most additional money they so fervently demand may eventually spur price increases of consumer goods.

Most of the unions also seem unwilling to be the first "victim" of economic policy that could ultimately increase the purchasing power of its members.

This occasional disregard for public economic welfare gives every union an uncomplimentary image to the public, and diverts attention and enthusiasm from their ultimate goal: Betterment of workers' conditions.

Just as the oppressive industrial giants of the 19th Century eventually found themselves labeled as the "bad guys," so, too, will today's labor unions which are single-mindedly employing every dramatic tactic in their arsenal. Most likely, they will be regarded quite unsympathetically by future onlookers.

The perpetual power play between labor unions and management, nevertheless, is not inevitably headed for disaster. A genuine spirit of cooperation and compromise in both labor negotiations and everyday working interactions would do a great deal to improve the relationship.

The realization, too, that in a fair compromise neither side can be completely satisfied is a needed replacement for the current negotiating attitudes of belligerent stubbornness.

Negotiations between labor and management too often seem weighted down in favor of one side or the other, but the addition of cooperation and realistic attitudes could be the necessary elements to keep the balance of power from toppling.●

THE DAY OF SHAME

● Mr. WILLIAMS. Mr. President, on this 10th anniversary of the Soviet invasion of Czechoslovakia, I would like to express my personal repugnance for government sanctioned oppression. In current times, when human rights are extremely vital to our Nation's foreign policy, it saddens me to be reminded on this occasion that there are countries which refuse to recognize the right of each individual to personal and political freedom.

The people of Czechoslovakia were awakened early in the morning of August 21, 1968 by Soviet and Warsaw Pact troops, tanks, and guns. These people, who had been striving for a more democratic state, were forced by thousands of alien soldiers to accept the repressive standards of Communist rule. The people of Czechoslovakia, before that time, had made great strides toward the implementation of many aspects of democracy in their country. In fact, according to a contemporary Western report, many of those who were considered to be the more radical of Czechoslovakian reformers: "dreamed of making that country a genuine democracy, with different political parties that would have the right to contest for power. In their view, Czechoslovakia should become a country in which Communists could be voted out of power if the people wished to do this."

Mr. President, these efforts of the so-called "radical" reformers were, in my mind, directed toward a truly noble goal. Nevertheless, the Soviet Union refused to accept the legitimate aspirations of these courageous people. Instead, they denied many of those so-called "radicals" the opportunity to express their aspirations for a more representative government.

The tragic events of 10 years ago should serve as a consistent reminder to all Americans that we have an obligation to support the freedom of people everywhere. There are millions of individuals whose daily lives still focus around a continuous struggle with Communist oppression. They live under governments which refuse to recognize their inherent rights to freedom and personal dignity.

As Americans, we are privileged to be able to promote the cause of freedom by protesting the plight of any people who are systematically denied justice by their own governments. Too many countries, like Czechoslovakia, have reluctantly fallen under totalitarian domination since World War II. This anniversary of the shameful day that the Soviet Union crushed the budding liberalization there should add to our resolve that we will remain free.

And, in the enjoyment of our freedom, we must let the world know that we feel implicated in the fate of those who are oppressed. Our expressions of hope and indignation can hasten the day when the torch of freedom will once again shine in Czechoslovakia and other enslaved nations.●

TENTH ANNIVERSARY OF SOVIET INVASION OF CZECHOSLOVAKIA

● Mr. ZORINSKY. Mr. President, today we recall with sorrow the Soviet invasion of Czechoslovakia. On August 21, 1968, the Soviet Union brutally occupied Czechoslovakia and brought to an end a brave experiment in independence. Threatened by a breath of freedom, the Soviet Union crushed the attempt of the Czechoslovakian people to fashion their own institutions of government free of external influence.

Ten years have neither softened the harshness of that first blow nor the continuing oppression with which the Soviets exercise their dominance over the Czechoslovak nation. August 21 rightly is called the "Soviet Day of Shame." The Soviet Union has violated the letter and the spirit of the United Nations Charter and the Helsinki Final Act. Such flagrant violations deserve the condemnation of free peoples everywhere.

Aspirations for freedom have survived in Czechoslovakia and are expressed in Charter 77, a manifesto by Czechoslovakian citizens appealing to their government to observe the principles of the final act and the Czechoslovak Constitution. I applaud this call for the sovereign right of self-determination. Our national commitment to basic human rights demands no less.

Earlier this month, I proudly joined a number of my colleagues in cosponsoring

Senate Resolution 526, observing the 10th anniversary of the Soviet invasion of Czechoslovakia. Senate Resolution 526 expresses the sense of the Senate that the President should use the influence and leverage of his office to end the continuing intervention in Czechoslovakia by the Soviet Union. Today, I join Americans of Czech and Slovak descent—and all Americans—in condemning again the Soviet occupation of Czechoslovakia and expressing support for the brave people of that nation.●

TENTH ANNIVERSARY OF THE INVASION OF CZECHOSLOVAKIA

● Mr. MOYNIHAN. Mr. President, today, August 21, 1978, marks the 10th anniversary of the Soviet invasion of Czechoslovakia.

This year must bring many memories to the peoples of Czechoslovakia—some that are inspiring, and some that are grim. But it is equally an occasion for Americans to reflect upon the influence our ideas have had throughout the world, and on the challenges those ideas encounter in the world today.

Sixty years ago the modern nation state of Czechoslovakia was created out of the ruins of the Austro-Hungarian empire and the chaos of World War I. Its creation was principally the work of Czech and Slovak patriots and statesmen, most notably a man of brilliance and great character, Thomas Masaryk. But we should remember that those who accomplished this remarkable work were greatly influenced by the precepts of democratic self-determination whose most eloquent international advocate was our own President, Woodrow Wilson. Moreover, like our own country, the Czechoslovak Republic was a nation composed of diverse ethnic groups—not only Czechs and Slovaks, but Germans, Hungarians, Ukrainians, Gypsies, and Jews. For 20 years, until outside powers destroyed it, the Republic enabled these peoples to live together in unprecedented harmony and liberty.

In 1938, 40 years ago, their accomplishment was cruelly destroyed. Hitler's armies occupied the Sudetenland, and the rest of Czechoslovakia was yielded to the Axis powers at the Munich conference. Czechoslovakia was abandoned with a remarkable combination of cowardice and hauteur best expressed in Neville Chamberlain's remark that Czechoslovakia was a "far away country about which we know little." It was a remark which sometimes finds echoes in our own time.

Hitler's defeat brought only the briefest respite for the peoples of this nation. Both Czechs and Slovaks rose against the German occupations in 1944 and 1945, but received little aid from the Allies, largely because the Soviet Union preferred to "liberate" these areas itself. A coalition government ruled the country for a short period after the war, but local Communists, directed by Soviet agents and aided by the massive presence of the Red Army, overthrew the constitutional government in 1948—30 years ago. Again, the democracies turned their backs on our Central European cousin. Russia, the Big Four conceded, had a right to her own buffer zone: a bizarre concession to the outrageous contention that the West harbored designs against the Soviet Union.

But Czechoslovakia's democratic traditions did not die. Ten years ago today they reappeared in the heresy of "Socialism with a human face," and the call for political pluralism, a prospect which panicked the Soviet leadership and precipitated the Soviet invasion. That invasion, justified by the remarkable pretext that the Soviets were protecting the country from "West German revanchism," brought about nothing less than a thoroughgoing reimposition of totalitarianism on Czechoslovakian society. The Dubcek coalition was completely purged. Five Soviet divisions were permanently stationed on Czechoslovak soil. And, most important, pro-Soviet Czechoslovak Communists reimposed ideological and political controls in all spheres of life.

Nevertheless, today, 10 years after the ruthless invasion of Czechoslovakia, the Czechoslovak people's commitment to freedom remains an unbroken force. This fact is a powerful rebuke to the enemies of freedom, and to the cynics who believe that those who would resist totalitarianism are quixotically seeking to impose their own democratic values upon an indifferent world. It is also a tribute to the enduring power of that tradition of democratic internationalism which shaped the best of our own Nation's foreign policy in the years since World War II. The spirit of freedom in Czechoslovakia endures among the workers, who have joined in protests against oppression and foreign domination. It is evident among the religious groups: Roman Catholic clergy have spoken out bravely against religious persecution, as have priests of the Protestant Church of the Czech Brethren, Lutherans, Jewish leaders, and Seventh-day Adventists. But perhaps the best-known evidence of Czechoslovak desire for liberty is the group which calls itself "Charter 77," a group which now has some 1,000 public supporters, and describes itself as:

> . . . a free, informal and open community of persons of varying convictions, religions and professions, joined together by the will to work individually and collectively for respect for civil and human rights in our country and in the world—those rights which are granted to man by the two codified international covenants, by the Final Act of the Helsinki conference, by numerous other documents opposing war, the use of force and social and intellectual oppression, and which have been expressly and succinctly stated in the UN Universal Declaration of Human Rights.

The current Czechoslovak regime's utter contempt for basic human rights was displayed when, at the very moment its delegates were discussing compliance with the Helsinki accords in Belgrade, it was convicting three of the Charter 77 signers—the playwright, Vaclav Havel; the actor, Pavel Landovsky; and worker, Jaroslav Kukal—for "anti-Czech" activities. All this was done even though the Chartists took great care to draft their statement so that it would conform to the letter of their country's written laws. On June 6, 1978, almost 40 of those associated with the Charter 77 Movement were arrested in order that no evidence of the Czechoslovak desire for liberty would be visible to Chairman Brezhnev during his visit to the country.

Mr. President, these good people depend on the interest and concern of the West to keep their movement alive. We have not always been faithful to them in the past. Today, as negotiations go forward on mutual and balanced force reductions in Europe, this anniversary should remind us that our interests in seeing fewer Soviet troops in Eastern Europe arise not merely from military and strategic considerations, but also from political and humanitarian concerns. Soviet troops in Czechoslovakia pose a threat to Western European security, but their presence is also a brutal imposition on the freedom of the Czechoslovakia peoples themselves. As long as the troops remain, so will oppression and domination.

Mr. President, I have recently received from my friend and colleague, Dr. Jiri Horak, the statement of the Council of Free Czechoslovakia, adopted by them on August 1 of this year. I ask that this statement, the appeal of an extraordinary group of Czechoslovak democrats-in-exile, be printed in its entirety in the RECORD.

The statement follows:

AN APPEAL: END THE OCCUPATION OF CZECHOSLOVAKIA

On the tenth anniversary of the invasion and occupation of Czechoslovakia by the armed forces of the Soviet Union we appeal to all the peoples of the world and the United Nations to support the demand of the Czechoslovak people for the immediate withdrawal of all Soviet forces from the territory of their Republic.

On August 21, 1968, the Soviet army invaded and occupied Czechoslovakia. On August 28, 1968, the Soviet Communist Party leaders forced Czechoslovakia's kidnapped leaders in Moscow under duress to sign a communique sanctioning the temporary occupation of the Czechoslovak Republic.

This act of aggression was in violation of the Czechosovak-Soviet Treaty of Friendship and Alliance of 1943, of several agreements among the Allied Powers on liberated Europe, of Article 2 of the Charter of the United Nations, and of the Soviet government's own declaration of October 30, 1956. The Soviet Union invaded Czechoslovakia on the pretext that the country was to be protected against a nonexistent "West German revanchism."

The continuing occupation of Czechoslovakia is in violation of the agreement between the governments of Czechoslovakia and the Soviet Union of October 16, 1968, according to which Soviet armed forces were to be stationed in Czechoslovakia only provisionally. In this document to the Soviet Union acknowledged that its forces had entered Czechoslovak territory only temporarily and undertook to withdrew them as soon as the situation in Czechoslovakia had been normalised. Since then Czechoslovak as well as Soviet Communist leaders have declared on numerous occasions that

conditions in Czechoslovakia have been normalized. But the country continues to be occupied.

The occupation also violated the provisions of the Final Act of Helsinki. But above all else it continues to violate the three principles which the Soviet Union itself has recognized as essential for the peace, stability, and prosperity of Europe:

The principle of the sovereignty of all European states and nonintervention in their internal affairs.

The principle of the independence of all states including the right of self-determination.

The principle of the renunciation of the use of force against any state.

The Soviet invasion and occupation of the Czechoslovak Republic have dangerously upset the military balance that had existed in Europe since the end of the Second World War. They violate wartime agreements about the deployment of Allied forces in Continental Europe. Czechoslovakia was to have neither Western nor Soviet troops on its territory. The occupation of Czechoslovakia keeps Soviet forces in the heart of Europe in such numbers that the military balance along the dividing line between East and West is heavily weighted in Soviet favor.

It is therefor imperative not only for Czechoslovakia's sovereignty, independence, and freedom but also for the peace, stability, and prosperity of Europe that the Soviet Union withdraw its armed forces from the territory of the Czechoslovak Republic.

This appeal is backed by documents in which the Soviet Union has committed itself to evacuate the territory of the Czechoslovak Republic, and by Czechoslovak citizen's to declarations of protest against the occupation of their country and resolutions demanding its end. The Charter 77 movement in Czechoslovakia and Czechoslovak exiles' endorsement of Petition 78 bears witness to the determination of all Czechs and Slovaks to see their Republic rid of Soviet occupation forces and once more sovereign, independent, and free.

In submitting this appeal, we speak for the Czechoslovak exiles who left their country after the coup d'état of 1948 as well as for those who had to leave when Czechoslovakia was invaded by the Soviet army in 1968. We are absolutely certain that, speaking in their names, we speak for all Czechs and Slovaks. We believe that a new European order based on the principles of true sovereign equality, independence, self-determination, nonintervention, and renunciation of the use of force would be a great step toward satisfying the hopes, aspirations, and interests of all the European peoples.

COUNCIL OF FREE CZECHOSLOVAKIA.
WASHINGTON, D.C., *August 1, 1978.*●

CZECHOSLOVAKIA: AUGUST 1978

● Mr. EAGLETON. Mr. President, yesterday marked the 10th anniversary of the Soviet invasion of Czechoslovakia. On August 20, 1968, Soviet tanks and troops moved into Prague in a massive effort to "rehabilitate" the Communist government of Alexander Dubcek. Dubcek's movement toward liberalization and reform so threatened the Soviet Union's ideological hold that they retaliated with their own particular brand of crisis management—force.

It is tragic and yet predictable that the Soviets move in this pattern. Their totalitarian system cannot tolerate much flexibility in the area of human rights or civil liberalties, for it shakes the very foundation upon which the Soviet oppressive regime is built. Whenever the Soviets have perceived that their influence is on the wane, whether domestically or internationally, they have tightened their control. We have seen it most recently with the Scharansky-Ginsburg trials, and as we look back into history we see the trend evolving.

And yet, Mr. President, in spite of the pressure tactics used by the Soviets, the 1968 invasion of Czechoslovakia has strengthened the push for human rights in Eastern Europe and the Soviet Union. In an excellent article in yesterday's Washington Post, Tad Szulc points out that the invasion of Czechoslovakia received almost unanimous condemnation from Communist leaders outside Eastern Europe.

Since 1968, the trend of Communist parties outside the Soviet Union has been toward self-reliance—less dependence on Moscow and more independent action. This is not to say that communism is no longer a force to be dealt with, but that the Soviet Union's tactics of force and brutality do not always produce the desired effect. As Tad Szulc states in his article:

Communism, of course, will not go away in our time as a major political force in the world. But Czechoslovakia has probably done more to change its system of international relationships than any other single contemporary event.

Mr. President, the reforms Alexander Dubcek initiated in the Prague Spring of 1968 were stilled by the sheer weight of Soviet force, but the spirit of Prague Spring still smolders in the consciousness of hundreds of thousands of Czechs, despite the presence of some 80,000 Soviet troops.

In 1977, a group of Czech citizens rekindled the human rights movement by issuing Charter 77, presenting the Husak government with a bold statement regarding the necessity to improve human rights in Czechoslovakia. Charter 77 outlines some 12 areas in which the Czech Government violates the most basic human rights—freedom of expression, freedom of religion, right of assembly, right to strike, the right to leave one's country, to name a few. The necessity for such a document is hard for us to fathom, because we take these basic rights for granted. It is a testimony to the spirit and strength of the Czechs that they have been able to keep their hopes alive during 10 years of Soviet occupation.

Mr. President, I ask that Tad Szulc's article, "The Legacy of Prague," be printed in the RECORD.

The article follows:

THE LEGACY OF PRAGUE—INVASION DEEPENED IN COMMUNIST WORLD

(By Tad Szulc)

At precisely 11 p.m. on August 20, 1968, Soviet and Warsaw Pact armies crossed the borders of Czechoslovakia in a land and aerial invasion designed to stamp out that country's experiment in "Marxism with a Human Face." It was a watershed event in terms of Soviet power politics, aimed at preventing any change in the ideological status quo in Moscow's zone of influence and blocking Marxist evolution wherever possible.

Now, a decade later, it is evident that while the Soviet Union remains faithful to the "Brezhnev Doctrine," invoked as a justification for invading Czechoslovakia to preserve ideological orthodoxy, it has paid a heavy price for this surgical stroke. The international Communist movement has been further splintered, dissent in Eastern Europe as well as in the Soviet Union has risen to new heights forcing last month's Moscow trials, and China has been propelled into a new relationship with the United States.

On the plus side for the Kremlin, the Prague invasion became a precedent for "invitations" for outside military intervention of the type the Russians and the Cubans are currently practicing in Africa. The "fraternal assistance" against the Prague government of Alexander Dubcek had been "requested" by pro-Soviet Communist conservatives whom the Kremlin called Czechoslovakia's "authentic" leaders.

In other words, the events of 1968 are having a continuing impact on the world scene today.

First, the invasion established the proposition that Moscow will never tolerate a peaceful evolution of the Communist system within its zone of influence at home or in Eastern Europe. The Russians had invaded Hungary in 1956, but the issue there was the ouster from power of the Communist Party—not its transformation—and the abandonment of the Warsaw Pact. In the sense that Marxism still aspires to being a living, changing philosophy suited to new generations, the fundamental ideological test was Czechoslovakia.

As far as the Kremlin is concerned, Marxism-Leninism in its present form is an immutable dogma not open to dissent or experimentation; as recent events prove, there has been no meaningful change in it in the last decade, despite internal and external pressures. This concept is obviously linked to the national interest of the Soviet state, which includes absolute control over domestic nationalisms. What if the example of reforms in Prague, which included certain autonomy for Czech minorities, had given ideas of change to the nascent Soviet dissidence or to the Ukrainian, Georgian, Lithuanian, Tatar or other minorities?

Although the intervention was meant to paralyze Marxist liberalization, ironically, it served to strengthen Soviet dissent, and, gradually, to reawaken it in part of Eastern Europe. The desire for change simply could not be killed.

To be sure, Andrei Sakharov, the nuclear scientists, had issued his manifesto calling for internal Soviet change the year before the invasion and writers Yuli Daniel and Alexander Ginzburg were already in jail. But the Prague invasion resulted in unprecedented public protests in Moscow and the consequent imprisonment of several activists. And the wave of dissent kept gathering power after August, 1968, climaxing in this summer's trials when, once more, the Politburo concluded that any ideological challenge was unacceptable. A direct line connects the events of the summer of 1968 and the summer of 1978.

RIFTS IN THE FAMILY

Within the international Communist movement, the invasion has had consequences that cannot yet be fully measured. Yugoslavia in 1948, Albania in the early 1950s, and China in the late '50s had broken away altogether from the Moscow center of communism. In the early 1960s, Romania had embarked on an independent foreign policy, including close ties with the runaway Chinese. Palmiro Togliatti, leader of the Italian Communist Party in the mid-'60s, had begun developing novel notions about Marxist evolution.

Then the Prague invasion forced another historic divide in Communist movements. Yugoslavia and Romania mobilized their forces and were ready to fight if Brezhnev

decided to use the momentum of Prague to put communism in order on their territories. The Italian Communist Party denounced the invasion openly and began moving toward what became known as Eurocommunism. So did the Spanish party, still exiled but quite important. The French party, rich in Stalinist traditions, split over Czechoslovakia and began its own shift away from Moscow's leadership. So did the smaller Western European parties.

Significantly for the future, of all the important world Communist figures outside Eastern Europe only Cuba's Fidel Castro applauded the invasion. China, of course, condemned it and even North Vietnam was strangely ambiguous about it.

When the Kremlin succeeded in organizing the 1969 conference of world Communist parties in Moscow, it was clear that the international movement was rent asunder over Czechoslovakia. The Kremlin has not even tried to convoke another such global conclave since 1969, fearing new and deeper rifts that would be certain to become public.

In the ensuing years, the divisions inevitably acquired greater depth. It took the Soviets two years to prepare the conference of European Communist parties that was finally held in East Berlin in June 1976. For the first time, Moscow had to negotiate a consensus document with foreign parties rather than impose it. In the end, the Berlin declaration was issued without the signatures of any of the Communist leaders. Unwilling to risk a public breakdown, Brezhnev had to go along with a text setting forth, in effect, the independence of individual parties from Moscow and their right to seek power and influence in their own way.

Traveling through Eastern Europe late in 1976, I was told that while the Soviet and most of the parties in the immediate zone of Moscow's control did not consider the Berlin text to be binding on them—and that they interpreted it in their own way—Western European Communists along with Yugoslavia and Romania would clearly insist on the new freedom of maneuver.

Western European parties have not broken altogether with Moscow—the Italian party, for example, still supports Soviet foreign policy in a broad context—and they may not do so in the foreseeable future. But they are no longer committed to such articles of faith as international proletarian solidarity and each is evolving in its own way in terms of modern Marxism. The strong Spanish party, for one, this year took the surprising step of eliminating the name and concept of Leninism from its official documents and pronouncements.

Communism, of course, will not go away in our time as a major political force in the world. But Czechoslovakia has probably done more to change its system of international relationships than any other single contemporary event.

FROM CHINA TO AFRICA

Prague 1968 has changed other situations, too, in myriad ways. In my conversations with Chinese diplomats after Henry Kissinger's first trip to Peking in 1971, I was told that the invasion of Czechoslovakia was one of the key elements in China's decision to open a relationship with the United States. The invasion, coincidentally or not, was followed by armed Soviet-Chinese border clashes in 1969, and Peking must have drawn its own conclusions from these sequential events.

Czechoslovakia also put an irrevocable end to the timidity of the non-Communist Left in the West in criticizing Soviet actions of this type as well as Moscow's internal repression. The 1956 Budapest bloodbath had led to protests by leftist intellectuals in Western Europe, but they died down. After Czechoslovakia, these voices became strong and clear and they keep gaining in resonance The French protest generation of May 1968 has produced the "new philosophers" of the mid-'70s, many of them shedding their former Marxist convictions and becoming articulate anti-Communists. Gulag, immortalized by Solzhenitsyn, is now the symbol of oppression for much of the Western European intellectual Left.

The mechanics of the Brezhnev Doctrine, however, also work in other directions, again stressing the historical fallout of Prague. Fidel Castro, the man who praised the 1968 invasion, has borrowed from the Soviet example the concept of "invitation" to justify his military involvement in foreign countries.

This Communist legalism was invoked to provide an excuse for the Cuban intervention in Angola in 1975 and Ethiopia in 1977, where American policy created the conditions for such interventions. In the first instance, the Cubans moved to support one faction that "invited" them against two others in the developing civil war. As for Ethiopia, how and by whom the invitation was issued are mysteries, although the ruling junta doesn't deny, after the fact, that the Cubans and the Russians were asked to come. Today Havana remains open to an "invitation" from Rhodesia's Patriotic Front, if events warrant it, or to related invitations from Zambia, Tanzania or Mozambique.

A decade after Soviet tanks entered Prague, the Brezhnev Doctrine remains intact in all its aspects, a challenge to the West as it is to Marxist reformers.●

AMERICA'S DEFENSE POSTURE

● Mr. HARRY F. BYRD, JR. Mr. President, a great deal of attention has been given in recent months to the state of our Nation's defense.

Growing Soviet military capabilities combined with a perception of declining U.S. military strength have led many analysts to conclude that our future security is in danger unless prompt corrective actions are taken.

Adm. Thomas F. Connolly, a distinguished naval officer with long experience in matters of national security, has recently written a thoughtful article on this matter which raises serious concerns as to our Nation's future security.

