SENATE—*Friday, October 6, 1978*

(Legislative day of Thursday, September 28, 1978)

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

PRAYER

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

Let us pray:

Almighty God, who has watched over this Nation from the beginning until now and made us stewards of Thy great gifts, grant us the wisdom to use our inheritance for the making of a better world. Let Thy benediction be upon all who serve in this Chamber and all who support and assist the Members of this body, that together we may be good workmen. Prepare us for surprises, for disappointments, for failure, and for success. In all changes guide us by the wisdom of the Founding Fathers. Reinforce all human strength by the greater energy of divine grace that we may not be overcome by frayed nerves or worn emotions. Reward our efforts by inner peace and the knowledge that we have followed One who came not to be served but to serve, in whose holy name we pray. Amen.

RECOGNITION OF LEADERSHIP

The ACTING PRESIDENT pro tempore. 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.

Mr. ROBERT C. BYRD. Mr. President, I do not need any of my time so I yield it back.

RECOGNITION OF LEADERSHIP

The ACTING PRESIDENT pro tempore. The Senator from Tennessee is recognized.

Mr. BAKER. Mr. President, I do not have any requirement for my time, and I yield it back also.

SPECIAL ORDER

The ACTING PRESIDENT pro tempore. Pursuant to a previous order, the Senator from Vermont (Mr. LEAHY) is recognized for not to exceed 15 minutes.

S. 3552—THE NATIONAL RURAL DEVELOPMENT BANK ACT OF 1978

Mr. LEAHY. Mr. President, I rise today to introduce S. 3552, the National Rural Development Bank Act of 1978. I believe this legislation is critical to our efforts to bring planned, conscientious development to rural areas.

I lay this bill before the Senate with the hope that it will draw considerable comment and refinement during the remainder of this year. The Rural Development Bank Act of 1978 will focus renewed emphasis and vigor on the Rural Development Act of 1972. It has been 6 years since the passage of the 1972 act and we still do not have an effective rural development policy. We do have an important collection of evolving programs, but they lack a clear, comprehensive focus. The Rural Development Bank Act of 1978 will pull together and execute the intent of Congress embodied in the 1972 Rural Development Act. It will foster a balanced national development policy where rural areas are given the consideration they deserve. This intent has not been realized to date on any effective broad scale.

The bank which I propose will help all rural residents. In fact, it will help urban residents too; for many of our urban problems were created by and continually fester due to a lack of attention to rural needs. Perhaps most importantly, this bank will bring financial services to some of the hardest to reach pockets of poverty in this country. That is, the bank will not only service outlying rural communities, but will reach those rural places inside of standard metropolitan statistical areas. These are often the most impoverished rural areas and are habitually passed over by both the rural and urban advocates.

Mr. President, there can be no doubt that the services to be provided by this bank are needed in rural America. For example, rural per capita income lags considerably behind its urban counterpart; as a rule, rural homeowners pay higher mortgage interest rates over shorter amortization periods than do urban residents. In addition, rural banks are generally small with limited access to capital, consequently, a major portion of their assets are sometimes tied up in Government bonds and are not loanable resources.

The Rural Development Bank Act of 1978 would alleviate many of these rural problems. It would provide adequate capitalization for a majority of those projects essential to rural economic development efforts. Small rural banks are severely limited to the amount of credit they can dedicate to any individual rural development project or borrower. This bill would correct this situation by channeling additional capital into rural America for farm and nonfarm rural development.

Mr. President, allow me to present a thumbnail sketch of this legislation to the Senate.

This bill would establish a National Rural Development Bank to serve as a basic source of financial assistance to lending institutions that have purchased, refinanced, discounted, or rediscounted nonfarm rural development loans made by local rural banks and other local financial institutions.

It would also set up a board for the bank composed of 13 Presidential appointees, 3 ex officio members, and 12 members elected by the bank stockholders to set bank policy and procedures.

In addition, it would authorize the appropriation of not more than $200 million annually over 10 years for the purchase of capital stock in the bank by the Secretary of the Treasury.

In its organization and operations, the proposed bank would:

First, rely on the existing private rural banking and financial system and not create a major new bureaucracy to administer the bank's operations;

Second, be owned and controlled by the independent rural investment institutions themselves;

Third, create an additional independent source of capital for farm and nonfarm rural development that can be utilized by rural financial institutions, and not be required to operate within the constraints of the Federal and State political structure;

Fourth, work with correspondent banks or with rural banks themselves to increase the liquidity and security of rural development loans;

Fifth, join with local banks and other investors to make joint-venture equity investments in rural development projects on a limited basis; and

Sixth, require the purchase of bank stock by borrowers who are rural development project sponsors and joint venture cosponsors.

The proposed National Rural Development Bank would establish one national bank.

It would authorize the national bank to deal directly with local private banks and other financial institutions.

As things now stand, control of nonfarm rural development credit rests in the executive branch of the Federal Government—nowhere else. The administration's action on the Rural Development Act provisions for guaranteed and insured loans for rural industrial development and community facilities forces reliance on the rural development insurance fund for virtually all nonfarm rural credit.

The Office of Management and Budget has set a ceiling on these guaranteed and insured loans and has made them sub-

ject to the present budgetary and appropriations process. This, coupled with the administration's reluctance to provide adequate personnel for the Farmers Home Administration reinforces the need for an independent, nonfarm rural capital generating institution like the proposed National Rural Development Bank.

Unless more credit is made available for projects which can pay at least part of their own way, small towns will never be able to use local tax dollars to provide those basic services which improve the quality of rural life. Adequate credit for the provision of these services will make rural communities attractive for commercial and industrial expansion.

Mr. President, on March 27, 1978, President Carter proposed the creation of a National Development Bank. This bank, it is said, would increase the economic activity of many impoverished urban and rural areas. It is said that this National Development Bank would increase the number of new permanent, private sector employment activities in economically distressed urban and rural areas.

However, the reality is that the National Development Bank is tailored to meet the needs of our urban areas. These are pressing needs which this Government must address and President Carter should be commended for his sensitivity to them. I will support the creation of such a bank. And yet, even though I support the National Development Bank, certain aspects of it disturb me.

Mr. President, I am disturbed because the National Development Bank is purported to be a bank which will help both rural and urban areas. If this were the case the National Development Bank would be a great boon to all Americans. However, this is not the case at all.

The title of the President's proposed bank, the National Development Bank, is a misnomer. It should be titled the Urban Development Bank, for it is not national