This article appeared in the summer issue, 1978, of Wings of Gold.

I ask that this article be printed in the RECORD.

The article follows:

AMERICA: FIRST AND LEADING OR SECOND AND SUBORDINATE?

(By VADM Thomas F. Connolly, USN (Ret)

The future of naval aid depends obviously on the future of the United States. In the summer of 1978, as the American ship of state steams steadily toward a darkening horizon, the quality and adequacy of our American defenses, and the will of our people to either opt for first place and leadership or settle for second and a subordinate role to the USSR, become uppermost.

What is the bottom line in mid-1978? It is, plainly and bluntly, that since the Department of Defense came into being in 1948, the U.S. has won nothing, only lost. Large numbers of our young men have been killed, billions of dollars spent. Today, inferior in military forces and capabilities—particularly seapower—for an "island" nation short on energy and other resources, the U.S. stands in mounting risk to the power and intentions of an adversary. These words may be denounced. But there won't be many with honest tongues and knowledge of warfare who will deny that Soviet military strength has become very formidable while U.S. strength is spread far too thin, with marginal quantities of modern weapons, back-up aircraft and other armaments. Any notion that once conflict is at hand the nation can build to superior strength, as was done in WWII, is unrealistic. We face a situation we should never have let happen—where through our military weakness, temptations are presented for Soviet aggression in forms and degrees of their choosing.

Solzhenitzyn has warned that WWIII has been taking place and the USSR is winning. It can be noted also that professional military officers have long advised the political leadership of the growing dangers. Today top-level attention appears to be accorded strategic nuclear missile ratios and the preponderant Soviet/Pact forces in Western Europe. More likely Soviet initiatives are in other areas: subversion of Middle East oil governments; further penetration of Africa; and control, or threat of control, of the flow of vital resources and of commerce. And wherever and whenever those Soviet initiatives become reality, the first line of contact will be the U.S. Navy, with naval air, as in countless times in the past, in front.

In sum, economic harassment and weakening of the West by raising the uncertainty of resource availabilities, of investment, new business ventures and on-going commercial arrangements. These are the very strengths of the West. The possibilities for mischief and evil-doing provided by Soviet military power and their Cuban, African, and Asian surrogates are many indeed. Until we show the Soviets again that they will not be successful in aggression because we have the means and will to oppose their aggression we must expect a succession of reverses. Many will rise to say that such things will not be done by the Soviets. That view needs proving. The business of our government is to ensure that they cannot happen. Our fate and future must not be left to chance or the Kremlin. This is not a call to armed conflict but a call to be strong again—to deter Soviet venturism with credible military power, not concession followed by concession. For it is undeniably true that the risk of conflict rises as our differences shrink, tempting the USSR to actions which they would never try in the face of strength and will.

Since 1961 systems analysis as used by Defense has been a principal factor in the steady decline of United States military capabilities. Ostensibly on the basis of "cost/effectiveness," costs were cut using the McNamara formula which was to cut procurement, cut people, cut operations. U.S. forces have become even smaller; ships, aircraft, weapons fewer; combat and war-fighting experience less a part of selection and decision. The analysts working at a level just below the Secretary of Defense and above all the military departments, predictably had too much leverage as well as the last word so that civilian management of military matters has become total in everything that counts.

Secretaries of defense, budget directors and presidents have found the work of their analysts very useful in producing yearly budgets that fitted not military requirements but politically constructed dollar quotas. Part of the takeover process was to portray, and regard, military professionals as improperly or incompletely educated and, so, incompetent for the tasks of national defense. Once the trend of downward Defense and upward social welfare and other programs was established the process became self-fulfilling. The analysts cannot be saddled with all the blame. Top government officials have known over the past several

years that USSR military power was rising fast and, as well as any, they knew the U.S. was not putting enough dollars into national security or paying enough attention to it. Ours has become a government driven by pressure groups. During and after Vietnam pressures were away from defense expenditures. Government leaders found it hard—too hard—to press for required defense.

It is certain that moves to let the U.S.S.R. reach military superiority have been supported by some government planners on the premise that this would avoid war and convince the Soviets they had nothing to fear from the United States. Whatever, America's military decline and its international decline remain singular consequences of taking the military professional corps out of the arenas where requirements of national security are really formulated and decided. These are arenas into which different minded performers have made their way since the days when American military strength and standing were high. Only in the Congress do the cognizant military professionals testify as expert witnesses. But here also the process is a dissimulation: the military witnesses are required to adhere to the Administration budget, designed by civilians in the Pentagon and the White House. Congressional committees are thus denied hearing how the military leaders really view national security needs. If committee members ask the right questions in the right ways and call for a purely personal professional answer, they can hope for guarded responses that try to suggest but don't declare how deeply concerned the military corps of the U.S. have become. The procedure is justified on the basis of avoidance and substitution. Of course, the Secretary of Defense talks with the Joint Chiefs. But that has meant very little in budget matters for a long time. Changes, perhaps, but increases no.

Now the United States task is to rebuild military capabilities to cope with those of the U.S.S.R. Priority should be accorded naval and air power at sea where Soviet interdiction capabilities are so great. This means an increase in U.S. capabilities that can deal with the many Soviet missile systems. Navy-wise, it means CVNs, AEGIS cruisers, and SSNs for the battle groups, F–14s, E–2Cs, A–6Es and A–7Es for the carrier decks. It does not mean building V/STOL ships before we develop worthwhile V/STOL aircraft from existing decks. It particularly means the advanced AWG–9 and advanced PHOENIX missile, and it means CILOPing the best fighter-weapon system in the world—the F–14. Overall, it means more broad naval capabilities—not equipments tailored for "low threat" situations.

Planning and funding the steps will be very difficult: the opponents of a stronger defense are well intrenched. Prodigious effort—or shock—is needed just to reverse the downward course of U.S. arms. The Secretary of Defense believes, as he recently told the House Armed Services Committee, that his department, i.e. the defense establishment of the United States, is as well run as any governmental department, which is so if you drop out the bottom line: not capable of protecting and preserving the United States as we know it and as the great majority of Americans want it to remain.

The Congress has constitutional responsibility for providing military strength to meet all national security needs. The Congress also has investigative powers. At this urgent moment of our history, it seems that a joint committee of the Senate and House should determine the true state of preparedness of the U.S. to protect and preserve the nation. It is a time for honest realism, for a political, bipartisan determination of the nation's security. That having been done, established procedures of the Congress will undertake required actions.

It is certain that the Department of Defense must be reconstructed. There are too many well-meaning amateurs in high office for short periods with more responsibility than their knowledge and competence justify. Often they come with missions other than to build and maintain a national defense second to none. Senior military officers (not just the Chairman) should have key parts in national security planning and defense program formulation. Their views should not be set aside by the military sector of OMB. Too much accord and attention are paid to scholars regarding national security. Scholars almost never reckon with power or the kinds of men who acquire and use it. In general, scholars abhor power of all kinds and call for solutions that are "reasonable" which have been honored in the breach in every century including this one. The world today is alive with unrest and urges to action. Trouble—big trouble—lies in store. The workable formula for the U.S. to become militarily powerful again, and then reasonable. The Administration chooses to play a game of placating which is dangerous and almost certainly will be unsuccessful.

Unless our Defense efforts are reformed and revitalized on realistic national security lines the American dream can well end up being the West wing of an all Soviet condominium.●

WADE D. MOODY

● Mr. EAGLETON. Mr. President, it gives me great honor to pay special tribute to an outstanding Missourian, who recently received the Department of Commerce's Thomas Jefferson Award. Wade Moody of Pattonsburg, Mo., was honored for his unusual and outstanding achievements for volunteer weather observation. Mr. Moody was honored for making timely and accurate weather observations and for taking river stage readings under extreme and hazardous conditions. As Pattonsburg is subject to flash floods, unusual efforts were required to collect weather information on numerous occasions. In this day and age when everyone wants to be paid for their efforts, it gives me great pleasure to acknowledge the deeds of a man willing to give freely of his time.

The Thomas Jefferson Award was originated in 1959 for the National Weather Service to honor volunteer weather observers for their outstanding achievements. It is the highest award the National Weather Service presents to volunteers. The award is named for Jefferson because the statesman-scientist made an almost unbroken series of weather observations from 1776 to 1816.

Missouri citizens should be proud of Wade Moody, and his efforts to keep them informed.●

HUNTING AND FISHING IN ALASKAN CONSERVATION AREAS

● Mr. MARK O. HATFIELD. Mr. President, for several weeks now the Senate Committee on Energy and Natural Resources, on which I serve, has been grappling with the so-called d–2 issue, attempting to deal responsibly with legislation to designate lands of national interest as parks, wildlife refuges, national forests, wilderness, and other protective designations.

As with any legislation of broad national interest, a certain amount of misinformation is bound to be circulated. One of the arguments opponents of the d–2 legislation have used is its impact upon hunting and fishing. Some would have us believe that all areas designated for protection will be closed to hunting and fishing. This is clearly not the case. While national parks and monuments have been and will continue to be closed to hunting, they are not closed to fishing. In the case of wilderness outside of parks and monuments, and in the case of wildlife refuges, national forests and wild and scenic rivers, hunting and fishing would be allowed to continue.

A recent editorial in the Oregon Journal accurately points out that "Congress has no intent to forbid hunting in new wilderness areas or other preserves it sets aside" outside parks and monuments. I believe this editorial puts the hunting issue in proper perspective, and I ask that it be printed in the RECORD.

The editorial follows:

[From the Oregon Journal, July 22, 1978]

LIES ABOUT ALASKA

An editor at The Journal who is also an avid hunter, fisherman and outdoorsman returned to work after a two-week visit to Alaska in rapture and livid rage.

He talked happily about a memorable Inside Passage ship ride and his visits to the Kenai Peninsula and the Arctic west coast. His anger was reserved for stories he heard from fellow hunters about how the Alaska land bill now under study in Congress would ban hunting in most of the state.

Another effort by the do-gooders in Congress to lock up recreation lands only for the Sierra Club backpack types, he was told by irate residents up north, who like to take float planes, ski planes, snowmobiles and motor boats into the remote reaches of the great state.

The editor and the people he spoke with are victims of one of the larger lies associated with the emotional debate concerning federal "national interest lands" legislation which now is before the Senate Energy and Natural Resources Committee.

That panel is considering its own version of a similar bill which was unanimously passed by the House a few weeks ago. The legislation would set aside new wilderness areas in Alaska (where there currently are only 75,000 acres of official wilderness on the books), as well as create new national parklands, wildlife refuges and other conservation zones on federal lands in the state.

Aside from a ban on hunting in national parks, similar to one which exists in national parks in the "Lower 48" (and Hawaii), Congress has no intent to forbid hunting in the new wilderness areas or other preserves it sets aside, according to reliable analysts of the bill from both sides of the issue.

Congress has, in fact, taken special care so far to recognize the unique subsistence culture of natives and non-natives in Alaska, and gives them hunting rights even in national parklands in some cases.

Contrary to Lower 48 wilderness restrictions, where persons using motorized vehicles are severely punished, the "traditional" motorized conveyances Alaskans have long found necessary generally still will be allowed by recreationists, in all the new areas.

There have been few land issues which have inflamed Americans as much as those arising from Alaska, from the time Seward's folly in 1867 brought critics down on that wily Interior secretary for paying too much,

to the present fights over the oil pipeline, distribution of lands and federal preservation policies.

Hunting, certainly, is but one of the issues involved in the current legislative battle. If the lie about locking out hunters and fishermen is understood to be misleading propaganda, it also should be seen as the least controversial issue Congress must decide.●

ALI BHUTTO AND PAKISTAN'S FUTURE

● Mr. McGOVERN. Mr. President, I am among several Members of the Senate who have been involved in humanitarian efforts to prevent the execution of former President Zulfikar Ali Bhutto of Pakistan. Those efforts have included direct appeals to the present government of that country—appeals the government says it will not heed.

More recently, former U.S. Attorney General Ramsey Clark has traveled to Pakistan to witness the legal proceedings involving Mr. Bhutto. Beyond the humanitarian issues involved, Mr. Clark has made a careful evaluation of the destabilizing internal consequences that would flow from the execution of a most popular leader in Pakistan.

Mr. Clark's report appears in the August 19 issue of the Nation magazine. I think this thoughtful study will be of interest to everyone who has followed developments in South Asia, and I therefore ask that it be printed in the RECORD.

The study follows:

THE TRIAL OF ALI BHUTTO AND THE FUTURE OF PAKISTAN

(By Ramsey Clark)

Rarely has a criminal proceeding held such potential to alter history as does the trial of Zulfikar Ali Bhutto. Its impact can reach beyond the fate of a man and the unity of a nation to affect fundamentally economic, political and military power worldwide. The Supreme Court of Pakistan is now considering an appeal from his conviction for murder and the sentence of death. Its decision is expected in the very near future. Executions are carried out immediately following final judgment in Pakistan.

The idea of Pakistan, nurtured by a poet, Allama Iqbal, and consummated by a statesman, Mohammed Ali Jinnah, was fragile from conception. To bind a political union of widely differing, proud and often warring people by a single tie, the religion of Islam, was a unique experiment. The dream of Pan Islam fitted neatly with desires of the Islamic populations of British India to be independent of the majority Hindu population when "freedom came at midnight" to the subcontinent of Asia. The result was a new nation of East and West Pakistan divided by 1,000 miles of land mass.

The West contained four distinct regions with diverse and sometimes hostile populations: the dominant Punjab, the North West Frontier Province, the Sind and Baluchistan. The traumatic separation from India in 1947 split both Punjab in the west and Bengal in the east between India and Pakistan, resulting in waves of migrating millions and recurring massacres. Pakistan, containing the poorest areas of the former colony, was cut off from markets, industry and the continuity of government administration, all primarily located in India.

Movements for political separation were powerful forces throughout the new nation from its birth. A bloody civil war began in East Pakistan in March 1971. Four months after the India-USSR treaty of August 1971, India invaded East Pakistan and in two weeks crushed West Pakistan forces, ending the war. East Pakistan seceded and became Bangladesh. It contained the majority of the population of the former nation and an even greater majority of its poverty and problems. Henry Kissinger's "tilt" to Pakistan at that time probably deterred India from invading and partitioning the West.

Separatist movements were not limited to tensions between East and West. Within the West there were, among others, a Baluchistan Liberation Movement sometimes based in Iraq and a Pakhtoonistan movement involving both Baluchistan and the North West Frontier—giving rise to the possibility of a new nation in the event of the breakup of Pakistan, a nation that would include Afghanistan and most of Pakistan west of the Indus, excluding the Sind and Punjab forming a corridor hundreds of miles wide from the Soviet Union to the Arabian Sea. The movements have involved guerrilla warfare countered by martial law and military casualties that may exceed those of the war in the East.

Bhutto came from a wealthy land-owning family in the very poor Sind. Graduated from the University of California at Berkeley and with a law degree from Oxford, he was Minister of Commerce for Pakistan at 30 and Foreign Minister when 33. He resigned as Foreign Minister in protest against military government policies in 1966, having established good relations for his country with China. He was imprisoned briefly in 1968 by President Ayub Khan for criticizing the government.

Founding the grass-roots Pakistan Peoples Party, Bhutto became the dominant political figure in the West by 1970. After the war in which East Pakistan was lost, he became President in 1972 (the first civilian chief of state in more than twenty years) and then in 1973, the first elected Prime Minister. Presenting himself as a democrat, a Socialist, a Populist and reformer, he initiated programs for land reform, economic development, social services, family planning, a strong Pakistan Peoples Party, internal security, Moslem leadership and international prominence based on nonalignment.

It is conceded by friend and foe alike that Bhutto is keenly intelligent, popular and charismatic. On the international scene he was called on to mediate in Cyprus, Korea and elsewhere. He assisted in preliminary contacts that led to President Nixon's visit to China. He negotiated difficult prisoner exchanges with India and Bangladesh, restored relations with Bangladesh, and eased tensions with India.

The United States expressed its strong disapproval of his role in calling for a Third World Summit, fearing concerted action by poor countries. President Carter urged Bhutto to abandon plans for a nuclear reprocessing plant France agreed to build in Pakistan. (India has had the bomb since 1974.)

Within the nation, he helped bring about the adoption of a new written Constitution in 1973 which some saw as a foundation for democratic government protecting human rights and securing economic justice. Economic policies stimulated growth despite difficult international problems including rising energy costs. Agriculture, health, education and housing were major concerns for his government and some progress was made.

But his years in power were in most ways the worst of times. He assumed office in the aftermaths of a humiliating military defeat, the severing of the nation, loss of most of its population to Bangladesh and the psychological and physical impairment of the dominant power in the society—the Army. Floods (including those of 1973 which were called the worst natural disaster in the area's history), earthquakes and other calamities befell the people during those years.

And above all there was the random violence, gun-running, guerrilla skirmishing, constant tension and high risk of revolution or invasion caused by political, tribal, cultural and international ambitions for power and dominance in surviving Pakistan and its very different parts. The Shah of Iran strongly supported Bhutto's efforts to contain the separatist movements. The Shah has no interest in seeing another state arise capable of dominating the strategic Persian Gulf, particularly a Baluch state that could lay claim to the loyalty of Iran's own sizable Baluch population. (Within Iran live one-third of the Baluch people.) World powers, principally the United States, the USSR and China are also keenly interested in Pakistan.

Growing instability was addressed with tough military and police measures. While parliamentary government endured, there were political arrests and detentions numbering in the thousands, martial law for whole cities and provinces at times, and a growing Federal Security Force not greatly concerned for life and liberty. Amnesty International, among others, protested human rights violations in a well-documented 1976 report.

The first six months of 1977 were difficult. Bhutto's popular appeal seemed to slip badly with turbulence and the harsh government reaction to it. He called elections which were held in March and the surprisingly strong showing of his party brought immediate outcries of vote fraud by other parties. Hundreds of protests and demonstrations, including some by women and children, led to violence and deaths and brief periods of martial law in major cities. Conditions were reminiscent of Chile before the *golpe* in 1973. Though most observers concede Bhutto candidates actually received a clear majority, probably 60 percent of the votes, a settlement among the parties that might have restored relative calm had not been reached by July, and new elections were planned for October.

On July 5, 1977 there was a bloodless military coup. General Zia ul-Haq, who had attended advanced command courses in the United States and the United Kingdom between 1972 and 1975, assumed government power as Chief Martial Law Administrator. The stated purpose was to stop the "drift toward political chaos." But drastic police measures were taken which created doubt as to General Zia's purpose. Severe penalties were immediately promulgated by fiat. Martial Law Order 12 provided for preventive detention and it was used liberally. Martial Law Regulation 11 of July 5 declared simply: "No one shall, either directly or indirectly, participate in any political activity. Maximum punishment 5 years Rigorous Imprisonment, fine and/or whipping not to exceed 10 stripes." Martial Law Regulation 13 provided the same punishment for any form of communication critical of the Armed Forces or "calculated to create alarm or despondency amongst the public."

Public executions and floggings were authorized and carried out. The amputation of a hand was made legal punishment. General Zia says, "it is the humiliative rather than the punitive aspect of flogging which is important." He tells one that the death penalty and life imprisonment were not deterrents to criminal conduct but the threat of flogging was. His new Law Minister A. K. Brohi says floggings are necessary to control the people and asks what do you do with a "mad dog." He defends stoning women to death for adultery and is the principal government spokesman justifying these cruel, inhuman and degrading punishments as being ordained by the law of Islam.

Bhutto was arrested on the night of the

coup and held for several weeks. Most of the high officials in his administration have been confined. Leaders of the Pakistan Peoples Party were also arrested. Many are still in prison, joined this year by leaders of other parties. Bhutto, released to campaign for the October elections, was greeted by enormous crowds. In early September he was arrested and charged with ordering the murder of a minor political figure in November 1974. General Zia publicly spoke of documentary evidence establishing Bhutto's guilt. Released on *habeas corpus* by a court, he was promptly rearrested under both military and civil process and has been detained virtually incommunicado since September 17, 1977.

While he was originally to be tried by a military court, it was decided he should be tried before five members of the High Court in Lahore. The two justices who had granted his writ of *habeas corpus* were excluded. The presiding judge was acting Chief Justice by appointment of General Zia; he was also an old enemy who had heard Bhutto's case when he was arrested in 1968. He should have been disqualified.

The murder charge, if believed, takes the case out of politics. Officials in the Zia government assure you this is a routine murder case. (Ferdinand Marcos of the Philippines, a master at authoritarian deceit, has used an ordinary murder charge to convict and condemn Benigno Aquino, a major political opponent, to death.)

This murder charge, while the most serious that can be made, was not taken seriously at first. The allegations themselves are so inherently improbable. The murder rate in Pakistan is high enough to make Houston seem peaceful. This assault was said to have been an attempt to kill a man named Ahmad Raza Kasuri, a dissident in the Pakistan Peoples Party. On June 3, 1974 Bhutto had become irritated with Mr. Kasuri on the floor of Parliament and expressed his feelings sharply, but not threateningly. This incident is the prosecution's case for a motive. Others had spoken far more sharply, even threateningly, including Kasuri himself who said of another group, "Time had come for their being killed."

Kasuri's father was apparently killed by automatic gunfire which hit a moving car occupied, according to the evidence by Kasuri, his father, mother and an aunt, near Lahore shortly after midnight on November 11, 1974. Kasuri, who had no way to knowing who fired, or ordered the shooting, immediately blamed Bhutto and used the charge politically.

In 1972 he had claimed nine attempts had been made on his life for which he had blamed another politician. He claimed three attempts were made on his life in 1974. An investigation of the death of Kasuri's father was closed in 1975 without charges being brought. From 1975 through June 1977 Kasuri sought through intermediaries to establish friendly relations with Bhutto, obtained a meeting with the Prime Minister and returned to the party.

Shortly after the coup, two members of the Federal Security Force were arrested, questioned and confessed to the shooting. Masood Mahmud, Director General of the FSF, was taken into protective custody on July 5, 1977, and on August 14 wrote General Zia making "a clean breast of the misdeeds of the Federal Security Force under the orders of Bhutto." He later confessed to ordering the assault on instructions from Bhutto. His testimony is the only evidence directly linking the Prime Minister to the murder. It is more than suspect. He says Bhutto threatened him and made him personally responsible for "taking care" of Kasuri, commanding him to instruct a subordinate, Mian Muhammed Abbas, to "produce the dead body of Ahmad Raza Kasuri or his body bandaged all over." The body was never produced, of course. Abbas confessed, and then retracted, then on July 10, 1978 his lawyer again filed a confession before the Supreme Court.

The trial was not fair. The acting Chief Justice's conduct would make Judge Julius Hoffman in the Chicago 7 trial a model of decorum. He publicly commented on Bhutto's "guilt" outside the courtroom before conviction. His prejudice is spread through his 145-page decision. Even there he could not restrain himself from characterizing Bhutto, who did not present a defense, as a "compulsive liar," "unruly," "hurling threats as well as insults on us."

As one illustration, before the defense abandoned the case, Bhutto's lawyers had cross-examined Masood Mahmud, the prosecution's second witness. He was asked whether he had caused police to hold a Mrs. Ibrat while "rats were let loose in her shalwar and its ends tied." The purpose obviously was to examine the credibility and character of the witness. The acting Chief Justice, in referring to this cross-examination, wrote: "It appears that these questions were put to prove that P.W. 2 (Mahmud) was well-qualified from the point of view of the principal accused (Bhutto) to be appointed as Director General of the Federal Security Force."

The evidence presented against Bhutto, even if believed, would not support a verdict of guilt. The prosecution case was based entirely on several witnesses who were detained until they confessed, who changed and expanded their confessions and testimony with each reiteration, who contradicted themselves and each other, who, except for Masood Mahmud, were relating what others said, whose testimony let to four different theories of what happened, who were contradicted by ballistics and other physical evidence and who were absolutely uncorroborated by an eyewitness, direct evidence, or physical evidence.

There were records showing that one of the FSF officers who allegedly fired the shots was in Karachi at the time, but no defense evidence was presented on this. Each of these witnesses had an urgent motive to inculpate the Prime Minister, each alleged that he resisted and protested but was forced by threat and command to participate in the shooting. That Kasuri remained alive in spite of the alleged fury of the Prime Minister did not seem to affect belief that his murder was ordered. Kasuri himself was shown to be a highly erratic, untruthful and opportunistic politician of no standing who sought favor from Bhutto until his overthrow.

Critical stages of the trial were conducted in camera. Comments and rulings by the court and conflicts between counsel and the court caused Bhutto to discharge his attorneys and boycott the trial before the prosecution completed its case.. The remaining prosecution witnesses were not cross-examined, no defense case was presented and Mr. Bhutto was unrepresented during the concluding, critical phases of the trial.

All five defendants—Bhutto, the two FSF officers who allegedly fired the shots and their two superiors who were charged with participating in carrying out the order allegedly communicated by Masood Mahmud—were sentenced to hang, Mahmud, who alone testified that Bhutto ordered the acts, was pardoned. Efforts of the other four defendants to involve Bhutto and justify their conduct did not save them, at least not yet.

The decision of the High Court is full of errors of fact and law. Its characterizations of evidence show its bias. There was no objective effort to determine fact.

The case is now on appeal in the Supreme Court of Pakistan at Rawalpindi. There from Saturday through Wednesday each week, the nine justices engage in a meticulous review of the trial record. They are impressive men, learned in the law and skillful in their examination of the trial transcript, counsel and each other. The Chief Justice Anwar ul-Haq questions most frequently, but all participate in a lively manner.

The Court has maintained some judicial power. In an important decision in Bhutto's wife Nusrat's application for a writ of *habeas corpus*, the Court boldly declared that precedents suspending judicial power under similar circumstances through the law or necessity were in error. But no writ was issued and Mrs. Bhutto remains incommunicado in custody, though not charged with any crime.

The Supreme Court of Pakistan is not in an easy position. The Chief Justice was selected by General Zia who had removed his predecessor. Four of his associates were appointed by General Zia. Everyone is looking for political motivation. Each justice has the rule of law in Pakistan, his professional reputation, his personal future, perhaps his own freedom and life before him in this case. The decision will be historic. It is due within weeks now.

We shall see whether the world sits quietly by and watches if Ali Bhutto is executed. Just 51 years old, he moved impressively on the international stage for nearly two decades. Many viewed him as a "scholar statesman," a phrase used by Kasuri in 1976. Political vengeance can be dressed up as a pure criminal trial. Such a method defames former leaders and dissipates support for them. It is not a happy or humane precedent. Even a commutation of the death sentence by the Supreme Court or by General Zia will only diminish the personal tragedy and perhaps temper political significance of this method of destroying democratic institutions.

For Pakistan and Islam, the execution of Bhutto would have devastating effects. If an election were held today, most concede that Bhutto would win overwhelmingly. He is the one leader with broadly based popular support in Pakistan. His prosecution and his mistreatment in prison, where no foreign observer has been permitted to see him or examine conditions of his confinement, have created new and greater public sympathy for him. Even some soldiers have openly expressed their view that the charges were fabricated.

Martial law does not sit easy on the people. Public lashings of members of the press (more than eighty have been arrested) and of many poor people has caused a bad reaction, so that General Zia was quick to observe in mid-July that there had been no lashings for four months. Still, even government-controlled daily papers report sentences of imprisonment and lashing by military courts presided over by a major or a colonel. The Law Minister, who believes in the law of the lash and says both Islam and the people demand it, doesn't seem to hear even supporters of General Zia say that the floggings, executions and theatened amputations are causing greater unrest and alienation. Both at home and abroad the Draconian punishments have greatly damaged the nation and its religion.

The execution of Bhutto would be extremely destabilizing. Rioting, even civil war, is a possibility. The military is not of a single mind. Eighty percent of the soldiers are from Punjab, which creates hostility in Sind, Baluchistan and the North West Frontier. A foreign power with a suitacase full of money might easily establish another General.

Poor Pakistan with its staggering human problems, hunger, violence, illiteracy, illness, population growth, underdeveloped economy, fragile confederation of dissimilar and warring people needs help. A haunting part of the planet running from the Arabian Sea coast to Nanga Parbat in the Himalayas, most

of its more than 70 million people live in staggering want.

But foreign interest in Pakistan may prove its greatest problem and peril. It is the wrong country, in the wrong place, at the wrong time. And it will not be left alone.

To Afghanistan it is tempting because it contains many people of common tribe and culture in the Frontier and Baluchistan. It also offers access to the sea, the chance to realize a greater Afghanistan and a vast increase in power. To Iran it presents a threat on a long border with a large common population of Baluchs and the threat of encirclement by hostile forces from the Arabian Sea to the Turkish border, along with the possibility of strategic domination by the USSR of the Persian Gulf, the Arabian Sea, the Middle East.

To India the prospect of the disintegration of Pakistan offers the chance to consolidate Punjab, to return to British India's borders geographically, along with the elimination of an enemy, control over a wide buffer to the Soviet Union. These are historical and regional concerns.

To China, the Soviet Union and the United States, Pakistan is of the greatest strategic importance. From the days of the wars with the Ottoman Empire, Czarist Russia sought warm-water ports. Pakistan has hundreds of coastal miles on the Arabian Sea, dominating, with Oman, the entrance to the Persian Gulf. Control of Pakistan would directly increase Soviet power over Middle East oil, magnify its influence with India, give it access to the Indian Ocean and to East Africa and greatly contribute to the encirclement of China. With the new, stronger Soviet influence in Afghanistan, destabilization in Pakistan holds enormous meaning.

China, with a common border and open highway from Sinkiang to Karachi, may see Pakistan as a key to containing Soviet influence and holding a protected position throughout the subcontinent and Southeast Asia. With Pakistan controlled by the Soviets, China would be cut off on the west, and India, Burma and Thailand would be more vulnerable to influence by the USSR.

The United States may see in the balance the Middle East and its vast oil reserves, along with greatly altered influence in southern Asia and eastern Africa. People in Pakistan speak of CIA activity in establishing Zia. They name names. It is believable to many. After all, is not Iran—"we helped restore the Shah to his throne," William Colby says—the CIA's proudest achievement?

Whatever the cause, the United States is again in the position of supporting a military dictatorship, harsher in its public pronouncements than any, even claiming religious authority for its harsh rule.

General Zia may have greater difficulty maintaining himself in power than Marcos or Generals Pinochet or Park or the neighboring Shah. He is unknown. He is inexperienced. He has not been judged effective by international observers. He presides over historic dimension and contemporary turbulence. He rules by the threat of the lash with absolute authority. He postpones elections.

And he may execute Ali Bhutto.

The role of the United States should be clear by now. We cannot live other nations' lives for them. We can only live by our own principles and believe that right may make might.

We should stand for life and implore with all our moral suasion a commutation of the death sentence. We should stand for justice and urge freedom, or—if the facts warrant prosecution, which I have not seen—a new and fair trial for Ali Bhutto. We should stand for democracy and urge popular elections in Pakistan at the earliest date by which all parties and candidates can be fairly preserved and voting honestly monitored. We should urge an immediate end to martial law and cruel, inhuman and degrading punishments.

We should stand for humanity and send massive economic aid, assuring delivery to those in greatest need—offering food, independence in food production, health care, education, an expanding, independent economy, decent housing and human dignity for all the people of Pakistan. It is to these issues that our imagination, energy and foreign policy should be addressed.●

AND NOW A WORD ABOUT YOUR SHAMPOO

● Mr. LAXALT. Mr. President—

Today, consumers are greeted with an unending variety of shampoos and conditioners. Shampoo for dry hair or oily hair, for damaged hair or tinted hair. To help you decide what's best for you, the Food and Drug Administration has a reprint from its magazine, the *FDA Consumer*. It's called *And Now a Word About Your Shampoo*. For a free copy . . .

My office received a press release the other day from GSA, from which I took the above quote. At first I thought I was being subjected to some sort of joke, but as I read on, I realized that the Federal Government was indeed concerned about the welfare of my hair, and wanted to make sure that I used the right shampoo when I was moved to wash my hair.

I was relieved to learn that the bureaucracy has analyzed, and published the results of its analysis, not only the various sorts of shampoos available on the market, but after-shampoo conditioners, additives in shampoo, their respective functioning in hard and soft water, and a host of other little known facts about keeping my hair soft and shiny. I was told in the press release, for example, that I should not look toward protein or other additives to feed my hair, or make my hair alive, since my hair is dead and cannot be fed.

I was told, in addition, that I would need to use a special after-shampoo conditioner to mask the problems caused by the use of dyes, bleaches, waving, or straightening mixtures, or from the intense heat used to curl or straighten my hair strands. Mr. President, I am certainly glad to know these things about my shampoo problems, and am equally glad to know that the Federal Government has taken it upon itself to use its resources to come to grips with these acute problems of our society. I am sure, as well, that the voters in California who voted for proposition 13 would be equally happy to know how their tax dollars are being spent.

I wonder, Mr. President, if they will ever learn.

I ask that the GSA press release be printed, in full, in the RECORD:

AND NOW A WORD ABOUT YOUR SHAMPOO

"Rapunzel, Rapunzel, let down your long hair." Now we all know what her hair looked like, but what about her shampoo? Actually, choosing a shampoo in the days of yore was probably a lot easier.

Today, consumers are greeted with an unending variety of shampoos and conditioners. Shampoo for dry hair or oily hair, for damaged hair or tinted hair. To help you decide what's best for you, the Food and Drug Administration has a reprint from its magazine, the *FDA Consumer*. It's called *And Now a Word About Your Shampoo*. For a free copy, send a postcard to the Consumer Information Center, Dept. 566F, Pueblo, Colorado 81009.

Ever wondered if a shampoo can give your hair shine, smoothness and body, just as well as an after-shampoo conditioner? According to the FDA, probably not. It's difficult to produce a shampoo that is strong enough to clean well, but mild enough to leave natural oils on the hair.

The conditioners in shampoos are not normally adequate to cover damage that may result from the use of dyes, bleachers, waving or straightening mixtures, or from intense heat used to curl or straighten the hair strands. You'll usually need special after-shampoo conditioners to mask these problems.

Know what the labels "for use on normal, dry or oily hair" means? different formulas are controlled by altering the strength or amount of the synthetic detergent and conditioning additives in the shampoo. So, by picking the one that matches the condition of your hair, you can feel a difference.

On the other hand, don't look toward protein or other additives to "feed your hair" or "make the hair alive". This can't be done, since hair is dead tissue.

And, what's in a baby shampoo? Baby shampoos are usually made from relatively stingless and non-irritating synthetic detergents. They don't normally contain added ingredients, like perfumes, which can irritate the eyes.

Today, most shampoos are made with synthetic detergent, not soap. The main advantage of synthetic detergent is its functioning in hard water. Although soap works well to remove dirt and grease from surfaces, in hard water the soap forms a gummy material called "soap scum". The familiar ring in the bathtub is formed of these deposits. Synthetic detergents, on the other hand, do not react to the degree of hardness in the water, and scum deposits do not form on your hair.

When you order a copy of And Now a Word About Your Shampoo (free), you'll also receive a copy of the free Consumer Information Catalog. It lists more than 200 selected free or low-cost publications from the federal government. The Catalog is published quarterly by the Consumer Information Center of the General Services Administration.

Note to editors: Please check with us if you plan to use this material after November 15, 1978, so we can be sure we have adequate stock to meet your readers' requests.●

LET'S NOT TORPEDO OUR NAVY

● Mr. HARRY F. BYRD, Jr. Mr. President, the balance of naval power has been shifting. The Soviet Navy in recent years has become a true "blue ocean navy" and has increased substantially its capabilities to threaten U.S. control of the seas.

Former Secretary of the Navy, J. William Middendorf, has recently written an excellent article in the August edition of Reader's Digest concerning the current state of our Navy and its needs in the future.

His thoughtful analysis describes clearly the threats our Nation faces. He also prescribes the actions necessary to reverse the harmful trend of the naval balance.

So that my colleagues may have the benefit of his views, I ask unanimous

consent that the article be printed in the RECORD.

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

LET'S NOT TORPEDO OUR NAVY

(By J. William Middendorf II)

Since retiring as Secretary of the Navy last year, I have been haunted by the feeling that my obligation to the American people won't be fully discharged until I deliver a final word, my own view of our ability to continue to safeguard our freedom. As a private citizen, I have no ax to grind, save the ax all Americans ought to be grinding—that we maintain the military posture it takes to deter war, to ensure our vital interests, to protect freedom and to prevail if war comes.

That is the posture we began keeping in the early 1950s and which for several years now has been in serious decline. Indeed, so severe is the decline that I fear we are fast approaching a time of testing such as the United States has never had to endure. Unless we move fast on a Naval rebuilding program, I'm convinced that the next ten years will see the end of U.S. ability to deter and prevail, with all the grave consequences that implies for free people everywhere.

We've had warnings:

During the 1973 Middle East War, the Soviet navy was quickly able to double its Mediterranean fleet to 96 ships on station. And this wasn't even an all-out effort by the Soviets. Against it, we went all out to reinforce our Sixth Fleet to a peak strength of 66 units. The Soviets were armed with deadly anti-ship cruise missiles, a weapon not then in our own inventory. Knowledgeable professionals differ as to who would have prevailed in a Soviet-American shoot-out. Fortunately, we didn't have to find out, but Moscow's boldness during that crisis brought us to the brink of World War III.

Huge Soviet navy war games were held in 1970 and 1975. Called Okean (Ocean) 70 and Okean 75, they are full of ominous meaning for the future. In Okean 75, hundreds of Soviet air, surface and undersea combatants were deployed over the world's seas with intelligence collectors, oilers, repair ships and merchant convoys and put through intensive, coordinated maneuvers. It was the the greatest show of naval strength in history.

Five major shipyards in the U.S.S.R. produce submarines—with six more building large surface ships. All these huge yards have been expanded and modernized in the last five years, to produce a steady stream of new ships.

STRATEGIC THREAT

In short, there has been an alarming shift in the balance of naval power and the abilities of the Soviet and American navies to perform their different missions. Though many of our ships are superior in quality and our sailors are more experienced, the Soviet navy now is more than triple the size of our fleet and its overall effectiveness is increasing.

Our way of life depends on the unimpeded flow to us of essential raw materials and energy—we now import *all* our rubber, chromite, cobalt and manganese ore and *half* our oil. Ninety-nine percent of our overseas trade is carried by ship. Our survival depends upon a Navy competent to keep open the sea lanes, pose a believable deterrent and enable us to support our allies in the event of war.

By contrast, the U.S.S.R. is relatively self-sufficient in raw materials and energy. The Soviet Union can support itself and provide most of its allies with economic and military aid without crossing a major body of water. A truly peaceful Soviet government would be content with adequate coastal-defense forces—the kind of naval force the Kremlin kept until 15 years ago. Since then, it has sought to create a navy of such speed and devastating fire power (at the expense of cruising range) that it can overwhelm any U.S. Naval force. It has created a "first strike" navy.

This explains the enormous Soviet naval buildup of the past decade and a half. The Kremlin became aware in the late 1950s that without a blue-water navy it could not influence world events. The Soviets were embarrassed at their impotence in 1956 when a British and French naval expedition invaded Suez; and in 1958, when the U.S. Navy moved strong forces into the eastern Mediterranean to discourage communist interference in Lebanon's disorders. The last straw was the 1962 Cuban missile crisis, when a U.S. Naval blockade and the threat of overwhelming American nuclear retaliation forced the U.S.S.R. to remove nuclear missiles it had been installing in Cuba.

But now the U.S.S.R. boasts the world's largest strategic (long-range, nuclear-ballistic-missile-carrying) submarine fleet. The Soviets have launched 60 such boats in the past ten years. Their Delta Class submarine—27 operational and more abuilding—is the world's largest. Each is poised to fire 4200-mile-range missiles.

That distance exceeds by some 1700 miles the range of our most advanced submarine-based missile, the Poseidon. It also approximates the range of our new Trident I missile, which won't reach the water until close to 1980. The Delta Class missile now makes it possible for the Soviet strategic submarine force to attack virtually every city in the United States from the U.S.S.R.'s home waters.

The Soviet force also includes 33 Yankee Class boats, each fitted with 16 1300-mile missiles, and 30-odd older nuclear- and diesel-powered boats, each carrying a number of 350- and 650-mile nuclear missiles. Against this, the United States has a ballistic-missile firing submarine fleet of 41 relatively old Polaris and Poseidon boats.

SHRINKING MARGIN

The Soviet navy's commander in chief, Adm. Sergei Gorshkov, has vowed publicly to achieve a navy that is second to none. Is he achieving this goal?

Recently retired Chief of Naval Operations Adm. James L. Holloway III has delivered a sobering assessment to Congress: we retain "a slim margin of superiority." The Chief of Naval Operations four or five years from now may not be so optimistic, since that "slim margin" is represented by our 13 aircraft carriers. In 1976, the Soviets deployed their first, the 45,000-ton *Kiev*. A second *Kiev*-class carrier is nearing completion and a third is under construction. We probably can expect to see more and perhaps larger carriers joining Soviet fleets through the 1980s.

Although Gorshkov's carriers do not yet give him the long-range striking power ours provide, he has 1250 land-based naval aircraft, of which 30 are the new supersonic Backfires. These have at least a 5000-mile range, and pose a terrible threat to our Mediterranean and Pacific fleets. They could also menace any Naval force that we might bring into the Indian Ocean to shore up a Red-threatened oil-rich state.

The Russians also have tried to offset our superiority in aircraft carriers by arming scores of surface ships and submarines with deadly anti-surface-ship cruise missiles. There is frightening evidence that they are developing a new guidance technology, which will enable a missile-firing ship or submarine to stand off at a distance, find a target ship with over-the-horizon radar, and fire a weapon that will streak at 2000 m.p.h. 50 to 60 feet above the sea, underneath our search radar.

Our scientists have been developing a weapons system to counter this threat. It's called Aegis, and we know it will find incoming Soviet missiles 30 to 40 miles out and blow them up. But at the earliest, it will be 1981 before the system can be deployed on the first ship.

SOVIET SQUEEZE

In addition to a strategic submarine force twice the size of ours, the Russians now have by far the world's largest attack submarine fleet, well over 200 boats, for anti-shipping and anti-submarine purposes. Imagine what the Soviet attack force could do in the event of war! Nazi Germany, which began World War II with 57 submarines, primitive by today's standards, very nearly succeeded in severing our Atlantic supply lines, sinking some 14 million tons of Allied shipping. Clearly, the lesson has not been lost on the Soviets.

Against the U.S.S.R.'s huge surface and undersea forces we can deploy a total of 82 attack submarines.

The Russians also have more of all kinds of surface combatants than we have: more cruisers, more destroyers and other escort types; they vastly outnumber us in small (less than 1000-ton) attack boats. Yet these are fast, maneuverable and hard to hit. Equipped with new nuclear-tipped missiles, they pack a lethal wallop. The Soviets now are also moving to gain an advantage with amphibious ships that carry marines and their arsenals, including tanks, into beaches. They have some 100 such ships. We have 63, and we would need 48 of these to embark a single Marine amphibious force.

The Soviet navy has the world's largest naval-mine-warfare force, the world's largest inventory of naval mines and a capable anti-mine-warfare force. It also has the world's largest fleet of intelligence collectors—so-called "spy ships." Approximately 50 are deployed all over the globe—many posing as merchant or fishing vessels.

With their modern, powerful navy, the Soviets are showing the flag in more and more places, doing their best to influence events. During the Angolan war, Soviet naval units were deployed offshore in a show of support for their Cuban proxies. They now cruise regularly in many of the world's major seas. (A Soviet task force has come within 25 miles of Hawaii, and another has entered the Gulf of Mexico.) Thep have obtained the use of port facilities in the Indian Ocean, the Mediterranean, on the west coast of Africa and in the Caribbean. It is obvious that the Kremlin employs its naval forces in support of an ambitious foreign policy targeted at controlling the world's raw-material sources.

I don't think most Americans, including many in Congress, really grasp what a tough fix we are in, or will be in soon. If present trends continue, for example, it wouldn't surprise me to awaken some morning to the news that the Soviets have annexed the warm-water ports of northern Norway, which they have long coveted. Or to be told by Moscow that "the situation must be stabilized" by the Soviets in some politically troubled oil-rich state which is important to our survival.

U.S. RESPONSE

We are in this fix for a lot of reasons, including old, discredited theories that the Russians are as interested as we are in arms control and disarmament. Powerful voices in this country continue to urge that we disarm unilaterally, insisting that the Russians will then disarm, too. In fact, we have long been unilaterally disarming. Among other things, we have halved the size of our Navy—we now have 458 ships, against nearly 1000 ten years ago.

But the main reason we are in this fix is that during the 1960s, while the Soviets were working hard to develop the mightiest

military posture in world history, we were pouring our resources into the Vietnam war. We neglected our defenses, none more than our Naval component. By the end of the 1960s we were confronted with block obsolescence, large numbers of ships built in the 1940s and 1950s that were not worth expensive restoration.

Currently, our Navy is smaller than at any time since two years before Pearl Harbor. Yet the Carter Administration has just cut in half the Navy's five-year shipbuilding plan! Congress will be gravely risking our survival if it allows this to happen.

We simply must rebuild the Navy. That doesn't mean refurbishing obsolete ships. We need a modern, self-sufficient Navy that can operate in distant areas without having to rely on overseas bases.

Admiral Holloway has estimated that the balanced Naval force we need comes to about 600 ships. In preparing this force, we must understand that, from the time initial plans are prepared for Congressional approval, it takes eight years to get a Trident submarine to sea, ten years to float an aircraft carrier. And weapons technologies improve so rapidly that when we build certain new systems, we have to hope that they won't be obsolescent in ten years.

But we have no choice. We must understand that our freedom is not preordained, and that without a strong defense we won't be able to keep it. So much time has been lost already that, even if we start now, we are in for some rough and scary sailing in the years directly ahead.●

THE HILL'S MANGLING OF AN ERA ISSUE

● Mr. GARN. Mr. President, Prof. Walter Berns is an eminent scholar, and we are fortunate to have his abilities directed toward an issue as important as extension of a ratification period for a proposed constitutional amendment. Yesterday, the Washington Star ran an article by Professor Berns entitled "The Hill's Mangling of an ERA Issue." I recommend Dr. Bern's article to our colleagues and every person concerned with the processes of Constitutional law and American government. It is a fine piece of thinking and writing and both Professor Berns and the Star should be commended for their contribution to this vital debate.

The article follows:

THE HILL'S MANGLING OF AN ERA ISSUE

(By Walter Berns)

Unable to secure the approval of the constitutionally required three-fourths of the states during the congressionally stipulated seven-year period, the advocates of the Equal Rights Amendment are now engaged in the attempt to persuade the Congress to extend that period to 14 years. This proposed extension raises constitutional issues, involving fundamental principles of American government, that have never been decided—and can scarcely be said even to have been considered—by the Supreme Court. There is in fact very little constitutional law on the mode of amendment of the Constitution, and if the full House and then the Senate follow the disgraceful example of the House Judiciary Committee in its recent consideration of the extension resolution, there will be very little constitutional principle.

The reasons for the lack of constitutional law are not hard to identify.

First, there have been few cases to reach the courts. Prior to the ERA, 32 amendments had been proposed, and of these 26 were adopted, most of them quickly and without great argument. The first 10 amendments, for example, were ratified in a body by nine states within nine months of their submission by Congress in September 1789, and, after Virginia got around to acting, by the required three-fourths of the states by the end of 1791; and the 26th and most recent amendment (respecting 18-year-old voting) was ratified within a year.

Second, in the few cases to reach the courts, the Supreme Court has tended to say that the issues raised in them are political (hence to be decided with finality by the Congress) rather than justiciable; this has the effect of further reducing the number of cases. (This relative lack of law and dispute is reflected in the fact that in the annotated Constitution a mere five and a half pages of text are required to set forth the law of Article V, the amending article, whereas 236 pages are required to set forth the law of the 14th Amendment alone.)

Thus, the Court has never ruled directly on the questions of whether Congress may extend the ratifying period, whether a state may rescind its ratification of an amendment and whether a state (*viz.*, Illinois) may require an extraordinary legislative majority to pass a ratification proposal.

Nor has it ever addressed the fundamental question underlying these questions: Who are the people of the United States who, in principle, possess the sovereign power of the United States?

We do know that no state may rescind its ratification of the Constitution as a whole. South Carolina was the first to try to do this. Its Ordinance of Secession of Dec. 20, 1860, took the form of a declaration by the people of the state rescinding the ordinance adopted by "them" on the "23rd day of May, in the year of our Lord 1788, whereby the Constitution of the United States was ratified"; but Lincoln demonstrated the absurdity of this when, in his First Inaugural, he pointed out that if one state may secede from the others, the others, with the same propriety, may secede from the one. This would follow, he said, unless the seceders make the point that the one, because it is a minority, may rightfully do what the others, because they are a majority, may not rightfully do.

"These politicians are subtle and profound on the rights of minorities," he said. "They are not partial to that power which made the Constitution, and speaks from the Preamble, calling itself 'We, the People.'" Lincoln's view of this constitutional issue was upheld not by the Supreme Court (which, as it was then constituted, would probably have upheld South Carolina) but by the armies of Grant, Sherman, Thomas and others less famous.

Congress' lack of respect for constitutional principle is not so readily explained or condoned. A few weeks ago the House Judiciary Committee voted 19–15 to recommend adoption of what it was pleased to call a joint resolution extending, by some three years, the period during which the states may ratify the Equal Rights Amendment. The full House approved the extension last Tuesday by a 233–189 vote. This so-called House Joint Resolution 638 is not a concurrent resolution (for it would then have no binding effect); nor is it an act of Congress in the sense of Article I, section 7 (for it would then require the president's signature); nor is it, in the usual sense, a resolution adopted under the authority of Article V, authorizing Congress to propose amendments to the Constitution (for then it would require passage in both houses by two-thirds majorities). It is, instead—if it is anything that can be described in constitutional terms—an Article V resolution in an unusual sense, in fact, in an extraordinary and wholly unprecedented sense.

The power to enact this resolution was discovered in the fact that the time requirement, prescribing the period within which states may ratify the ERA, was placed not in the text of the amendment itself but in a separate clause, from which the committee jumped to the convenient conclusion that, whereas a two-thirds vote is needed to propose an amendment, only a simple majority is needed to change the time period for ratification of the amendment. Setting and changing the time period are "subsidiary matters of detail," the committee suggested.

This solved one of its problems, left unsolved the problem of the missing presidential signature, and opened up the possibility that the power could be used—or from the committee's point of view, misused—by others. For, if the power to set a time limit is one belonging exclusively to Congress, "to be disposed of by a simple majority of each House," and if "Congress retains authority to review the [time] limit should the circumstances so warrant," then it would seem to follow that Congress, by simple majorities, may extend the ratification period, or, "should the circumstances so warrant," contract or shorten it.

After all, some circumstances would warrant extensions and others contraction, and it is conceivable that, last year for example, a majority of the House and Senate, being disturbed by a possibility of street battles between the advocates and opponents of the ERA, could have concluded that domestic tranquility depended on a quick resolution of the issue and, therefore, that the time period should be shortened to six or even five years. This the committee could not allow; it had to find a formula that would permit Congress to extend but not to contract the time period.

To this end, it said, quoting Justice Department testimony, that the 92nd Congress had determined that "the States should have at least seven years within which to consider the equal rights amendment," and, again, that "the States should have at least seven years within which to consider ratification of this amendment." In saying this the committee was not telling the truth, but it was serving its partisan purpose.

A joint resolution shortening the time period would amount to a change of the original time clause, but a resolution extending the time period would not be a change; after all, a ratification period of 10 years and three months (but not one of five years or six) is "at least" seven years. So that was that, and we can conclude from it that, since every resolution resolves something, this new-order joint resolution was intended to be a handy device for resolving awkward constitutional doubts.

At one point in its report, the committee quotes Article V of the Constitution and then, quite gratuitously, says this: "The language of article V thus requires a two-thirds vote for action by Congress in proposing an amendment and in calling a convention in response to the applications of two-thirds of the State legislatures."

This is, of course, nonsense. Article V does not say that (two-thirds of the states having applied for a convention) a convention shall be called only if two-thirds of both houses of Congress agree; it says a convention shall be called. The Judiciary Committee apparently has its eye on the attempts now being made to have the states call for a convention to propose amendments putting limits on the taxing or spending powers or reversing the Supreme Court's decision in the abortion cases. Having broken the rules in its effort to promote the ERA, the committee seems to be serving notice that it stands ready to break them again when and if necessary.

The Judiciary Committee's performance should also serve to confirm the judgment that the Supreme Court has erred when it has suggested that the issues involved in amending the Constitution should be resolved mainly by the Congress. In fact, how-

ever, the Court has not abnegated in favor of Congress to the extent suggested by some members of Congress.

Contrary to the Judiciary Committee, the Court did not say that the question of what constitutes a reasonable time for ratification may be settled by Congress "in such a manner as 'the public interests and changing conditions may require.'". It did say this: "Of the power of Congress, *keeping within reasonable limits* to fix a definite period for the ratification we entertain no doubt." (*Dillon* v. *Gloss*, 256 U.S. at 375–6. Emphasis supplied.) And it did not suggest that Congress is completely free to determine what is a reasonable period.

The issue in this 1921 case (one of only two or three in which the Court has addressed itself to questions involving the mode of amending the Constitution) was simply whether Congress was entitled to impose a seven-year limit on state ratification of the 18th Amendment, and, in the course of upholding the power and this use of it, Justice Van Devanter, speaking for a unanimous Court, said this:

"We do not find anything in the Article which suggests that an amendment, once proposed, is to be open to ratification for all time, or that ratification in some of the states may be separated from that in others by many years and yet be effective. We do find that which strongly suggests the contrary. First, proposal and ratification are not treated as unrelated acts, but as succeeding steps in a single endeavor, the natural inference being that they are not to be widely separated in time. Secondly, it is only when there is deemed to be a necessity therefor that amendments are to be proposed, the reasonable implication being that when proposed they are to be considered and disposed of presently. Thirdly, as ratification is but the expression of the approbation of the people and is to be effective when had in three fourths of the states, there is a fair implication that it must be sufficiently contemporaneous in that number of states to reflect the will of the people in all sections at relatively the same period, which, of course, ratification scattered through a long series of years would not do."

This seems reasonable. To argue that an amendment once proposed "is to be open for ratification for all time" is to indicate a willingness to accept consequences that ought to be unacceptable. It would mean, for example, that the amendment, proposed in 1861, that would have forbidden the abolition of slavery is still viable and only awaits the ratification of three-fourths of the states to become the fundamental law of the land.

To argue in this fashion is, moreover, to be blind to the fact that the Constitution is made by us, the people; and that "we, the people," each of us possessing one vote, can only speak in the voice of the majority, and that the majority, because it is subject to changes over time, must be ascertained at a particular time.

The Constitution is fundamental law precisely because it arises out of the will of the people. This will is expressed when the people act in their constituting capacity; it is in this capacity that the people perform, in Hamilton's words, the "solemn and authoritative act" of writing or amending the Constitution. In this capacity, and only in this capacity, the people have the right to "alter or abolish the established Constitution whenever they find it inconsistent with their happiness." This, Hamilton says, is the "fundamental principle of republican government."

In a profound sense, "we, the people of the United States" are always the same people, possessing the same power today that we possessed and exercised in 1787–8, the power, as Hamilton puts it, to declare our will in a constitution. But this will can change from time to time, and whether it has changed can be ascertained only by eliciting the views of—or by attempting to gain the constitutional consent of—the individual Americans comprising the American people at any particular time.

On a question of constitutional amendment, it will not do to elicit the votes of James Madison, Jimmy Carter, and of persons who, because they have not yet been born or naturalized, are not part of this people. Jimmy Carter is, but the others are not. The interests of our future generations should be weighed and the counsel of our forebears should be considered, but their votes may not be counted simultaneously. "We, the people" are a continuing body whose membership is constantly changing. Because this is so, we can act constitutionally only at particular points of time. To ignore this is to presume the right to govern the people without the consent of the people.

Justice Van Devanter was also correct when he said that "proposal and ratification are not to be treated as unrelated acts, but as succeeding steps in a single endeavor." This was the mode of the Constitution's adoption and this mode should, to the extent possible (and within the limits prescribed by the people in Article V), serve as the model for its amendment.

Submission of the proposed Constitution was followed immediately by a vigorous debate between its advocates and its opponents, surely the most enlightened and still enlightening debate ever to engage the attention of and to involve a people. They were being asked to give their consent to a form of government, and the purpose of the debate was to foster an enlightened consent; or, stated otherwise, it was to ensure that the will of the people, to be embodied in a constitution, be an enlightened will, expressed after due deliberation.

The importance of this is obvious because, enlightened or unenlightened, the will of the people is the source of our fundamental law. Hamilton began the debate in the first *Federalist* by pointing out that it had been "reserved to the people of this country, by their conduct and example, to decide the important question, whether societies of men are really capable or not of establishing good government from reflection and choice, or whether they are forever destined to depend for their political constitutions on accident and force." Whether choice is made after reflection depends in part on whether ratification follows closely on proposal; the longer the period, the greater the possibility that, in Madison's words, "the passions [and] not the reason, of the public [will] sit in judgment."

These considerations lead to the following conclusions:

(1) A 14-year ratification period is too long; even a seven-year period allows too great a distance between proposal and ratification, reflection and choice.

(2) This objection can be met if, rather than extending the period, Congress again considers whether to propose an Equal Rights Amendment and, after deliberate debate, if it decides to do so, again submits it to the people.

(3) This necessarily means that the people of each state must again consider whether to accept or reject it; there is here no question of whether a state may rescind a previous ratification; until the proposed amendment is again submitted to a state there is (after the expiration of the original seven-year period) no constitutional business before it. Nothing could be more improper or, indeed, more unconstitutional, than to allow votes for ratification to be accumulated from the past and the future as well as from the present generations of the people. There is no way of knowing whether such an accumulation is the contemporaneous will of the people and, therefore, it is not the will of the people.

Finally, it would seem to be improper for any state to require extraordinary majorities to ratify a constitutional amendment. Constitutions arise properly out of the will of the people, each person possessing one vote, which leads ineluctably to the right of the majority to decide.

That majority may decide to limit its power to amend the Constitution. This is what the American majority ("We, the people") did in 1787–8 when (in Article I, section 9, for example) it placed limits on the legislative power, and, in Article V, out of respect for the federal system, it modified the right of the majority to amend the Constitution by assuring, by means of the three-fourths requirement, that the majority will be geographically or regionally distributed.

When, however, the majority does not itself modify the majority principle, that principle that must be respected. Thus, neither Congress nor the states may require extraordinary majorities to ratify an amendment, which means a federal court clearly erred in upholding a state requirement that the ERA needs a three-fifths majority for ratification in the Illinois legislature.

I hope it is clear that the Supreme Court has erred whenever it has suggested that the mode of constitutional amendment is not a subject to be governed by constitutional law. The right of the people to alter or abolish the established Constitution is, as Hamilton correctly says, the "fundamental principle of republican government," but that right may be exercised only in a "solemn and authoritative" manner; the principle governs both the right and the manner of its exercise.

The definition of fundamental principle is not among the powers of any legislative body. Indeed, the right of the Supreme Court to expound the fundamental law governing the American people—a right no longer in question among us—is at least as evident in the case of the amending article as in the case of any other provision of the Constitution, and not simply because legislatures, and especially the House Judiciary Committee have demonstrated their inability to act in a "solemn and authoritative manner." ●

THE SLIDING DOLLAR

● Mr. HARRY F. BYRD, JR. Mr. President, Hobert Rowen, Washington Post staff writer, had an excellent piece in Sunday's Post analyzing the decline in the value of the U.S. dollar.

In the past few years the dollar has lost about half of its value against the West German mark, 55–60 percent against the Swiss franc and 35–40 percent against the Japanese yen.

This is a staggering drop.

In the last several weeks, I have consulted with economists and others involved in international finance and most agree that the sharp drop in the value of the dollar results from a lack of confidence in the way the United States is handling its own financal affairs—its inability or its unwillingness to get a grip on inflation.

As Mr. Rowen points out "inflation remains the key to the dollar crisis."

I ask to have printed in the RECORD Mr. Rowen's piece, headined "The Dollar's Slide: What it Means".

The article follows:

THE DOLLAR'S SLIDE: WHAT IT MEANS

(By Hobert Rowen)

For months, headlines have been blaring the saga of the dizzying decline of the U.S. dollar: "Dollar Drops Again Against the Japanese Yen." Or, "Dollar Hits New Low

Against West German Mark: Gold Hit New High." Or, "Tourists on Holiday Find Their Dollars Buy Less and Less."

What has happened to the once almighty dollar to account for a loss in the past few years of about half of its value against the West German mark, 55 to 60 percent against the Swiss franc, and 35 to 40 percent against the Japanese yen?

The answer is relatively simply, and it's the same one that often applies to a decline in the price of any commodity; and oversupply. There are too many dollars in the hands of foreigners—or at least more than they want to hang on to.

Experts estimate that individuals and central banks of governments abroad hold about $600 million, much of it pumped abroad to pay for accumulated U.S. balance of payments deficits. Over the years, when this country has bought more goods and spent more money abroad than it takes in from foreign sales and investments, and the gap has been covered by printing additional dollars.

The United States has the advantage of being able to do this because the dollar has been not only the chief reserve currency but also the world's chief transactions currency.

As Britain's chief economics official in Washington, William Ryrie, said recently, "The United States does not have to find foreign currency to pay for a deficit in its balance of payments if it has one. The U.S. pays in dollars. The rest of us pay in dollars, too, but we cannot print them."

When there is too much of a currency outside the country that issued it, the people who hold it start to lose confidence.

"They naturally start to dump them," Henry Kaufman, chief economist of Salomon Bros., New York, said in an interview.

"All you have to do is to create some question marks or fears about the dollar, and if you loosen a fraction of that sum—say just 10 to 20 percent—you have enormous amounts of money that want to get out of dollars into other currencies," Kaufman said.

The situation has become increasingly tense in the past few weeks, with inflation rates in the United States soaring far over those of its major trading partners, West Germany and Japan.

Compared with a 10.4 percent U.S. rates in the first six months, the Japanese inflation rate is 4 percent, and the West German rate is less than 3 percent.

The failure of the economic summit meeting in Bonn in July to come directly to grips with the dollar problem was a great disappointment in financial circles.

In little more than a month since then, the dollar has drifted down 3 to 4 percent against major European currencies and 8 percent against the yen. Such changes over a relatively short time are characterized by veteran market observers as near-chaotic.

Interviews of officials, bankers, businessmen and others here and abroad indicate that the slide of the dollar has reached crisis proportions and that this carries with it a threat to the international monetary system and to world economic stability.

President Carter implicitly recognized that last week by directing Secretary of the Treasury W. Michal Blumenthal, working with Federal Reserve Bank Chairman G. William Miller, to recommend new actions to set the dollar on a steadier course.

But no one—here, in Bonn, Tokyo or New York—thinks that there are any simple solutions.

"Gauging when the critical point will come is beyond any of us," said Robert V. Roosa, partner of Brown Brothers Harriman, in New York.

In a strictly technical sense, it is clear that the dollar already has dropped too far too quickly, and hence is now undervalued. It would tend to rise naturally, economists say, if the U.S. government made a believable effort to control inflation and reduce its massive $30 billion trade deficit.

But the accumulation of worries, the panic psychology of markets "and the natural reaction of holders of assets to seek diversification in the face of steady decline," nonetheless is pushing the dollar further down, Roosa said.

It remains unclear whether the Carter administration, with an unsteady record so far of managing the U.S. economy, can do anything that will restore confidence. A boost in the Federal Reserve Board's discount rate on Friday was welcomed by the markets, but they are looking for much more.

Roosa, under secretary of the treasury in the Kennedy administration, confesses that a year ago he would have thought that if the dollar reached the low rate it is currently at, "we would already be in the midst of a great crisis. The fact that it has happened in wave-like spasms has in part conditioned the rest of the world to it."

The dollar has been in a steady decline for more than a year, but the Carter administration has been reluctant to take decisive action to stop it.

A cheaper dollar has some advantages for the United States. It makes American exports less costly. This not only helps reduce the staggering American trade deficit, but also stimulates U.S. production, sales and jobs.

But it also adds to inflationary pressures at home by boosting the price of foreign goods and making foreign travel more expensive—as tourists paying $3 for a cup of coffee in Japan or West Germany have found out.

Beyond that, however, there are serious problems of economic policy management created for the United States, and this has helped push Carter into seeking new solutions. These problems can be summarized this way:

To protect the dollar and stem the decline, the Federal Reserve is pushing interest rates higher. This provides incentive for dollar-holders abroad to keep their dollars rather than dump them. But such a policy threatens economic recovery at home.

A continued slide of the dollar could induce the Organization of Petroleum Exporting Countries (OPEC) to raise the price of oil again. This would be a new deflationary force and could trigger a world-wide recession.

If the dollar dips far enough, this would lower American prestige and political influence abroad. The dollar's role as an international "reserve currency" has already been challenged by others, and a new slide could accelerate the trend.

A dollar decline transfers wealth from the United States to foreign holders. Dollars accumulated abroad are a claim against U.S. wealth. Foreigners today hold about $120 billion in Treasury securities. This transfers $9 billion a year in interest to them.

The reasons for the dollar's difficult situation are many and complex. But most experts agree that the weakness stems from a combination of the rising U.S. rate of inflation and the enormous trade deficit, which last year added some $20 billion to the $600 billion already in foreign hands.

A subtle overlay to these basic reasons is the almost unanimous belief in European, Japanese and other financial centers that the Carter Administration has shown some incompetence in handling its economic problems. Its failure to mount a successful anti-inflation program and to persuade Congress to pass an energy conservation program are viewed with amazement and consternation in Europe.

A cheaper dollar, of course, means that other currencies, like the mark and the yen, become more expensive. This makes goods produced in the countries of the mark and the yen less competitive in world markets.

But if countries like West Germany and Japan choose to halt the decline of the dollar by intervening to prop it up, that action leads to a boost in their own domestic money supply—hence, a new inflationary threat to them.

So their demands have been for greater U.S. intervention, by which this country would assume the major burden of responsibility for protecting the value of the dollar.

Steadfastly, the Carter administration has refused the kind of massive intervention that would "peg" the dollar at any fixed rate or range. It believes that such an action would be useless in the face of $600 billion sloshing around in European hands.

Roosa flatly predicted that the dollar will continue to be "battered" in world currency markets because of the huge supply of dollars abroad. He said the dollar, which at the end of the week was worth only 1.65 Swiss francs, could decline to a 1-to-1 ratio, with additional but less spectacular declines against other currencies.

"Until there is a sustained, clear turn in the Japanese current account surplus, I don't see anything stopping [the appreciation] of the yen," Roosa said.

He suggested that the yen—which at the end of World War II and for many years later was 360 to the dollar—could move to 150 to the dollar. Less than three years ago, the yen was over 300 to the dollar.

Kaufman, one of the leading observers of financial markets, said in an interview that merely improving the trade position of the United States would not solve the dollar problem.

"It would help," Kaufman said, "but it won't solve it. The problem goes beyond the current account and relates to the capital account—the international financing role of the dollar."

In effect, Kaufman says, the United States has played the role of international banker and suddenly the international banker's currency doesn't appear to be very sound, eroding at a double-digit rate.

In the past, Kaufman pointed out, when a major reserve currency—like the pound sterling—appeared threatened, the central bank of that currency's country interest rates considerably, which quickly aborted any dumping.

"But that is very difficult to do in a modern society," Kaufman observed. The tradeoff for high interest rates is usually a depression of business activity and more unemployment at home.

He noted that Miller in the past few months had given markets the impression that the Fed would ease interest rates in the United States or at least not "overstay" tight money.

"The symbol of preserving the integrity of the dollar internationally tends to be in the discount rate," Kaufman observed. But Miller actually voted against the majority of his board in a July boost in the discount rate, from 7.0 to 7.25 percent, something that jarred the markets.

"It was an enormous disturbance in the foreign exchange markets," Kaufman said. Banker David Rockefeller confirmed this assessment, noting that "Miller's vote suggested that he didn't have control" of Federal Reserve policy.

Since then Miller has said that he made a mistake. He voted with the majority on Friday to raise the discount rate to 7.75 percent, citing international as well as domestic reasons.

There have also been signs that the administration was weak in controlling infla-

tion. In an effort to mollify AFL–CIO President George Meany, President Carter took an action widely interpreted as muzzling his wage-price aide, Barry Bosworth.

"There is no anti-inflation program in place," Kaufman said, "and foreigners recognize that."

What are the answers to the problem?

In groping for a response, the administration tends to fall back on its complaint that Congress has ignored the energy legislation, which it considers critical, interest rates, as the Federal Reserve action last week demonstrated, are moving higher. A more positive intervention policy, perhaps with greater U.S. resources marshaled for the day-to-day operations, is also possible. Other nations, like West Germany and Japan, although reluctant to do so, may take on more of the reserve currency responsibility.

But inflation remains the key to the dollar crisis. It remains to be seen whether the Carter administration can mount a stronger anti-inflation effort through traditional means like tighter control of budgets, or supplemental measures involving direct or indirect limits on wage and price increases.●

NOTICE CONCERNING NOMINATION BEFORE THE COMMITTEE ON THE JUDICIARY

● Mr. ROBERT C. BYRD. Mr. President, the following nomination has been referred to and is now pending before the Committee on the Judiciary:

Andrew L. Metcalf, Jr., of Michigan, to be U.S. marshal for the western district of Michigan for the term of 4 years vice Marvin G. Washington, term expired.

For Mr. EASTLAND, and 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 Monday, August 28, 1978, 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.●

ROTH-KEMP TAX CUTS

● Mr. ROTH. Mr. President, with the tax debate shifting from the House to the Senate, Members of the Senate will soon be given the opportunity to vote on my proposal for substantial across-the-board tax rate reductions.

The $16 billion tax "cut" recently approved by the House is really not a tax cut at all. Because it fails to offset the new social security tax increases and the automatic tax increases caused by inflation, virtually every American taxpayer will face a tax increase next year if this bill is enacted.

I believe we need a real tax cut to offset these huge increases and reduce the total tax burden on the working men and women of this country. The Roth-Kemp tax rate reduction bill is just such a tax cut—one that can restore incentive to our stagnant economy, creating real economic growth and meaningful new jobs.

Mr. President. Mr. Jude Wanniski, a well-known political economic commentator, has produced a series of short papers discussing the Roth-Kemp bill and the Hansen-Steiger capital gains reduction bill. The first paper deals with the basic theory behind our tax cuts, while the second paper responds to some of the tax cuts critics, including Walter Heller.

These two papers are extremely relevant to the tax cut debate, and I urge my colleagues to study these two excellent papers. Mr. President, I ask that these two papers be printed in the RECORD following my remarks.

The material follows:

THE THEORY BEHIND TAX CUTS

INTRODUCTION: THE PROBLEM

In the last decade, the U.S. economy has experienced a combination of problems unique in our history: stagnation and inflation.

The productivity of the economy has fallen steadily since the late 1960s. The value of the U.S. capital stock, as measured by the stock market, is roughly one-third its value (in real, non-inflated terms) compared to February 1966. And the purchasing power of the U.S. dollar has fallen by roughly two-thirds in the 1970s.

Conventional economic wisdom has no solution to this malaise. It argues that inflation can only be decreased through austerity. Stagnation can only be overcome by inflation.

THE DIAGNOSIS AND WHY HANSEN-STEIGER, ROTH-KEMP

Consider the axiomatic phrase: "Inflation is too much money chasing too few goods." It is the key to understanding the twin problems of inflation and stagnation. Traditional political economists can end inflation by producing less money, but stagnation remains. Or they can end the stagnation problem by encouraging greater production of goods, but inflation remains as long as money is being created at a greater pace.

The challenge for the political economist is to find a way to both increase the supply of goods and restrain the creation of money. The Hansen-Steiger, Roth-Kemp tax cut amendments are part of that strategy.

TWO STEPS TO CONVENTIONAL ECONOMIC STRATEGY

I. Conventional economic strategy has been to attempt an increase in the supply of goods by:

(a) increasing government spending on goods, or by

(b) lowering "taxes" on the private sector, which leaves consumers more money to spend on goods.

These methods necessarily mean deficit financing by government and a consequent rise in interest rates.

II. The next conventional step is to increase the money supply in an attempt to drive down interest rates. But the increased supply of money leads to an increase in the general price level. Economic strategy, under both Democratic and Republican administrations, has been trapped by this paradox, unable to find a simultaneous solution to stagnation and inflation.

ENTER THE PROGRESSIVE TAX SYSTEM

I. To make this dilemma even more difficult, conventional economic strategy must also face up to the inherent problem of the progressive tax system.

II. Progressive income taxes came into being in the early part of this century. You can think of the progressive system simply as a sliding scale, with lower rates at one end progressing up to higher rates at the other. With tax progressions on both capital and labor, a rise then in the general price level induced by excessive money creation forces the price of both capital and labor to go, if you will, sliding up the progressive tax scale to higher rates of taxation.

III. Capital and labor then trade the same goods and services in the marketplace, but at the higher price level they must pay higher marginal tax rates, giving a greater share of their production to government.

IV. With capital and labor paying in more to government (keeping a smaller share of what they produce) they are discouraged from increasing, or sometimes even maintaining, their present levels of production. This is the linkage conventional economic theory is reluctant to face: an increase in the supply of money, intended to drive down interest rates, instead pushes capital and labor into higher tax progressions, eroding incentives to produce, and simultaneously giving us inflation and stagnation.

THE NIXON ECONOMICS AND THE NEED FOR HANSEN-STEIGER

This phenomenon of stagnation began to unfold in earnest in 1969, not because of excessive money creation, but through an explicit reduction of production incentives. In that year, President Nixon agreed to a sharp increase in the marginal tax rate on capital gains, to almost 50 percent from 25 percent. This sharp reduction in the rewards to capital for undertaking new, high-risk enterprise brought on the recession of 1969–70.

In 1971, the Nixon Administration attempted to pull out of the recession by encouraging sharp increases in the money supply. But this increased the pace at which both capital and labor have been driven into higher tax progressions.

Today, in 1978, the Hansen-Steiger bill would merely redress this primary error of economic policy by returning to the level of capital-gains tax rates of 1969.

A COMPLEMENT TO HANSEN-STEIGER

The Roth-Kemp bill merely complements this process; its tax cuts are meant largely to offset the adverse impact of inflation on the real rates of taxation paid by capital and labor. It does this by reducing marginal tax rates on personal incomes by one-third over a three year period.

The Roth-Kemp tax cuts are commonly described as a "drastic" measure. Yet to fully offset the adverse impact of the inflation of the 1970s would take an immediate and whopping increase of more than 60 percent in personal income thresholds, while leaving the tax rates themselves frozen. Compared to this, Roth-Kemp is merely a modest attempt to get back to a sense of reasonableness in Federal income taxation. And, of course, because the cuts are phased in over the next three years, the adjustment they make, all the while, would be offset by continuing inflation.

THE NATURE OF THE CRITICISM OF ROTH-KEMP

The critics of Roth-Kemp operate with at least one basic flaw: they fail to treat inflation as a special problem in an environment of progressive tax systems. As a result, they fail to distinguish between average taxes and marginal tax rates. For the conventional economic theorist, the world is made up of stable prices, and a given tax rate has no dynamic economic effect; therefore, the individual, in conventional thinking, cannot be inflated into higher tax brackets.

Let me illustrate this fallacy in thinking with the following:

An economy can thrive even with a marginal tax rate of 100 percent, if the income at which the rate is encountered is very high, say $1 million per day (in other words, government would confiscate 100 percent of any amount earned above $1 million per day). But if money loses so much of its value that $1 million can only purchase a loaf of bread, all production would stop after the baker had sold his first loaf each day; the government would confiscate all subsequent loaves as income tax. Average "taxes" collected by the government would collapse to near zero even as marginal tax rates climbed to near total confiscation.

THE LAFFER CURVE

The instrument we use to examine this dynamic effect is the Laffer Curve, which applies the law of diminishing returns to tax rate policy. The Laffer Curve merely enables us to think in dynamic, rather than static, terms when we consider the effects of inflation on marginal tax rates.

The Curve does not speak to "average" tax rates, which have no relevance in determining individual economic actions. The Curve applies to individual economic activity, in which each individual faces a different marginal tax rate.

In spite of this, critics of the Laffer Curve and of Roth-Kemp insist on speaking of average taxes, average savings rates, and average incomes in their economic analysis.

The foremost critic of Roth-Kemp, Prof. Walter Heller, makes what might seem to be a powerful case against the legislation by accepting, as all economists do, the validity of the Laffer Curve, and then arguing that the point of diminishing returns on the Curve has not been reached. He does so by focusing entirely on average taxes.

But remember, in the baker example, average taxes can drop toward zero as individuals are pushed toward the highest marginal rates. Clearly, it should not be an objective of economic policy to reduce average taxes, which can be done by impoverishing the economy via confiscatory marginal rates. Yet this is what Mr. Heller mistakenly believes to be the theory behind Roth-Kemp.

THE NATURE OF THE CRITICISM OF HANSEN-STEIGER

Criticisms of the Hansen-Steiger capital gains proposal are social, not economic. The Carter Administration opposes the measure on the grounds that it benefits the rich. Treasury follows this by asserting that the lower rates will cost $2 billion in revenue flow.

The response from the economics profession as a whole—liberal and conservative—has been to reject the Treasury prediction, which assumes lower rates will have zero impact on production incentives. Economists may disagree on how powerful an effect Hansen-Steiger would have in expanding the U.S. production and tax base, but literally all conservative economists—those associated with the Republican Party—agree the Hansen-Steiger tax rate reduction will finance itself in the first year by several times $2 billion by an increase in revenues from all sources.

And liberal economists, who may disagree with Hansen-Steiger on social grounds, by and large—publicly or privately—accept the potency of this measure on output and revenues.

ANALYSIS NUMBER TWO

My second paper for the Republican Conference (A Response to the Critics: Walter Heller, et al) will confront some of the specific criticisms Prof. Heller and others have raised about Roth-Kemp.

Again, the failure to distinguish between average and marginal tax rates distorts any economic analysis of Hansen-Steiger, Roth-Kemp. The criticisms are further flawed by being static rather than dynamic. That is, the critics assume the impact of a tax rate cut will come only on the demand side of the economy, by increasing consumption. A dynamic analysis would take into account the increase in the economy's incentives to expand capacity itself, either in quantity terms or quality terms—more goods or better goods.

A RESPONSE TO THE CRITICS

As mentioned in the concluison of Analysis Number One (The Theory Behind Tax Cuts), the foremost critic of Roth-Kemp, Prof. Walter Heller, makes what might seem to be a powerful case against the legislation by accepting, as all economists do, the validity of the Laffer Curve, and then arguing that the point of diminishing returns on the Curve has not been reached. He does this by focusing entirely on average taxes.

In his July 12 essay in the Wall Street Journal, Mr. Heller asks:

"Have the tax pressures increased sharply since the mid-1960s and perhaps brought us closer to the breaking point? Comparative figures assembled regularly by the OECD show total U.S. taxes at 27.3 percent of GNP in 1966 and 29.6 percent in 1976, hardly enough of an increase for tax cuts to trigger much bigger responses today than in the mid-60s. Besides, with top income tax rates at 50 percent and 70 percent instead of 91 percent, there is less tax disincentives to remove."

The confusion here is between averages and margins. Individuals do not face average tax rates, they face marginal rates (that is, the percent government will tax on any additional $1 earned). In fact, if progressive marginal rates are unnecessarily high, their lowering could produce higher average taxes to the benefit of everyone.

WEST GERMANY AND INDIA

This brings to mind the critics who continually ask why West Germany is now doing so much better economically than the United States and yet allows a greater percentage of its national income to flow through its government (*i.e.*, average taxes in West Germany are higher than in the U.S.).

The answer is that West Germany's marginal tax rates are lower than in the United States (50 percent at the top, no capital gains tax rate at all).

India is in almost the exact opposite position. India taxes at such an extraordinarily high marginal tax rate (67 percent at $12,000), only a dribble of revenues are available for state spending. Only 9 percent of India's GNP is spent by the national government. Marginal rates are high, average taxes very low.

HAVE DISINCENTIVES BEEN REMOVED?

Professor Heller's point that "there is less tax disincentives to remove" because tax rates were brought down since 1964 is only partly true. The tax burden today would probably be intolerable had rates not been brought down in 1964.

What Mr. Heller fails to recognize is that individuals pay "taxes" by calculating rates multiplied by income thresholds. Although tax rates have come down some since 1964, income thresholds during this time have more than doubled through inflation alone. Moreover, Mr. Heller fails to note the huge bite on capital gains added since 1964, which pushed effective marginal tax rates on investment income back toward the 91 percent level.

FAULTY VIEW OF SAVINGS

The propensity to view the economy as a collective, in which an "average" has meaning, extends to Prof. Heller's view of "savings." The supply-oriented economists, led by Laffer, argue that lower federal income tax rates will so expand production that a temporary fall in revenues, should one occur, would easily be financed through an expansion of savings.

Yet, in his June 28 testimony before the Joint Economic Committee of Congress, Mr. Heller asks:

"Why, in the face of Laffer's assertions, has 'Denison's law' held true through thick and thin for the past 100 years or so? Edward F. Denison of Brookings has found that U.S. gross private domestic saving has been virtually invariant year-in and year-out in the face of high taxes, low taxes, or virtually no taxes."

Again, Professor Heller fails to recognize that "average" saving rates need not increase at all in order that savings as a whole increase. He would agree that everything produced is either consumed now or saved for future consumption. If high marginal tax rates are discouraging production, both consumption and savings are held back. If those unnecessarily high tax rates are eased, inviting greater production, both consumption and savings incrase.

In other words, as the so-called economic pie increases, the slice saved for the future can remain the same proportionate size, in accordance with Denison's Law. But its absolute size increases.

Denison found that the savings rate has remained constant at 16 percent of the total pie. His "Law" is meaningless because it is a static tool, not a dynamic one. Observe that by increasing the radius of an 8-inch pie to 10 inches, a 25 percent increase, the slice that is 16 percent of the total expands to 50 square inches from 32, a 56 percent increase.

THE PROHIBITIVE RANGE

As a graphic depiction of the "law of diminishing returns," the Laffer Curve simply states an eternal verity. There is a point at which adding an extra straw will break the camel's back. Professor Heller appears to accept this notion, but then argues that the point has not been reached:

"And even if there was something to the Laffer thesis, who is to say that we are in a high enough tax zone to produce those dire effects of higher rates and delightful effects of lower rates that Laffer postulates?"

Having, in effect, accepted the Laffer Curve, Mr. Heller cannot logically argue that we are not in the prohibitive range (where tax cuts will yield additional revenues) unless he is also prepared to argue that we are in the productive range (where tax rates can be raised to produce dramatic revenue gains). Instead, Prof. Heller completes his remarks by recommending a "moderate cut of $15 or $20 billion (or even $25 billion if monetary policy tightens a lot) . . ."

In the demand-oriented world of Professor Heller, there is no need to specify where the $25 billion in tax cuts should be made, as long as there is an additional $25 billion that can go into consumer demand for goods and services. The quickest way to do this, which is the advice President Carter got last year, is through tax rebates, an idea the supply-oriented economists say is counter-productive, having no incentive effects at all.

LAFFER'S UNCERTAINTY

In his July 12 essay in the Wall Street Journal, Professor Heller quotes Professor Laffer as having told Newsweek: "There's more than a reasonable probability that I'm wrong." The statement does not accurately reflect Laffer's belief that there is a very high probability he is right, but that there is no way for a single mind to know precisely the optimum point on the Curve. Determining that point comes through competition in the political marketplace.

THE MELLON TAX CUTS

In the 1920s, Treasury Secretary Andrew Mellon found himself in a similar position of defending his proposals for sharp tax rate reductions. Mellon used an analogy which is as valid in today's environment as it was earlier this century.

Henry Ford, he said, could produce 1,000 automobiles and charge $1 million each, or he could product 1,000,000 automobiles and charge $1,000 each. Ford revenues would be the same in each instance. Ford, though, is pushed to finding the optimum point because he has competition. The result is the maximum number of units at the lowest possible price.

The public sector, Mellon continued, has the same range of alternatives in selecting the optimum tax rates, which is the "price" it charges for public goods and services. By its nature, though, the public sector has no competition, but is monopolistic. Political

leaders must find the optimum point on the Curve by internal competition. As in the economic marketplace, tension is between price and volume.

If the one political party stresses tax rate reduction when rates are in the prohibitive range of the curve, as was the case in Mellon's time, that party would be expected to win more elections. And vice versa. If another party goes in the opposite direction, ignoring the need for tax relief when tax rates are in the prohibitive range, that party would be expected to lose more elections.

The point is, it is inappropriate to ask Laffer or any other single economist where exactly we are on the Laffer Curve. That point is determined through political competition, based, of course, on the advice of political economists. And, today, virtually all supply-side economists have concluded there is a very high probability tax rates have been inflated into the prohibitive range, and can be reduced with no revenue loss or with self-financing.

IF LAFFER IS WRONG

Professor Heller concludes, in his July 12 essay in the Wall Street Journal, that if Laffer is wrong, he may be leading the Republican Party "over the cliff."

What will occur if Laffer is wrong?

Treasury estimates that Roth-Kemp has a first year cost of $20 billion in receipts. That combined total, notice, is lower than the $25 billion Professor Heller said he would accept if money were kept tight. Under absolutely static conditions, in which there is no supply response in the economy to the lower tax rates, the worst possible condition would be an increase in the federal deficit by $20 billion.

ROTH-KEMP AND INFLATION

With federal expenditures constant, this would mean the American people would finance $20 billion more in federal outlays with bonds and $20 billion less in taxes. Individuals, in aggregate, would produce and consume the same amount of goods and services in this static world, but interest rates would be marginally higher. This reflects the fact that the future economy would have to produce $20 billion more in goods and services that would have to be taxed out of the productive sector to pay off the additional bonds.

There is, even in this worst case, no direct "inflationary" effect. Inflation, which is a decline in the monetary standard (in this case the dollar), results from excessive money creation in the absence of restraint.

Professor Heller's further criticism of Roth-Kemp is as follows:

(1) Unlike the 1960s, we are now in an inflationary environment. Where the Kennedy tax rate reduction worked exactly as planned, a similar strategy today will not work.

(2) Roth-Kemp would quickly cause inflation by bringing about capacity bottlenecks. Utilization rates in today's economy are low, but only low enough to respond to a one-year tax cut, not the three-year reductions of Roth-Kemp.

Again, this is a static approach that assumes the impact of Roth-Kemp will come only on the demand side, increasing consumption, with no increase in the economy's incentives to expand capacity itself, either in quantity terms or quality terms.

THE SPENDING ISSUE

Roth-Kemp has attracted support from economists who are not supply-oriented. These theorists believe the proposal surely will lose revenues, but this will force government into greater prudence.

The difference here is a matter of intention and not final results. In the dynamic scenario envisioned by the supply-side economists, passage of Hansen-Steiger, Roth-Kemp will lead to sizeable reductions in public expenditures for social-support programs. But this would be a natural process that unfolds as a result of economic expansion.

In other words, individuals now being supported wholly or partly by the government "safety net" of welfare payments, food stamps, unemployment benefits, medicaid, etc., will be drawn into the expanding private sector from the attraction of lower marginal tax rates. They not only stop drawing resources from the productive economy through tax/spending transfer payments. They become contributors to the treasuries of federal, state and local governments.

THE ADMINISTRATION'S STATIC SPENDING PROJECTIONS

There is an implied forecast in the Carter Administration budget that nothing can be done to reverse the process by which American citizens are forced to turn to social-support transfers.

Indeed, the administration appears to make straight-line projections along an upward slope for social spending. The vision of the future is one or more people cramming into the safety net, fewer people in the productive sector. Thus, spending projections are as static as revenue projections.

Yet the Carter budget office plans on benefitting from inflation. The budget forecasters assume annual rates of inflation in excess of 6 percent in the next five years, and then calculate an increased revenue flow to the treasury as a result of an upward shift of the entire work force into higher tax brackets. Again, they give zero allowance for the continuing disincentive effects of this process.

If President Carter is wrong, as a result of the counsel he is getting, the 6 percent inflation he assumes over the next five years will accelerate the economic contraction of the last dozen years. Incentives to production will continue to collapse, the tax base will shrink, and revenues will decline in real terms even as they climb in inflated terms. The safety net will be crammed with even more numbers of Americans demanding transfer payments in order to survive.

THE DYNAMIC SCENARIO

On the other hand, supply-side economists expect the reverse situation to occur with passage of Hansen-Steiger and Roth-Kemp:

(1) an increase in real revenues through expansion of the tax/production base; and

(2) reduction in transfer payment expenditures at federal, state and local levels as individuals become ineligible for such payments by virtue of being elevated into more rewarding private sector employment.

CAN FEEDBACKS BE EXPECTED?

Excluding Social Security, social-support transfers at all levels of government are now roughly $220 billion. The number will, of course, continue to expand, if only nominally through inflation, with a high probability of expansion in real terms if tax bases are not adjusted downward to permit economic expansion. In three years, the phase-in of Roth-Kemp, the number would go to $260 billion merely by a 6 percent inflation and to $290 billion if there is also a 2 percent increase in real terms.

If Hansen-Steiger, Roth-Kemp bring about the expected economic expansion, government transfer payments would shrink.

If they shrink by one-third, government outlays are reduced by almost $100 billion per year.

If they are reduced by one-sixth, outlays fall by $50 billion.

If a tenth of transfers are eliminated, the number falls by $29 billion per year.

These are precisely the kinds of calculations made by liberal Keynesians in support of government spending programs, i.e., $100 billion "Marshall Plans" for urban renewal. The point, though, is that there are such feedback effects—in either spending programs or tax rate reductions—and it is reasonable to assume they will go a long way toward financing the Hansen-Steiger, Roth-Kemp measures.

TREASURY'S FALLACY

Treasury estimates Roth-Kemp would lose $98 billion in revenues over the three-year period. Treasury's argument is based on the fallacy that says the $20 billion cost of the first year's tax reduction can be set against current revenue projections, with the assumption that revenues will continue to expand in the second and third years, both nominally and in real terms, to reach $98 billion.

In other words, the government is inflating the work force into higher tax brackets in order to produce greater revenues, and then complaining that Roth-Kemp will cause a loss to Treasury from that inflated income stream.

IN CONCLUSION

The upshot is that the supply-side economists believe with absolute certainty that the Republican tax program will have a dynamic effect on both revenues and spending. That is, when Treasury so assertively concludes the measures would lose a hard $100 billion over three years, supply-side economists are certain this dire prediction will not be the case.

Almost no economist of any persuasion would disagree on this point. There would be some economic expansion that would both increase revenues above the projected Treasury path and there would also be a reduction in spending for social-support programs below the projected Treasury path.

Professor Laffer and the supply-side economists believe there is a high probability the combination of higher revenues and lower spending would finance the tax cuts entirely. And even if a short-term revenue shortfall should occur at the federal level, which remains a possibility, they believe the total increase in national savings will more than cover this amount. As a result, there would be no crowding-out of private capital by Treasury borrowings.

Insofar as this reduces pressure on the monetary authority to be excessive in its money creation, the effect of the Hansen-Steiger, Roth-Kemp amendments would be to retard inflationary forces. There would be less money chasing more goods, a simultaneous blow against the twin problems of stagnation and inflation.●

THE ROCKFORD AND DECATUR AND THE PEORIA TO QUINCY, ILL., CORRIDOR

Mr. PERCY. Mr. President, while the Senate is considering S. 3073, the Federal-Aid Highway Act of 1978, I want to bring to the attention of my colleagues a program which is of critical importance for the completion of two Illinois road projects—the priority primary program. Several years ago, Congress authorized the Secretary of Transportation to provide funds for the priority primary program which would include "projects of unusually high cost which require long periods of time for their construction."

H.R. 11733, the Surface Transportation Act of 1978, contains $125 million of the Federal-aid primary authorization for the priority primary program for fiscal year 1979–82. In addition, the House Public Works Committee's report on H.R. 11733 mentions several projects, including new four-lane highways between Rockford and Decatur and Peoria and Quincy, as being worthy of receiving these funds. However, S. 3073 as reported from the Committee on Environment

and Public Works eliminates this very important program. I believe this program should be continued.

The State of Illinois has been aggressive in dealing with its 11,000-mile primary road program by widening, repairing, and resurfacing whenever necessary and possible. Thus, the demands on the State's primary apportionment are of such magnitude that the State is unable to funnel significant sums into priority projects, such as the Rockford to Decatur and the Peoria to Quincy corridors, without curtailing work on other worthwhile and needed road projects. The priority primary program provides additional assistance to States to help finance their priority projects.

For ever 30 years, the Rockford to Decatur route, presently known as U.S. 51, has been the subject of discussion and study. For years, this route was considered part of the recommended Interstate System, only to be dropped from the system in the final analysis.

Cutting through the center of the State, this new four-lane highway would improve connections between several important communities: Bloomington to Decatur, South of LaSalle-Peru to Bloomington and Rockford to South LaSalle-Peru. In addition, Route 51, when completed, would also act as a connector for five existing interstate routes, I–90, I–80, I–44, I–74, and I–72. Over the next 15 years, traffic is expected to reach 20,000 vehicles per day on the Rockford to Decatur highway.

Although over $67 million has been spent on design, engineering, and construction work on this route, the remaining estimated cost to complete this 156-mile stretch of highway ranges from $360 to $415 million, depending on final design. And at the current pace of construction, the people living along this route have at least 10 more years in which to wait before this route will be completed. Clearly, this route meets the criteria for priority primary funding due to its high cost and lengthy construction time.

Frankly, the people living in the communities which this highway would affect, such as the city of Rockford, the second largest populace area in the State, are running out of patience, as I am. Mayor McGaw and residents of the area have expressed to me their frustration over the congestion caused by an inadequate highway system. The priority primary program would certainly help to accelerate work on this vital route.

One very important consideration is that a wide variety of commercial and industrial enterprises are located in and around these communities. Certainly, the early completion of this project will help to expand the market potential of the area, and would bolster the economies of the cities and surrounding rural areas.

Another project in Illinois in need of special priority primary funds is the Peoria to Quincy segment of the Chicago-Kansas City Highway. For over two decades, this freeway has been under discussion. Under the Federal-Aid Highway Act of 1973, the Department of Transportation was authorized to conduct a study of the feasibility of constructing this highway. Although the Department's report concluded that this route was feasible, special funding was not available. As recently as 1977, the Department of Defense called for upgrading of the Chicago-Kansas City corridor as a part of the Nation's strategic highway corridor network.

The critical Illinois segment of this highway is located between Quincy and Peoria. At the moment, these two cities are connected only by two-lane highways. The narrow pavement, the deficient bridges and the insufficient capacity of certain sections of these highways demands attention.

Although State and Federal funds for this project have amounted to $33 million, an additional $388 million will be needed to complete construction of this four-lane highway.

The proposed 172-mile highway will wind through areas which are rich in agricultural production and coal resources. Along or near the route are important communities, such as Peoria, Macomb, Canton, and Quincy, where numerous manufacturing companies are located.

As the economic resources of the area are further developed, employment is expected to increase 27 percent by the year 2000. The highways in the area are inadequate to meet the area's future growth potential. Without priority primary funding, it will be many years before this highway can be completed.

It is essential that sufficient funds be provided to expedite construction of these four-lane highways between Rockford and Decatur and between Peoria and Quincy. These projects are not only a priority to the State of Illinois, but also they are an important transaction link to all communities which the highways will connect.

The bottom line of the discussion is that Government must sometime induce economies to expand in ways that are tested safe and sure to provide help. Our investment in an interstate highway system bears out this philosophy. The highway improvements I have described, as well as others across this country, will provide a means for the economies of the cities and surrounding rural areas to expand and to be strengthened. Strong, expanding economies mean more jobs.

Because the priority primary program is contained in H.R. 11733 and not in S. 3073, I urge members of the House-Senate conference committee on the highway bills to include the priority primary program in the final bill reported from conference. This program would serve as an important additional source of funding for the two major Illinois highway projects. The conference can accomplish results satisfactory to Illinois and other States concerned with completing vital transportation routes. I will continue to work with members of the Illinois delegation, and will work with members of the House-Senate conference, to accomplish this end.

Today, I have talked with Senator RANDOLPH, the distinguished chairman of the Environment and Public Works Committee, regarding Illinois' primary highway needs. Most importantly, we discussed specifically the urgent need for new four-lane highways between Rockford and Decatur and Peoria and Quincy. Chairman RANDOLPH assured me that he will take our concerns to conference.

AERIAL BRIDGES TO ISRAEL OPENED

Mr. PERCY. Mr. President, on August 16, 1978, Israel and the United States signed a new aviation agreement that is of direct benefit to the citizens of both countries. It is a historic agreement because it will lead to lower fares, and facilitate travel between the United States and our most important ally in the Middle East by providing for direct service to Israel from four new U.S. cities, including Chicago in my own State of Illinois.

Signing the agreement was Warren Christopher, Deputy Secretary of State, and Simcha Dinitz, the Ambassador of Israel to the United States. Both were instrumental in reaching this agreement. I ask unanimous consent to include their remarks in the RECORD at the close of my statement.

As a result of this landmark agreement:

First. Air fares to Israel will drop 28 percent—to the lowest level ever in terms of consumer purchasing power. Citizens of the United States of every religious affiliation will now be able to comfortably afford a journey to the hallowed places of Judaism and Christianity. For Israeli citizens, trips to the United States will now be within their financial reach. Already El Al-Israel Airlines has received approval to offer a $545 roundtrip fare between New York and Tel Aviv, effective September 1, 1978. It is anticipated that the fare will be further reduced to between $449 and $499 beginning November 1, 1978.

Second. Tourism to Israel will increase: This agreement will help Israel achieve its goal to doubling by 1983 the current level of 1 million annual tourists. An anticipated 16,600 new hotel rooms will have to be constructed to meet the increased demand. These tourists will be contributing acutely needed hard currencies to the Israeli economy.

Third. Increased access to Israel: Wide-bodied direct service on El Al will now be available from Chicago, Los Angeles, Miami, and one additional U.S. city to be named later. Under the 1950 agreement which preceded this agreement, El Al could only serve New York. It is expected that service between Chicago's O'Hare International Airport and Tel Aviv and Los Angeles and Tel Aviv, will begin sometime in the spring of 1979, perhaps as early as April. The Chicago flights will probably operate twice a week and stop in Montreal en route to Tel Aviv, according to El Al officials.

Fourth. A new U.S. flag carrier to fly to Israel: On August 16, 1978, National Airlines filed an application with the Civil Aeronautics Board to begin flights three times a week from Miami to Tel Aviv beginning next April. TWA is currently the only U.S. flag carrier flying to

Israel. The National flights will operate through various intermediate points in Europe. The flights will operate between: Miami-Amsterdam-Tel Aviv, Miami-Paris-Tel Aviv, and Miami-Paris-Zurich-Tel Aviv. Service between Miami and the first European intermediate point will be via DC–10 jumbo jet. Passengers will deplane at the European point to make a convenient connection to a smaller National Boeing 727 for the final leg to Israel. National has proposed a $600 roundtrip advance purchase excursion fare during the off-peak season, which is $100 below the lowest fare offered before the signing of this agreement. The new service would also be less restrictive.

An aerial bridge has now been built from principal cities in the United States to Israel which will further cement the close people-to-people ties that bind our two nations.

Fifth. Unlimited charter flights: The agreement opens up Israel to unlimited charters from anywhere in the United States. Before the signing of the agreement, charters were only permitted by the Israeli Government to operate from California, Oregon, and Washington State. I am appending to my remarks a press release from the Civil Aeronautics Board announcing that, because of the agreement, it is dropping a requirement that El Al receive U.S. approval before conducting an on-route charter flight to the United States. The Board also added El Al to the list of 46 foreign airlines receiving blanket off-route charter authority. El Al will now be able to operate charters from any airport in the United States.

Sixth. Israel may purchase U.S.-built airplanes: Because of the increased service to the United States, El Al is now considering the purchase of additional U.S.-manufactured Boeing 747 jumbo jets and intermediate range aircraft for its European routes such as the Lockheed L–1011 or the McDonnell-Douglas DC–10.

By successfully negotiating this agreement, the executive branch and particularly President Carter should be commended for placing the interests of consumers as its top priority. The entire United States delegation merits the highest praise. I am grateful that our Government has forcefully indicated that it is just as interested in guaranteeing planes of peace flown by El Al, TWA, and National as in selling planes of war.

On the Israeli side, Ambassador Dinitz headed an extremely able Israeli negotiating team. Adding his personal support and good judgment to the making of this new procompetitive agreement was Mordechai Ben-Ari, executive chairman of El Al-Israel Airlines. Mr. Ben-Ari has been increasingly identified as an outspoken advocate of lower fares and lessened government regulation of international aviation. I am including in the RECORD an insightful article in the August 1978 issue of Airline Executive on Mr. Ben-Ari and Mr. Mordechai Hod, El Al president.

Even though Israel is a very small nation, it has taken a leadership role in international air pasenger and air freight operations. An example of this leadership was the creation in June 1976, of Cargo Air Lines, Ltd., by Mr. Hod. I am including for the RECORD an article on CAL that appeared in the July 17, 1978, issue of Aviation Week & Space Technology.

Also present at the signing was Secretary of Transportation Brock Adams who is the architect of new proconsumer guidelines for U.S. negotiators participating in bilateral air transportation negotiations. This policy is expected to be formally promulgated in the very near future. Secretary Adams was quoted as stating at the signing that—

What this (agreement) means to the traveler is more flights at lower costs from more cities. That is what the Carter Administration's international aviation policy is all about—and this agreement is an outstanding example of how it can benefit two great nations.

I would also like to underscore the role of my colleague, Senator DICK STONE, who was instrumental in bringing direct service to Miami and Israel by both El Al-Israel Airlines and Miami-based National Airlines. I am attaching his remarks on the occasion of the signing for the RECORD.

I would also particularly like to thank six outstanding and respected leaders of the Chicago Jewish community who, at my invitation, traveled at their own expense to Washington, D.C., to observe the signing. They include:

Mr. Ralph Bell, president, Zionist Organization of Chicago.

The Honorable Maurice Berlinsky, former mayor of Joliet, Ill.; with Ms. Stephanie Ann Krockey, his granddaughter;

Rabbi Seymour Cohen of the Anshe Emet Synagogue in Chicago;

Mr. Saul Silverstein, chairman of the Community Council of Jewish Organizations;

Ms. Lorel Pollack, chaiman, Chicago Action for Soviet Jewry; and

Mr. James P. Rice, executive vice president, Jewish United Fund and the Jewish Federation of Metropolitan Chicago.

Each of them is a credit to the State of Illinois because of their unremitting dedication to the State of Israel and because of their significant contributions to community and civic affairs.

Now that this historic agreement has been signed, I would like to relate an aspiration expressed by Mr. Ben-Ari for the time when peace comes between Israel and its Arab neighbors. At that time, Mr. Ben-Ari experessed the hope that El Al-Israel Airlines will join with the airlines of the neighboring Arab States to form the Middle East Airline System. Within the Middle East system, Tel Aviv might well serve as a connecting hub between intercontinental flights to the Middle East and short range flights within the region. It is my fondest hope that the day when Mr. Ben-Ari's dream might be realized is not too far off.

Mr. President, I ask unanimous consent that the material to which I referred be printed in the RECORD, together with other pertnent material.

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

CAB LIFTS RESTRICTIONS ON EL AL CHARTERS AS BILATERAL PROTOCOL IS SIGNED IN WASHINGTON

WASHINGTON, D.C. August 16.—The possibility of low-fare air transportation between the United States and Israel became a reality today as the Civil Aeronautics Board moved to implement a protocol signed between the two governments.

Between 1963 and 1976, the Israeli government refused to accept passenger charter flights from anywhere in the United States. In 1976, they relaxed their policy somewhat, allowing U.S.-originating charters from the west coast.

Under the protocol relating to the U.S.-Israel bilateral air services agreements signed today in Washington, the Israeli government accepts unlimited charter flights between any U.S. city and Israel. This opens to all American cities the possibility of low-cost charter flights to Israel.

The Board today therefore vacated a 1973 order (73–2–99) requiring El Al to apply to the Board for a statement of authorization to conduct any on-route passenger charters between Israel and the U.S. In addition, the CAB today added El Al to the list of 46 foreign airlines granted blanket off-route charter authority.

On-route charters are those which are conducted between cities named in a bilateral agreement. Off-route charters involve cities not specified in the agreement.

CAB Chairman Alfred E. Kahn hailed the protocol as another milestone in international aviation, "providing low-cost scheduled and charter service for travelers to Israel and the Middle East and new opportunities for our airlines."

The protocol adds four as-yet-unnamed American cities to El Al's foreign air carrier permit, expanding its scheduled service. Trans World Airlines currently is the only U.S. carrier offering scheduled air service between the United States and Israel. Under the terms of the protocol, the United States is free to designate other U.S. airlines to provide scheduled and charter service between the two countries.

After August 1, 1979, a fare filed by an airline for scheduled U.S.-Israel service can be disapproval only if both governments agree, thus allowing true price competition.

The original bilateral air services agreement between the United States and Israel was signed in 1950.

EL AL SEEKS CHANGES TO GROW AND COMPETE

(By Holly Saunders)

The former and current presidents of El Al are planning for extensive restructuring of Israel's flag carrier in order to face problems "coming from both sides of the ocean."

The current president, Mordechai Hod, was appointed in November 1977. Although new to the commercial airline business, the retired general is a veteran of aviation. Born in Israel in 1926, Hod became an Israel Air Force fighter pilot in 1950 and was a commanding officer during the Six-Day War and the War of Attrition. During the Yom Kippur War he was aviation advisor to Israeli commanding officers.

In 1973 Hod was appointed assistant to the Defense Minister and was in charge of security matters. He was instrumental in the formation of Carog Airlines Ltd., (C.A.L.), a company designed to transport agricultural produce in co-operation with the Israel Growers Association. C.A.L. became operational in June 1976 and Hod was appointed general manager. He held that post until he became president of El Al.

The former president, Mordechai Ben-Ari, now has extended his leadership of El Al to become executive chairman of the board. At this position he is responsible for the policies and direction of the entire corporate structure of the carrier and its subsidiaries.

Both Hod and Ben-Ari agree that the current international air transport system, as well as El Al, have to be restructured in order to respond to the economic and political problems that lie ahead.

"Complete freedom of the skies", at least on routes to the U.S., is Ben-Ari's answer to some of El Al's problems. Hod agrees.

Hod believes theoretically that increased competition and lower fares should generate more traffic and result in increased profitability. But the El Al president doesn't believe that the theory can apply to El Al on the North Atlantic unless current constraints are relaxed.

The carrier's New York-Tel Aviv route comprises about 40% of its total revenue. El Al carries 80% of all traffic that moves on the route but the carrier's yield on the North Atlantic is the lowest in the industry, partly because of its high costs. In addition, 95% of that traffic is pleasure oriented moving on group and discount fares. El Al's North Atlantic yield during the 1976/77 fiscal year was only 4.3 cents, compared to Trans World's 4.58 cents.

That situation, coupled with the fact that New York is El Al's only U.S. gateway, places the carrier at a competitive disadvantage under the current system. In addition, Hod argues that El Al has the burden of being its country's only international carrier. El Al must, for national commercial and political reasons, maintain service to many areas—such as Scandinavia and Mexico—even if the economics are questionable. This does not allow El Al to emphasize service on the North Atlantic the way it would like and therefore diminishes that route's possibilities for profitability.

"This is the first time we have faced such a situation," said Hod, who attributes the low yields to the Carter Administration's consumer mindedness which has allowed prices to go down while expenses continue to increase.

Ben-Ari is even more critical of the U.S. position. He said the U.S. operates under the "disguise of freedom," but in fact dictates terms to other countries on the basis of "country-of-origin" rules. He adds that the U.S. policy eventually could provide "new vistas if brought to its logical conclusion"—deregulation.

"International civil aviation is one of the most regulated international businesses," Ben-Ari said recently. "The rules are based on sovereignty of the skies and on the fact that each country regards its air traffic as a national treasure, like oil, like minerals."

El Al's 5-year performance

Year	Pass. flown	Pass./km. flown (millions)	AS Km (millions)	Load factor	Total rev.'s $U.S. (millions)
1973–74	756,888	3609.3	5449.9	66.2	166.6
1974–75	743,109	3556.4	5253.8	67.7	193.3
1975–76	767,745	3443.2	5286.1	65.1	195.0
1976–77	960,256	4496.1	6678.2	65.9	262.0
1977–78	1,098,852	4899.4	7097.1	69.0	360.0

The El Al chairman has come to the conclusion that the only way international carriers can continue to grow both in revenues and in traffic is through an open skies approach to international air transportation.

"Today, we have reached a stage of maturity where the current system no longer works," he argues. "The only alternative to complete regulation is deregulation."

When asked how the U.S. would compete in an open skies environment, Ben-Ari admitted that it may result in fewer U.S. carriers in the marketplace, especially U.S. supplements. He believes they would have to obtain scheduled rights, merge with a scheduled carrier or be forced out of business.

In recent negotiations with the U.S., the Israelis won four additional gateways—probably Miami, Los Angeles, Boston and Chicago. Two points will be awarded immediately and two a year from now when a new fares articles will be instituted prohibiting either country from taking unilateral action, and allowing third countries to match low fares. Blind sector beyond rights were given to El Al from all U.S. points to Asia and South America and from one U.S. point—probably Miami—to Mexico. Charter rules also were liberalized.

On other horizons, President Hod said negotiations are expected "in the near future" for routes to Brazil and Argentina. He also wants to extend routes to the far east to Bangkok via Teheran. An estimated 25,000 Israelis fly from Tel Aviv to Bangkok on Air France and Alitalia. The president says this traffic should belong to El Al. Bangkok represents a good future market for Israel as a direct route, a crossroads and an around the world point, especially if the carrier is given fifth and sixth freedom rights from the U.S. and Bangkok.

In an attempt to foil low-fare concepts such as the Laker Skytrain, Ben-Ari is proposing a new fare structure for the industry. It would be a three-tiered concept offering services tailored to how much the passenger pays.

"We are selling for the price of a Volkswagen, the service of a Cadillac," said Ben-Ari. The passengers paying Cadillac prices are being discriminated against because they must travel under the same conditions as passengers paying 25–50 percent less, he added.

The three-tiers would be deluxe, business and holiday. The deluxe class would offer service superior to current first class service and the fare would be increased. Business class would be based on a 34-inch pitch seating configuration with service features "identical" to those presently being offered in first class.

Holiday class would be offered to passengers at approximately 50% discounts off current economy class fares. Seat pitch would be reduced to 32 inches and there would be no-frills service.

"Our seeking of complete freedom of the skies and a new milieu of international air transportation coupled with this new concept of service in the aircraft, . . . will bring El Al into a new era of growth and future development," predicts the chairman.

El Al is considering the purchase of a medium range, widebody aircraft which represents a luxury that, until now, the airline could not afford. Front runners for selections are the Airbus Industrie A300 and the Lockheed L–1011–400.

Previously, all aircraft in the El Al fleet had to operate on all routes with reasonable efficiency. Departing from this philosophy, the new aircraft is being selected specifically to serve European routes, which contribute 50% of El Al's revenue.

The airline eventually will have three types of aircraft. Medium to short range widebodies for the European sector, long range 747s, which the chairman says are the best aircraft ever produced, and something in between which will solve the need for long and medium range routes with relatively low traffic density.

El Al also plans to expand its cargo operations, concentrating on agricultural produce. From September to May of this year, El Al flew 50,000 tons of agricultural produce. In the next two to three years, El Al plans to fly 200,000 tons of produce on what will become their "skytrain" operation. A large portion of the increased tonnage is expected to be diverted sea freight. If El Al is successful at diverting this sea traffic, in three years it is estimated the figure will rise to 400,000 tons per year.

To accommodate this projected growth, the airline has added a Boeing 747C, El Al's sixth 747, and has a 747F scheduled for delivery in March 1979.

Beginning in 1984, the airline will replace its ten 707–420s—some of which are eighteen years old—in two stages. The aircraft to replace the 707s is likely to be the Boeing 777. The existing El Al fleet is exclusively Boeing. Although the chairman says it is desirable to have a one-manufacturer fleet, it is not mandatory. Ben-Ari also said that if the Boeing 767 existed today, El Al would have no hesitation about choosing it for their European routes. And if a Boeing equivalent of the supersonic transport ever develops, El Al would be at the top of the waiting list, according to Arnold Sherman, former public relations director and now director of operations in Athens.

In 1977, the country's thirtieth year, Israel reached the one million tourists mark for the first time. Overall tourism has been increasing at an annual rate of between 22 percent-28 percent. A rapid decline in U.S. tourism occurred in 1977, dropping from an annual growth rate of 50 percent in 1976 to 32 percent in 1977, because of budget fares to other parts of the world. Currently, even charters in Israel can't compete with some international discount fares. Until the holiday class fare is in effect, the entire Israeli tourist package is still too expensive because of comparatively high air fares, even though land arrangement prices are reasonable.

TOURISM DOLLARS NEEDED

Economically, Israel needs the dollars generated from tourism, and is making an organized effort to expand and improve this industry. The Ministry of Commerce, Industry and Tourism is encouraging conventions and conferences to promote business traffic to Israel which currently accounts for only 5 percent of El Al's traffic. Israel accommodates approximately 70 conventions yearly, but with lower air fares, officials believe this figure could double within a few years.

The government has developed a package of incentives to encourage foreign and domestic inventors to develop business and hotels in Israel. With a 50 percent inflation rate, it is difficult to attract investors, but the government is offering tax exemptions, long-term, low interest rate loans and grants of up to 12 percent of investment cost to desired investors. The government will pick up 50 percent of the total research and development expenses and offers academic incentives as well. The average Israeli salary is $375 monthly which means labor costs are relatively low.

Hotel construction was frozen in the aftermath of the 1973 Yom Kippur War but is now being encouraged. By 1983 Israel plans to accommodate an anticipated two million tourists who will require 40,000 hotel rooms, an increase of 16,000 over the current 23,400. Under the holiday fare package, an individual passenger will receive a 24 percent discount off 5-star hotel rates and plans are underway to make more economy class hotels available.

One cannot mention tourism with respect

to Israel without addressing the seriousness of the political situation, which directs the country's economy. El Al's main national task is to provide a link to the outside world in times of war and peace—not to make a profit. While the outbreak of war has not stopped El Al from flying, it has of course lowered the profitability of the airline and decreased tourism. But in Israel, and at El Al, profitability is not a condition of operation—El Al planes will fly.

The economics of peace could mean an extreme shift in the national budget. Currently one-third of Israel's budget goes toward defense, one-third for paying back loans from other countries, and the other third is in the national reserve—used for such services as education, future investment and other social services.

Whatever political changes the country faces, economic changes are inevitable, and Israel wants to be in control. Israel is gearing up for expanding its influence in the international marketplace by increasing exports, expanding tourism and developing industry and productivity while at the same time it is trying to hold in check in "diseases of the western society," says Meir Amit, Minister of Industry, Commerce and Tourism.

El Al "did not cost the Israeli taxpayer one penny" last year, and it provided Israel with one of the most important economic entities in the country, according to Chairman Ben-Ari.

El Al is the second biggest exporter in the state of Israel, accounting for 6 percent of all exports and 3 percent of the gross national product. It employs over 5,000 people, and although just one-seventh the size of Pan Am and only six-sevenths of an airline (operations cease on the Sabbath from sundown Friday to sundown Saturday—operating only six days out of seven), El Al still broke even for 1977–78 and turned over $360 million revenue. Says Ben-Ari, "we are going to be an airline with $1 billion turnover by the end of the next decade."

This is not a small achievement and did not happen without problems, which unfortunately, still trouble the airline in 1978. Serious labor difficulties have plagued El Al in the past few years, and although talks are underway, a resolution is not in clear sight.

TRADE UNION CONFLICTS

There are conflicts of interest between the trade unions, resulting in the threats of strikes and wildcat strikes. Each work group has its own trade union and until recently negotiated contracts separately. Splinter groups refused to accept the discipline of the national labor union, the Histradrut, so the "will of the national interest has not been imposed," an El Al official said.

El Al management has made some progress by setting up an airline counsel where each trade union is represented. The counsel negotiates for all member unions with the management. El Al officials stressed the fact that they are "going forward" with these group negotiations. They added that a "proper solution . . . (would be found) . . . if possible with the consent and the agreement with our labor representation, if impossible, by other means."

International terrorism continues to represent a serious threat to the security of El Al and all international airlines, believes Ben-Ari. "We are mistaken when we think that the present silence is an end to terrorism in civil aviation," he said.

Ben-Ari has submitted detailed proposals to IATA in an attempt to alert airlines and governments to the "clear and present danger of international terrorism" and to achieve greater organization to combat this potential threat to "the very existence of civil air transport."

Ben-Ari's policy of "active defense" is based on two firm rules: foil the attack before it can take place and do not rely on only one method of security—such as baggage screening. These rules, along with his assertion that what has been done thus far is far from sufficient, is Ben-Ari's prescription for combating this crucial situation.

Ben-Ari was president of El Al during the first terrorism attacks and is painfully aware of the nature of the beast. El Al security probably the most thorough of any carrier in the world and it is the application of these policies that have made it so.

CONGLOMERATE STRUCTURE

The appointment of Mordechai Ben-Ari as executive chairman of the board allows him to oversee the entire infrastructure of El Al which has grown into a conglomerate.

The parts are:

Teshet: A wholly owned subsidiary of El Al specializing in aviation and tourist services including international hotel management, marketing outlets, ground handling services for passengers and cargo, and kosher food plants in the U.S., U.K. and Israel. The objectives of Teshet are to own and manage non-flight activities of El Al.

El Al Charter Services, Ltd.: A new wholly owned subsidiary specializing in marketing charters between Israel and Europe.

Arkia Inland Airlines: Owned 50% by El Al, and 50% by the national labor union, the Histradrut, Arkia is the country's domestic carrier, founded in January 1950, offering scheduled and charter service to all parts of Israel.

El Al is currently negotiating for an agreement with the Israel Agricultural Boards of Production and Marketing, the owners of Cargo Airlines Ltd., for 50% ownership of C.A.L.

C.A.L. is a non-scheduled, non-IATA cargo airline which carried 36,259 tons of agricultural and industrial exports and 22,260 tons of miscellaneous imports in 1977. Anticipated growth in 1978 is 58,000 tons of exports and 36,000 tons of imports. C.A.L. currently leases one 747F from El Al, one 747–100F from Flying Tiger Line and operates one 747B, one 707B, and one DC–8–63 leased from various international companies on a short-term basis. The fleet planned for 1979 consists of four 747Bs and other narrow body aircraft including DC–8s and 707s.

An interministerial committee has been developed to oversee El Al's operations to make certain that these potentially conflicting activities remain "kosher." This committee will submit recommendations regarding the advisability of expanding El Al's power to own subsidiaries. The committee serves as an impartial third-party in evaluating such issues as whether El Al or Arkia should serve certain charter routes. The ministries involved are the Ministry of Finance, the Ministry of Transportation and the Ministry of Commerce, Industry and Tourism.

"I am confident in the basic principle of efficiency, of economy, by having all the means in one hand, and exploiting them in a co-ordinated way," states Ben-Ari, ". . . Using on the other hand the specialization required for the various fields of activities, under central planning and co-ordination, is the milieu which gives . . . the possibility to every one of the components of this conglomerate to compete one with the other, but all of them against foreign countries, and at the same time to assure the lowest possible cost per production unit."

With this guiding philosophy and the restructuring plans, the Hod/Ben-Ari team is confident of El Al's future, in 1978 and beyond.

[From the Aviation Week and Space Technology, July 17, 1978]

C.A.L. BUILDS MIDEAST-EUROPE ROUTES

(By David A. Brown)

TEL AVIV.—Israeli all-cargo airline, C.A.L., is establishing a network for cargo routes between Europe and the Middle East with the expectation that Israel will become the area's major distribution and transshipment center if a Middle East peace agreement is reached.

In the meantime, the carrier, formed less than two years ago, is aggressively pioneering airborne export of Israeli agricultural produce and the import of European industrial goods.

At the same time, it has worked to solve the traditional air cargo problem of backhaul cargo and has reduced the nonproductive mileage flown by careful route selection.

C.A.L.—for the Cargo Air Lines Ltd.—was formed in June, 1976, by Gen. Mordechai Hod, retired air force chief of staff and now president of El Al Israel Airlines (AW&ST Dec. 2, 1977 p. 31). It began operation in November 1976.

The airline was formed in response to needs of the Israel Agricultural Boards of Production and Marketing for a way to transport perishable agricultural products from Israel to European markets quickly in order to eliminate the need for expensive refrigerator shipping.

This provided substantial, although seasonal, westbound traffic and it was hoped that by providing the capacity and frequent service, sufficient eastbound cargo could be attracted to cut freight costs by making full use of the capacity available and keeping utilization of the aircraft at a high level.

Since the export cargo volume is seasonal and C.A.L. has to adjust its capacity over a wide range to compensate for this, the carrier leases all of its aircraft.

Peak season is from mid-October through mid-May, when Israeli agricultural exports are heavy and it is during this period that C.A.L. carries about 70% of its annual volume of cargo. During the months from mid-May to October, the carrier drops its capacity to about a third that of the peak period.

In planning its routes, C.A.L. decided that the most efficient course to follow was to have one point in Europe to which most cargo could be trucked and processed through a central warehouse. This saved on flight costs to additional cities and permitted the carrier to work all its customers' cargoes together to insure a full load on every eastbound flight.

Site selected for this terminal was Cologne/Bonn airport in West Germany, where traffic was relatively light and where the airport administration was anxious to get additional business.

Airport officials have invested more than $5 million in cargo facilities for air carrier use and as a result have seen the total cargo moving through the airport rise to 70,000 tons in 1977, the majority of which was carried by C.A.L.

C.A.L. also uses Munich for about a fifth of its total eastbound traffic and operates occasionally on demand to Rome, Paris, Marseille, Amsterdam and Brussels.

The carrier established agreements with European trucking firms to distribute cargo from Cologne and Munich to the rest of Europe, since it is almost as fast—and about four times cheaper—to truck goods from Munich or Cologne as it is to fly them to a second destination.

Produce destined for Britain, for example, is flown to Cologne and trucked to London, resulting in one-day service from Israel.

During 1977, C.A.L.'s first full year of operation, the airline flew 240 million revenue ton/kilometers, carrying 58,000 tons of cargo in and out of Israel. Forecast for 1978 is 380 million revenue ton/kilometers with 58,000 tons being exported from Israel and 36,000 tons being imported.

C.A.L.'s fleet for 1977 consisted of a 747 leased from Flying Tiger, one leased from El Al, the cargo half of a 747 leased from El Al, a DC–8–63 leased from Trans International, a Boeing 707 leased from TAP of Portugal and a 707 leased from El Al.

All were wet leases except the Flying Tiger

aircraft, which was dry-leased and operated by El Al crews.

For the coming heavy season, beginning next October, the airline plans to lease two 747C combis from El Al and a 747F freighter from El Al after it is delivered in the early spring, a 747 from Flying Tiger and three smaller aircraft. El Al also will provide backup service with a 747F when needed.

C.A.L. plans to operate the 747s on a cargo shuttle basis to Cologne and Munich and the smaller aircraft to other destinations as needed.

In addition to serving the route between Europe and Israel, C.A.L. is engaged in planning and developing routes to other countries with the dual purpose of expanding its service now and establishing a network that will permit it to play a role in transshipment by air of goods from Europe to all the Middle East if an overall peace settlement is reached.

Initially, these efforts have centered on carrying agricultural produce from nearby nations, such as Greece, Turkey and Cyprus, to Europe and providing a backhaul cargo by carrying industrial goods from Europe to Iran. This leaves only the relatively short leg from Teheran to Tel Aviv as an unproductive route segment.

Future expansion is planned along a line from Europe to Hong Kong, via Israel, Iran, India and Thailand. Planning studies indicate that there should be sufficient cargo in both directions along this basic route to permit a high-capacity, low-rate cargo operation to be profitable.

C.A.L.'s future, however, is being pinned heavily on a peace settlement opening up virtually all of the Middle East to it and economic studies already show that transshipment of goods to Saudi Arabia via Tel Aviv could cut shipment costs by as much 50%.

As an example, to ship 100 tons from Europe to Riyadh at present requires about 48 hr. of 707 time. If this shipment could be combined with others, shipped to Tel Aviv on a 747 and transshipped to Riyadh by 707, large reductions in cost could be made by cutting to a minimum the distance the aircraft have to fly empty.

By routing goods from Europe to Saudi Arabia via Tel Aviv, for example, nonproductive flight time could be cut from the present Riyadh-Europe segment for a 707 to only the Riyadh-Tel Aviv segment, while at the same time taking advantage of the lower cost of shipping from Europe to Tel-Aviv on the more efficient 747.

At present, C.A.L. estimates that it has a constant backlog of 400–500 tons in its warehouse at Cologne bound for Israel, which permits continual high loads on the eastbound route. This is accomplished by concentrating all or at least most of the cargo from Europe to Israel at one or two points for onward shipment by air, according to Gilon Zohar, C.A.L. vice president-commerce.

The reverse situation also is possible in the Middle East, C.A.L. officials believe, by concentrating the cargo at Tel Aviv for onward shipment to Europe.

Cost advantages of this can be significant. C.A.L. estimates that it can carry aluminum from Europe to Tel Aviv for 13 cents per kilo. The lower deck of the 747 is well-suited for heavy material shipment, C.A.L. believes.

Such concentration also has other advantages. C.A.L. has an agreement with the Cologne/Bonn airport officials that provides a reduction in the operating costs of all flights out of the airport if the carrier flies more than 400 flights per year. This will permit C.A.L. to operate out of Cologne for only about one-third of the cost of operating from Amsterdam.

By leasing its aircraft, C.A.L. also has been able to operate with a relatively small staff. It has only about 60 employes, including those which are based in Cologne.

C.A.L. also is seeking to profit from sideline activities it has entered as a result of its airfreight needs.

Car carrier designed by C.A.L. is manufactured for it by Trans Equip Inc. of Los Angeles, with the airline receiving a royalty on carriers sold to other users.

Statement on the Signing of the US-Israel Civil Aviation Agreement

(By Senator Richard Stone)

As Chairman of the Senate Foreign Relations Subcommittee on Near Eastern and South Asian Affairs, it was a great pleasure to witness the signing of the newly revised United States-Israel Civil Aviation Agreement. This event ushers in an exciting new era of air transportation between our two countries.

I am particularly pleased that Miami, Florida, will be one of four additional gateway points for direct flights to and from Israel. The people of Florida have long sought this service and I want to congratulate this Administration for bringing this agreement to a successful conclusion.

On Wednesday afternoon (August 16), National Airlines formally filed an application with the Civil Aeronautics Board requesting permission to provide three flights a week between Miami and Tel Aviv, beginning in April 1979. National plans to offer low, discount fares on these flights.

I made repeated attempts with the previous Administration to secure this type of agreement but all those efforts were unsuccessful. On January 28, 1977, only one week after President Carter took office, I wrote him asking for the granting of additional landing rights in the United States and for Miami in particular. As you can tell, this Administration wanted to get the job done.

Significant fare reductions have already been announced and approved by both governments. Because United States domestic carriers have applied for service to Israel, the spirit of this long-needed revised agreement is taking shape. I want to congratulate President Carter, the State Department and the White House officials who worked tirelessly along with Ambassador Dinitz and his staff at the Embassy of Israel. This is a great breakthrough benefitting the people of both our countries. It was a long time coming, and will be appreciated for a long time.

National Airlines

MIAMI.—National Airlines requested authority today from the Civil Aeronautics Board to fly from Miami to Switzerland and Israel.

The airline proposed to serve Zurich and Tel Aviv as an extension of its nonstop flights to Paris and Amsterdam.

Present direct service from the U.S. to Israel is available only from New York, Chicago and Boston. The Miami flights would provide the first direct service from the South.

In a schedule proposed for the summer of 1979, National said it would operate one flight weekly each between Miami-Amsterdam-Tel Aviv, Miami-Paris-Tel Aviv, Miami-Paris-Zurich-Tel Aviv, and Miami-Paris-Zurich.

The airline said it will provide direct online connections at Miami for most of the Florida cities it serves, plus New Orleans, Houston, Los Angeles and San Francisco.

National pointed out that the U.S.-Israel and U.S.-Switzerland markets currently are served primarily by foreign flag airlines.

El Al, the Israeli airline, carries about 90 per cent of the U.S.-Israel traffic. Trans World Airlines, the only American carrier with authority to Zurich, currently does not schedule flights to that city, leaving Swissair with the only service from the U.S.

National believes there is tremendous potential for developing business and vacation travel from the Sun Belt states to Switzerland. Florida has emerged as a major banking center, for example, a factor which should contribute to strong business traffic on the route.

The airline also noted that it expects to participate in large group movements of passengers wishing to visit Israel as part of organized tours.

National reminded the CAB that it had initially proposed extension of European services to Tel Aviv and Zurich in the Transatlantic Route Proceeding nearly five years ago.

Another reason cited for the request was "radically improved air relations" with Israel. A more liberal aviation treaty between the U.S. and Israel is expected to be signed today.

The agreement will enable the U.S. to make multiple designations of U.S. airlines to Israel. Israel, in exchange, has been granted rights to four new U.S. cities. One of them—Miami—was prominently mentioned during the negotiations as a likely point for new services by El Al.

The filing noted that Miami/Fort Lauderdale contributed nearly 10,000 passengers to the Tel Aviv market in 1976, with other National points in Florida responsible for an additional 3,000. The airline's on-line Florida cities and across the southern tier of states accounted for 56,000 passengers between the U.S. and Tel Aviv-Zurich combined during the same period.

Remarks at Signing Ceremony for U.S.-Israel Aviation Agreement

(By Deputy Secretary of State Warren Christopher)

Mr. Ambassador, Members of Congress, Secretary Adams, and Distinguished Guests:

I am pleased to welcome you to the signing of the new aviation agreement between the U.S. and Israel.

This agreement is a major step forward in the U.S. Government's new pro-competitive aviation policy. The agreement includes three significant provisions designed to expand air service between our two countries and to make available to consumers the benefits of increased competition.

First, Israeli airlines will be able to serve four additional U.S. cities of their own choosing, and U.S. airlines are permitted to serve Israel from all cities in the U.S.

Second, unlimited charter service by airlines of both countries is permitted, subject only to the requirement that charter fights conform to the charter rules of the country in which they originate.

Third, airlines are permitted to compete freely in offering lower air fares, unless the governments of both countries disapprove the fare. This third provision requiring disapproval of both countries to block a lower fare is an innovation in international aviation agreements that we feel can be highly effective in stimulating new low fare offerings.

Taken together, these three provisions symbolize the new commitment to competition in U.S. Government aviation policy. I think it is fair to say that this agreement, and several others negotiated in the past year, are breaking new ground in international aviation.

We hope and believe airlines of both countries will take advantage of the opportunities offered by this agreement. We also hope that the principle of enhanced competition embodied in this agreement will be increasingly reflected in other international aviation agreements.

Remarks by His Excellency Simcha Dinitz

After long, difficult, but successful negotiations, the United States and Israel have finally reached an agreement which is the most liberal air agreement ever signed.

This agreement expresses the mutual desire of both countries to facilitate the expan-

sion of international air transportation by making it possible for airlines to offer the travelling and shipping public a variety of service options at the lowest and most competitive fares.

This agreement provides for unlimited rights for charter flights from both countries and gives Israel the right to operate through four additional cities in the United States.

Since 1950 when the bilateral air agreement between the United States and Israel went into effect, Israel has tried to expand its services in the United States. After 28 years we are now entering a complete new era in the aviation relations between our two countries.

For Israel the new agreement opens the gates for expansion of the air traffic between our two countries, thus promoting tourism and facilitating more intimate relations between the people of the United States and Israel. It will also provide El Al Israel Airlines with the opportunity and the challenge to expand its activities in this country.

The list of the people who took part in the efforts to achieve this agreement is very long and we are grateful to all of them. We would like to thank Mr. Styles, the chairman of the U.S. delegation, and all the members of his delegation who worked very hard to get this agreement. We would also like to thank Undersecretary Cooper and Assistant Secretary Katz who directed this effort.

To our many friends in the executive and legislative branch of the government who have been helpful in bringing about this agreement, our thanks and gratitude.

We are confident that the new opportunities created by this agreement will work for the benefit of our two countries and for the benefit of the individual traveler. This individual, is after all, the cornerstone upon which the bridge of friendship and understanding between our two countries is built, stretching over ocean and seas to unite people of common purpose and common destiny.

TRIBUTE TO EDWARD DURELL STONE

Mr. PERCY. Mr. President, on Sunday, August 6, 1978, Edward Durell Stone, one of the great American architects of the 20th century, died in New York. Few modern architects have had the influence of Mr. Stone, whose diverse projects included the Museum of Modern Art and the General Motors Building in New York, the U.S. Embassy in New Delhi, the Standard Oil Building in Chicago, and the Kennedy Center for the Performing Arts in Washington.

Mr. Stone felt that the desire of every good architect was "to imbue a building he designs with beauty." This desire was incorporated in all his works as he often used marble, ornate grilles, rich woods, and windows in creating elegant and effective structures. He took much pride in his works, particularly as he felt they were greatly enjoyed by the general public. He took pleasure in telling friends, when speaking of the General Motors Building in New York, that "every taxi driver in New York will tell you it's his favorite building."

One of Mr. Stone's most well-known projects is the Kennedy Center for the Performing Arts in Washington, D.C. As the Nation's center for the arts, the Kennedy Center is visited by millions of people each year. Many come to enjoy a symphony, opera, or play performed in one of the Kennedy Center's three beautiful theaters. Countless others visit the Center, one of the Capital's largest tourist attractions, to view its magnificent Halls of States and of Nations or to revel in its spectacular overlook of the Potomac. Mr. Stone was pleased to see the Center become, in his words, the "cultural focus for the city of Washington," saying that it gives him "great joy to see the throngs of people truly enjoying the facilities provided."

On August 11, 1978, the Washington Post published an editorial about Mr. Stone and his contributions to our American architectural heritage. Mr. President, I ask unanimous consent that the Washington Post's editorial on Edward Durell Stone be printed in the RECORD.

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

[From the Washington Post, Aug. 11, 1978]

EDWARD DURELL STONE

If Edward Stone had designed no building in Washington other than the John F. Kennedy Center for the Performing Arts, he still would be regarded as one of the city's important architects. As it is, Mr. Stone also designed the Georgetown University Law School and the National Geographic Building—a work architecturally superior to the Kennedy Center in most ways. But the Kennedy Center was his major effort here, and his major legacy. And the fact of its success as a place for art, if not as a thing of beauty, testifies to how fully Mr. Stone understood this city, and the arts as well.

The Kennedy Center is so much a part of Washington now that it's odd to think back to the late '50s and early '60s, when its existence was up for grabs. First the "national cultural center" was to consist of "several 300- to 400-seat rooms" in addition to three enormous main theaters. It was to be 900 feet long, and to cost $50, no $61, no $75 million. There was congressional clamor. Then the price was slashed to $30 million, and the architectural plans reduced accordingly—just in time, of course, for the price to more than double. At one point in 1962, Mr. Stone changed his design to a cluster of separate buildings. To top everything, there was a barrage of 11th-hour attacks on the proposed site of the center: It would overwhelm the city's memorials; it would be inaccessible to those without cars; it would be better located downtown.

Mention those arguments to those who led the attacks in 1964 and 1965, and the hackles rise even now. The most deep-seated worry was not that the cultural center would dwarf the national monuments, but rather that it would become a national monument in itself, and thus not be a place where a fluid culture thrives. Observe the center coldly today, and you understand the concern—which was shared by The Post at the time. There it squats—all 630′ x 300′ x 100′ of it—a short way from the Lincoln Memorial, which it imitates poorly.

Yet Mr. Stone understood what he was doing with the Kennedy Center, perhaps far better than anyone imagined. The building is colossal, but it is also clever. Its size is broken into manageable units for the eye. The grey and white marble on the terrace is patterned in squares and rectangles, so as not to shoot down in one infinite path. The doors are high as well as wide. The trees and fountains flourish in their own compartments. And there's the location itself. No cultural center in the country has a more beautiful view. Nor is there a more pleasant place to stand during intermission or after a performance than on that terrace below which the Potomac miraculously becomes the Thames.

The Kennedy Center is not a beautiful building, but as a place of performance it is a beautifully functional one. Mr. Stone did build beautiful buildings—notably the pavilion at the Brussels World's Fair, and New York's Museum of Modern Art—but the beautiful, the special buildings stopped after his famous American embassy in New Delhi (some say just before it), and, like Orson Welles, he became a celebrity at about the same time heset aside the original force of his talent. Yet he was always a serious artist. He spoke sincerely of the need to convey "courage" and "dignity" in buildings, and he condemned "the colossal mess we've made of this country" with true rage. As for the Kennedy Center, he undertook the task as a national trust and sought to create a place where one can enjoy the arts wholeheartedly. That he did.

LEAA AND THE COURTS

Mr. THURMOND. Mr. President, I bring to the attention of my colleagues certain observations by Mr. Ralph N. Kleps with regards to the U.S. Law Enforcement Assistance Administration (LEAA) grants in the area of federally financed court improvement projects.

Mr. Kleps is presently a judicial consultant since his retirement as court administrator of the California Supreme Court. Speaking before the Conference of State Chief Justices, he notes that LEAA grants have been the most important catalyst for improvement in the judicial system in the past decade. He points out that LEAA funds have been wisely used by the courts to institute organizational and management changes and also to promote education and research.

However, Mr. Kleps warns that Federal aid often leads to Federal dictation and bureaucracy and suggests that State courts be vigilant of this fact.

Later this week, the Senate Criminal Laws Subcommittee will resume its LEAA reauthorization hearings. One of the central issues will focus on whether LEAA aid to State courts can be effected without Federal domination or control of them. Mr. Kleps' survey will help build the record on this crucial point.

An account of Mr. Kleps' observation is included in the following article from the Barre, Vt., Times-Argus. Mr. President, I ask unanimous consent 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 Barre (Vt.) Times-Argus, Aug. 1, 1978]

COURTS "LAST BASTION" AGAINST BUREAUCRACY

(By Judy Polumbaum)

BURLIGTON.—Courts are "perhaps the last bastion" against the encroachment of federal power into state affairs, a former California court administrator declared Monday.

Judges nonetheless have reason to be wary of federal assistance to state court systems, Ralph N. Kleps told the Conference of Chief Justices at the Radison Hotel here.

Kleps, a freelance judicial consultant since retiring from the administrative job last year, has completed a survey of federally financed court improvement projects in all 50 states.

He said the study indicates U.S. Law Enforcement Assistance Act (LEAA) grants have been "the single most powerful impetus for improvement" in the past decade.

And while a few court projects were undertaken in response to pressure from Washington, "those isolated instances do not add up to federal domination," Kleps observed.

But programs like LEAA which are

"oriented toward accommodating change through the federal bureaucracy" contain the seeds of federal dictation, he suggested.

Kleps advised the justices, "Beware of the Trojan horse," and added: "Federal aid is acceptable, but federal financial coercion is not."

The Californian's remarks followed a two-hour discussion Monday afternoon concerning pending federal legislation to restructure the LEAA.

The chairman of the judicial gathering here, Ohio Chief Justice C. William O'Neill, said state judges fear the legislation would dilute their control over the use of federal funds for the courts.

In the past, said O'Neill after the session, justices criticized LEAA because courts had a hard time competing for funds over law enforcement agencies and other groups "with political muscle."

Their criticism of LEAA reforms advanced by the administration of President Carter and in Congress revolve around a provision to funnel federal money directly to large cities.

The measure is "in line with present trends" regarding financing for urban areas, O'Neill remarked. But it is worrisome to judges, who believe "the judicial system ought to be organized on a statewide basis, he said."

Details of proposed LEAA changes, contained in an administration-backed Senate bill called the Justice Systems Improvement Act of 1978, were presented to the chief justices Monday by Walter Fiederowicz, a deputy associate attorney general in the Justice Department.

The bill, introduced at a White House ceremony July 10, is expected to go through numerous amendments and changes as it travels through congressional committees. Another version is expected to surface in the House, and a third version has been introduced in both the House and Senate by the American Bar Association.

Fiederowicz said the Senate proposal would create a National Institute of Justice to consolidate research, and a Bureau of Justice Statistics to bring together data. A third agency would handle the allocation of LEAA funds.

For the first time, Fiederowicz said, cities of 100,000 or more and counties or jurisdictions of 250,000 or more would be able to apply for LEAA grants.

In the past, only states have been eligible to receive the money. The states in turn have allocated the funds to local law enforcement agencies and to the courts.

LEAA has provided states with $6 billion in the past 10 years. The new Senate's proposal would provide $3.3 billion over the next four years. During the past decade, Vermont has received almost $1 million.

Kreps noted police and sheriff's departments awarded LEAA money have "tended to go overboard on hardware," particularly on uncoordinated computer systems.

But in the courts, he said, LEAA funds "have gone into organizational and management changes, into education, and into research."

Suggesting that federal assistance will continue to be useful to state courts, Kreps urged the justices to help frame guidelines for federal participation in court reform.

He said he would favor pushing for demonstration grants, technical aid, establishment of an independent judicial research foundation and the assurance that all projects be negotiated through the leadership of the state court systems.

THE CALENDAR

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar orders Nos. 1043 and 1044.

Mr. BAKER. Mr. President, reserving the right to object.

The PRESIDING OFFICER. Reservation is heard.

The Senator from Tennessee.

Mr. BAKER. Mr. President, I will not object. Calendar orders Nos. 1043 and 1044 are clearly on our calendar. We have no objection to proceeding to their consideration and their adoption.

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

FEDERAL DISTRICT COURT ORGANIZATION ACT OF 1978

The Senate proceeded to consider the bill (S. 3375) to amend title 28 of the United States Code to make certain changes in the places of holding Federal district courts, in the divisions within judicial districts, and in judicial district dividing lines, which had been reported from the Committee on the Judiciary with amendments as follows:

On page 2, line 11, strike "(b)" and insert "(c)";

On page 3, at the beginning of line 4, strike "and";

On page 3, line 4, after " "McHenry," " insert "and "Pierce,";

On page 5, line 15, strike "Tomkins" and insert "Tompkins";

So as to make the bill read:

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 "Federal District Court Organization Act of 1978".

PLACES OF HOLDING COURT

SEC. 2. (a) The last sentence of section 97 (a) of title 28, United States Code, is amended to read as follows:

"Court for the Eastern District shall be held at Ashland, Catlettsburg, Covington, Frankfort, Jackson, Lexington, London, Pikeville, and Richmond.".

(b) The last sentence of section 104(a)(1) of title 28, United States Code, is amended to read as follows:

"Court for the eastern division shall be held at Aberdeen, Ackerman, and Corinth.".

DIVISIONS WITHIN JUDICIAL DISTRICTS

SEC. 3. (a) Section 98(c) of title 28, United States Code, is amended to read as follows:

"Western District

"(c) The Western District comprises the parishes of Acadia, Allen, Avoyelles, Beauregard, Bienville, Bossier, Caddo, Calcasieu, Caldwell, Cameron, Catahoula, Clairborne, Concordia, Jefferson Davis, De Soto, East Carroll, Evangeline, Franklin, Grant, Iberia, Jackson, Lafayette, La Salle, Lincoln, Madison, Morehouse, Natchitoches, Quachita, Rapides, Red River, Richland, Sabin, Saint Landry, Saint Martin, Saint Mary, Tensas, Union, Vermilion, Vernon, Webster, West Carroll, and Winn.

"Court for the Western District shall be held at Alexandria, Lafayette, Lake Charles, Monroe, Opelousas, and Shreveport.".

(b) Section 114 of title 28, United States Code, is amended—

(1) in paragraph (2), by striking out "Sheridan, Steele, Stutsman, and Wells" and inserting in lieu thereof "Steele, and Stutsman";

(2) in paragraph (3), by striking out "Bottineau," "McHenry," and "Pierce,"; and

(3) by amending paragraph (4) to read as follows:

"(4) The Northwestern Division comprises the counties of Bottineau, Burke, Divide, McHenry, McKenzie, Mountrail, Pierce, Renville, Sheridan, Ward, Wells, and Williams.".

JUDICIAL DISTRICT DIVIDING LINES

SEC. 4. (a) Section 89 of title 28, United States Code, is amended—

(1) in the first paragraph of subsection (a), by inserting "Madison," immediately after "Liberty,"; and

(2) in the first paragraph of subsection (b), by striking out "Madison,"

(b)(1) Section 93 of title 28, United States Code, is amended to read as follows:

"§ 93. Illinois.

"Illinois is divided into three judicial districts to be known as the Northern, Central, and Southern Districts of Illinois.

"Northern District

"(a) The Northern District comprises two divisions.

"(1) The Eastern District comprises the counties of Cook. De Kalb, Du Page, Grundy, Kane, Kankakee, Kendall, Lake, La Salle, McHenry, and Will. "Court for the Eastern Division shall be held at Chicago.

"(2) The Western Division comprises the counties of Boone, Carroll, Jo Daviess, Lee, Ogle, Stephenson. Whiteside, and Winnebago.

"Court for the Western Division shall be held at Freeport and Rockford.

"Central District

"(b) The Central District comprises the counties of Adams, Brown, Bureau, Cass, Champaign, Christian, Coles, De Witt, Douglas, Edgar, Ford, Fulton, Greene, Hancock, Henderson, Henry, Iroquois, Knox, Livingston, Logan, McDonough, McLean, Macon, Macoupin, Marshall, Mason, Menard, Mercer, Montgomery Morgan, Moultrie, Peoria, Piatt, Pike, Putnam, Rock Island, Sangamon, Schuyler, Scott, Shelby, Stark, Tazewell, Vermilion, Warren, and Woodford.

"Court for the Central District shall be held at Danville, Peoria, Quincy, Rock Island and Springfield.

"Southern District

"(c) The Southern District comprises the counties of Alexander, Bond, Calhoun, Clark Clay, Clinton, Crawford, Cumberland, Edwards, Effingham, Fayette, Franklin, Gallatin, Hamilton, Hardin, Jackson, Jasper, Jefferson, Jersey, Johnson, Lawrence, Madison, Marion, Massac, Monroe, Perry, Pope, Pulaski, Randolph, Richland, St. Clair, Saline, Union, Wabash, Washington, Wayne, White, and Williamson.

"Court for the Southern District shall be held at Alton, Benton, Cairo, and East Saint Louis.".

(2) Section 133 of title 28, United States Code, is amended by striking out the item relating to Illinois and inserting in lieu thereof the following:

"Illinois:	
"Northern	12
"Central	2
"Southern	2".

(c) Section 112 of title 28, United States Code, is amended—

(1) in the first paragraph of subsection (a), by inserting "Columbia," immediately after "Clinton,", by inserting "Greene," immediately after "Fulton.", and by inserting "Ulster," immediately after "Tompkins"; and

(2) in the first paragraph of subsection (b), by striking out "Columbia,", "Greene," and "Ulster,".

EFFECTIVE DATE

SEC. 5. (a) The amendments made by this Act shall take effect one hundred and eighty days after the date of this Act.

(b) Nothing in this Act shall affect the composition or preclude the service of any grand or petit juror summoned, empaneled, or actually serving in any judicial district on the effective date of this Act.

The amendments were agreed to.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

Mr. ROBERT C. BYRD. Mr. President,

I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 95–1121), explaining the purposes of the measure.

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

PURPOSE OF THE AMENDMENT

The purpose of the proposed legislation is to provide an additional place of holding court in the Eastern District of Kentucky and the Northern District of Mississippi; to change the divisions within the Western district of Louisiana and the District of North Dakota; and to change the judicial district dividing lines in Florida, Illinois, and New York. The changes made by this bill are intended to improve the effective administration of justice in the Federal courts in these States.

STATEMENT

The proposed legislation affecting the boundaries and places for holding court by Federal District courts is intended to promote the efficient and equitable administration of justice and to serve the needs of litigants, jurors, witnesses, lawyers, judges and other participants in the judicial process.

Kentucky

Section 2(a) of the bill adds Ashland as a designated place of holding court in the Eastern District of Kentucky. Ashland is approximately 10 miles away from Catlettsburg which is one of two places in the Eastern District of Kentucky where a U.S. judge and a full-time magistrate presently have their chambers. The courthouse at Catlettsburg dates from 1910–11. Its space and facilities are grossly inadequate to carry on the business of the court with efficiency, safety, and convenience to all litigants, witnesses, officials of the court and members of the public. Not only is there inadequate space for the judge's chambers, the magistrate's office, law clerks and secretaries, but there is no space where jurors can be sent to wait while proceedings are conducted in the courthouse out of their presence, there are no witness rooms and no space for counsel to consult with clients. In addition, the building presents serious fire safety hazards. It has no fire escapes and only a small elevator and narrow stairs at one end of the building for egress from the second, third, and fourth floors. The overcrowded conditions and the physical layout of the building also complicate security efforts. The U.S. marshal's holding cell is inadequate and there is no separate holdover space for women or juvenile prisoners.

Besides the courthouse, the town itself has insufficient support facilities. Catlettsburg is the county seat of Boyd County with a population of approximately 3,200. In contrast, Ashland has a population of approximately 30,500. Catlettsburg has no hotel or motel facilities available for witnesses, litigants, and jurors, nor does it have restaurant facilities which could be used for a sequestered jury. In fact, the prevailing practice today is for litigants, jurors and members of the bar who are attending sessions of court in Catlettsburg to spend the night in Ashland and travel each day to the court. For these reasons, the committee believes that the administration of justice and the convenience of parties and public would be better served by designating Ashland as a place for holding court.

Mississippi

Section 2(b) of the bill adds as an additional place for holding court in the Eastern Division of the Northern District of Mississippi. The State of Mississippi is divided into two judicial districts, denominated as the Northern and Southern Districts. The Eastern Division of the Northern District consists of 13 counties in the northeastern corner of the State of Mississippi and extends in a north-south direction of approximately 140 miles. The principal place of holding court for this division is Aberdeen, Miss., which is located approximately 60 miles from the southern boundary of the division. Ackerman, Miss., which is also designated as a statutory place of holding court in the eastern division, is approximately 91 miles southwest of Aberdeen. However, no trials are held at Ackerman, which was included in the statute primarily as a location where chambers are provided for a circuit court judge from the State of Mississippi. The designation of Ackerman was required since section 142 of title 28 of the United States Code specifies that the General Services Administration can provide court quarters only at places where regular terms of court are authorized by law to be held.

The city of Corinth is located in the extreme northern part of the Eastern District, approximately 85 miles north of Aberdeen. Corinth has a population of approximately 15,000 residents and is a principal commercial center in that part of the State. Litigants and counsel from 5 of the 13 counties can more conveniently attend court located at Corinth than at Aberdeen, which is the sole place of holding court. One of the judges of the court is a resident of Corinth. Since the closest Federal courthouse is at Aberdeen, 85 miles away, the judge must spend 4 hours of travel time for each trip from his residence to the court chambers at Aberdeen. If Corinth is designated as an official place for holding court, the Government Services Administration, pursuant to section 142 of title 28, United States Code, would be authorized to provide chambers for the judge at Corinth. It is not proposed to provide a courtroom at Corinth. The committee is advised that the Federal post office building at Corinth has vacant space on the second floor of the building which at relatively small expense can be remodeled to provide suitable chambers for the judge. These chambers will be used by the judge for study, research and preparation of orders and opinions. The judge will also hear motions and conduct certain pretrial and post-trial proceedings at Corinth in cases where the parties and their counsel are located closer to Corinth than they are to Aberdeen.

The change proposed by this bill was approved by the Judicial Conference of the United States on April 7, 1976.

Louisiana

The Western District of Louisiana is one of 36 judicial districts operating under a statutory division scheme. Section 98(c) of title 28 designates the parishes to be included within the six divisions of the Western District and the cities within the district where court is to be held. In contrast, in nonstatutory divisions, Congress designates the cities where court is to be held but leaves the geographical limits of each division to be determined by local rule, according to the workload generated by the several parishes and the problems peculiar to the area.

The committee believes the Western District of Louisiana is better suited to a nonstatutory division system. Caseloads in the existing statutory divisions vary significantly and in some cases the designated place of holding court is not convenient for the parishes which it serves. The problems cannot permanently be remedied by realining the parishes in the present statutory divisions since changes in population and caseload may require additional changes in the future.

The elimination of divisions provided for by section 3(a) is in conformity with the general policy of the Judicial Conference favoring consolidation of district court divisions, and has been approved by all interested parties.

North Dakota

The State of North Dakota constitutes a single Federal judicial district comprised of four divisions. The divisions approximate quadrants and are accordingly designated as the Northwestern, Northeastern, Southeastern, and Southwestern Divisions.

Bottineau, McHenry and Pierce Counties lie in the northcentral part of the State of North Dakota. They form the extreme western and northern part of the Northeastern Division of the judicial district in which court is held only in Grand Forks on the far eastern border. The distance from Bottineau, the county seat of Bottineau County, to Grand Forks is 192 miles. The corresponding distance from Towner, county seat of McHenry County, is 165 miles, and from Rugby, county seat of Pierce County 146 miles.

In the Northwestern Division court is held in Minot which lies near the eastern border of that division. All of the above mentioned counties are significantly closer to Minot than Grand Forks. Placing Bottineau, McHenry, and Pierce Counties in the Northwestern Division would reduce travel to the Federal courthouse from the county seat of each county by 113, 120 and 82 miles respectively.

Sheridan and Wells Counties lie in the central part of the State. They form the extreme northwestern part of the Southwestern Division. In the Southeastern Division court is held in Fargo on the far eastern border of the division. Consequently, it is necessary to travel 201 miles from McCluskey, county seat of Sheridan County, and 173 miles from Fessenden, county seat of Wells County, to the Federal courthouse in Fargo. Aligning Sheridan and Wells Counties with the Northwestern Division would reduce the mileage to the Federal courthouse by 117 miles when traveling from McCluskey and 83 miles when traveling from Fessenden.

The committee believes that the interest of the Government, litigants and members of the bar of the counties affected would be served by reduction in travel distance and time. There would also be a saving for the Government in the mileage fee paid to jurors who are called to jury service from these five counties.

The realinement set forth in section 3(b) of the bill has been approved by the lawyers in the counties affected, the Federal District judges for the District of North Dakota and the Judicial Conference of the United States.

Florida

Florida is divided into three judicial districts. Under present law, Madison County, Fla., is included in the Middle Judicial District of Florida, with Jacksonville as the place designated for holding court. On its eastern border, Madison County is 86 miles from Jacksonville and on its western border it is 133 miles from Jacksonville. Section 4(a) of the bill would amend title 28 of the United States Code by removing Madison County from the Middle Judicial District of Florida and including it in the Northern Judicial District. The effect of such an amendment would be to reduce the average distance which Madison County litigants, attorneys, jurors and witnesses must travel to the nearest federal district court. On its eastern border, Madison County is 66 miles from Tallahassee, the place designated for holding court in the Northern Judicial District. On its western border, it is only 29 miles from Tallahassee. Section 4(a) of this bill has met with no opposition, and would greatly benefit the citizenry of Madison by making the federal district court more accessible.

Illinois

The primary thrust of section 4(b) of the bill is directed at replacing the existing Eastern and Southern Districts of Illinois with new Central and Southern Districts which more accurately reflect the makeup of the State.

Under present law, Illinois has three judicial districts—one covering the northern quarter of the state and two covering the

eastern and western sections of the State. These latter two are deceptively called the Southern and Eastern Districts. Parts of the Eastern District are located south of the Southern District and the present Southern District encompasses the western part of Illinois and lies in the central, not the southern, portion of the state.

The present Southern and Eastern Districts run counter to the natural east-west flow of commerce in Illinois which imposes inconvenience and economic hardship upon those who use the courts. In addition, under the current district structure counties such as Madison and St. Clair which have nearly identical social, cultural, and economic ties and which are both essentially part of the East St. Louis metropolitan area, are placed in different judicial districts.

The proposed districts would divide the state of Illinois logically in an east-west manner, uniting areas of common economic activity and interest. These districts would take into account the flow of commerce in the state, the convenience of users of the courts, and the population of the included areas. The new districts would encompass all the counties now included in the existing Eastern and Southern Districts, except Kankakee County, which would be placed in the existing Northern District to more evenly distribute the population in each District.

The proposed changes would not involve the construction of any additional court facilities or other major expenditures. However, the changes will necessitate a conforming amendment to the omnibus judgeship bill. The judgeship bill which is currently pending in conference includes an additional judgehip approved by both the House and the Senate for the existing Eastern District. The Committee intends that the judgeship for the existing Eastern District be assigned to the new Central District created by this bill.

The reorganization of the three districts in Illinois has been endorsed by judges in all three districts as well as the Circuit Council for the Seventh Circuit.

New York

Under present law, the counties of Columbia, Greene, and Ulster are included within the Southern Judicial District of New York, with New York City the place designated for holding court. This creates a burden on those who must use the U.S. District Court. Geographically, Albany is situated much closer to these three counties. Accordingly, the people of Greene and Columbia counties have centered their lifestyles around Albany and not New York City. They work there, utilize services offered there, and are required to conduct state and other federal business in Albany.

Section 4(c) of this bill would place the counties of Columbia, Greene and Ulster in the Northern Judicial District of New York, having Albany as the place designated for holding court. The addition of these 3 counties has been approved by the judges of the Northern Judicial District of New York and lawyers in the counties affected have indicated their support of this legislation.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed.

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

The motion to lay on the table was agreed to.

TRANSPORTATION OF COAST GUARD EMPLOYEES

The bill (H.R. 185) to amend section 2632 of title 10, United States Code, to provide the Secretary of the department in which the Coast Guard is operating with the authority to transport Coast Guard employees to and from certain places of employment, was considered, ordered to a third reading, read the third time, and passed.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 95-422), explaining the purposes of the measure.

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

PURPOSE OF THE LEGISLATION

The purpose of the bill is to provide the Secretary of the department in which the Coast Guard is operating with the authority to transport Coast Guard employees to and from their places of employment whenever the Secretary determines that it is necessary for the effective conduct of the affairs of his department. The bill would extend the authority, which presently exists for the Secretary of a military department, to the Secretary of the department in which the Coast Guard is operating.

BACKGROUND

One of the many missions with which the Coast Guard is charged involves the maintenance of a comprehensive aids to navigation network. That network includes the long-range radio and navigation (loran) system which is maintained to serve the navigation needs of the Armed Forces, as well as the needs of maritime and air commerce.

The problem to which the bill is addressed has arisen because of the construction of the loran stations necessary to operate the system. Because site selections are based upon a site's freedom from electromagnetic interference and upon a site's location with respect to the loran-C network, therefore, some sites are, and others necessarily will be, located in remote areas of the United States where adequate community support for Coast Guard personnel is not, or will not be, readily available. For example, one loran station is being constructed near Searchlight, Nev. However, the nearest town offering adequate community support for Coast Guard personnel accompanied by their families is Boulder City, Nev., which is 55 miles from the station site. Adequate public transportation is not available between the station site and Boulder City. Under current law, personnel would be required to drive their own vehicles 110 miles each working day. A similar situation exists at a loran station near Kodiak, Alaska.

The alternatives to providing transportation are to require personnel to drive their vehicles or to make the sites unaccompanied duty stations, which would work a hardship on the personnel and adversely affect crew morale. Providing transportation to and from the station sites is the most reasonable and cost-effective resolution of the problem. Although the cost of the proposed legislation will vary at each station, it is modest. The cost of operating a vehicle at any station would be approximately $10,000 for the first 5 fiscal years following enactment.

There is, therefore, a need to relieve the restrictions found in 31 U.S.C. 638a, which impose limitations on the use of federally owned passenger vehicles for home-to-work transportation of employees.

EXPLANATION OF THE LEGISLATION

This legislation would, by amending section 2632 of title 10, United States Code, specifically authorize the type of transportation authority desired. This, in turn, would nullify the restrictions of 31 U.S.C. 638a, by providing specific authority for the action.

Section 2632 of title 10 currently authorizes the Secretary of a military department to provide assured and adequate transportation for persons employed in his department to and from their places of employment whenever the Secretary determines that it is necessary for the effective conduct of the affairs of his department. Although the Coast Guard is an armed force, it is not a military department under the definition of section 101 of title 10. The bill would amend section 2632 of title 10 by including language affecting the Coast Guard and extending section 2632 authority to include the Secretary of the department in which the Coast Guard is operating.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed.

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

The motion to lay on the table was agreed to.

COMMITTEE MEETINGS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Constitution Subcommittee of the Committee on Judiciary be authorized to meet during the session of the Senate on Tuesday, August 22, 1978, to hold a hearing on the Citizens Privacy Protection Act.

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

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Energy, Nuclear Proliferation and Federal Services Subcommittee of the Committee on Governmental Affairs be authorized to meet during the session of the Senate on Wednesday, August 23, 1978, to hold a markup session on S. 1493, energy impact assistance and S. 3412, retirement benefits for GAO's Comptroller General.

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

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Health and Scientific Research Subcommittee of the Committee on Human Resources be authorized to meet during the session of the Senate on Wednesday, August 23, 1978, from 4 p.m. until 6 p.m. and Thursday, August 24, 1978, from 3 p.m. until 5 p.m. to hold a markup session on S. 2755, the Drug Regulation Reform Act.

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

SPECIAL ORDERS FOR TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that on tomorrow, after the two leaders have been recognized under the standing order, Mr. LEAHY be recognized for not to exceed 15 minutes and that the Senate then resume consideration of the District of Columbia representation measure.

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

TIME LIMITATION AGREEMENT—S. 2570

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that at such time as Calendar Order No. 821, S. 2570, the CETA bill, is called up and made the pending business, there be a time agreement on it as follows: 4 hours on the bill, equally divided, between Mr. NELSON and Mr. JAVITS, 1 hour on any amendment in the first degree, 30 minutes on any amendment in the second degree, 20 minutes on any debatable motion, appeal, or point of order, if such is made to

the Senate for its consideration, with one exception, that there be a time limitation on an amendment by Mr. BELLMON of 2 hours, and that otherwise the agreement be in the usual form.

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

The text of the agreement follows:

Ordered, That when the Senate proceeds to the consideration of S. 2570 (Order No. 821), a bill to amend the Comprehensive Employment and Training Act of 1973 to provide improved employment and training services, to extend the authorization, and for other purposes, debate on any amendment in the first degree (except an amendment to be offered by the Senator from Oklahoma (Mr. BELLMON), on which there shall be two hours; shall be limited to one 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 manager of the bill; and debate on any debatable motion, appeal, or point of order which is submitted or on which the Chair entertains debate 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: *Provided further*. That no amendment that is not germane to the provisions of the said bill shall be received.

Ordered further, That on the question of final passage of the said bill, debate shall be limited to 4 hours, to be equally divided and controlled, respectively, by the Senator from Wisconsin (Mr. NELSON) and the Senator from New York (Mr. JAVITS): *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, appeal, or point of order.

ORDER OF PROCEDURE

UNANIMOUS-CONSENT AGREEMENT

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that upon the disposition of Calendar Order No. 686, House Joint Resolution 554, the D.C. voting representation joint resolution, the Senate proceed to the consideration of Calendar Order No. 821, S. 2570, the CETA bill, on which there is already a time agreement, and that several amendments by Senator DOMENICI be disposed of.

Following the disposition of the several Domenici amendments, that Mr. DOMENICI may lay down an amendment dealing with fraud, which would be disposed of on Wednesday morning, August 23; that following the disposition of that amendment, the CETA bill be temporarily laid aside and the Senate proceed to the consideration of Calendar Order No. 787, S. 1753, the Elementary and Secondary Education Act; that after the opening statements, Mr. DOMENICI be recognized to call up some amendments; that after those amendments and other amendments have been disposed of, the Senate, no later than 2 o'clock p.m. on Wednesday, proceed to the consideration of any of the following bills from the Finance Committee: Calendar Order Nos. 721, 728, 849, 1024, 1025, 1032, 1033, and 1034; and that upon disposition of these measures the Senate return to the consideration of either Calendar Order No. 787, the Elementary and Secondary Education Act, or Calendar Order No. 821, the CETA bill, whichever in the opinion of the majority leader should be taken up and resumed at that time.

Mr. BAKER. Mr. President, reserving the right to object, and I will not object, as our colleagues might infer, this schedule of events is a matter that has been discussed by the distinguished majority leader and myself and others and, of course, much of the day today.

I believe it is a good schedule and I will not object to it. On the contrary, I express my gratitude to the majority leader for arranging it in this way, much of the content of this request was at the request of the minority leader on behalf of the Members on this side of the aisle.

I would ask the majority leader if there is any intention to try to spell out the consideration of other items for the balance of this week after this consent order is entered?

Mr. ROBERT C. BYRD. I would like, if it is at all possible, to proceed, depending upon the progress made, at least, to lay down the civil service reform bill before we go out for the holiday and, of course, it is understood there is not a time agreement on that measure.

It is understood also, when we return from the holiday, the natural gas conference report will be called up, but not until after the second concurrent budget resolution has been disposed of, which under the law must be enacted by September 15.

Mr. PERCY. Mr. President, will the majority leader yield?

Mr. ROBERT C. BYRD. I yield.

Mr. PERCY. Mr. President, I have discussed this matter with Senator RIBICOFF. We express deep appreciation to the joint leadership, with whom we have discussed this matter earlier today, for the decision to lay down the civil service reform measure before we recess on Friday.

Mr. ROBERT C. BYRD. We may not recess on Friday.

Mr. PERCY. Either one or both of us will be prepared to give opening statements whenever we do recess, Friday or Saturday, whenever it may be.

Mr. ROBERT C. BYRD. Or Monday or Tuesday.

Mr. PERCY. Or Monday or Tuesday.

Subject, of course, to privileged conference reports, and so forth. I have talked, I believe, with everyone on the minority side of the aisle.

Certain Senators will not enter into time limitations, on principle, on any legislation now. They have assured the Senator from Illinois that there will be no undue delay in this case, unless Hatch Act reform is attempted to be tied to this legislation—and there they would expect extended conversation and discussion—or, with respect to the labor-management section, title VII, if an attempt is made in the Senate to move us closer toward the House provision, which gives greater power to unions and would take away what some of our colleagues on the minority side feel would be an infringement of the Government's right and to carry as a principle into the collective bargaining process certain things reserved for management prerogatives today. In that event, they would expect to oppose strongly such provisions.

But if the bill can be kept pretty much along the lines as reported by the Governmental Affairs Committee, Senator RIBICOFF and I would expect expeditious movement of that measure.

I thank the leadership and express deep appreciation for their scheduling this matter so that we can anticipate moving ahead with it.

Mr. ROBERT C. BYRD. I thank the Senator.

Mr. BAKER. Mr. President, I have no further reservation.

The PRESIDING OFFICER. Is there objection? The Chair hears none and the unanimous-consent request is agreed to.

ORDER FOR CONVENING OF THE SENATE AT 9:30 A.M. TOMORROW

Mr. ROBERT C. BYRD. Mr. President, the hour for convening the Senate on tomorrow, I believe, already has been set, has it not?

The PRESIDING OFFICER. The hour already has been set at 9 a.m.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the hour be changed to 9:30 a.m.

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

RECESS UNTIL 9:30 A.M. TOMORROW

Mr. ROBERT C. BYRD. Mr. President, if there to be no further business to come before the Senate, I move, in accordance with the order previously entered, that the Senate stand in recess until 9:30 a.m. tomorrow.

The motion was agreed to; and at 8:25 p.m. the Senate recessed until tomorrow, Tuesday, August 22, 1978, at 9:30 a.m.

EXTENSIONS OF REMARKS

SENATE COMMITTEE MEETINGS

Title IV of the Senate Resolution 4, agreed to by the Senate on February 4, 1977, calls for establishment of a system for a computerized schedule of all meetings and hearings of Senate committees, subcommittees, joint committees, and committees of conference. This title requires all such committees to notify the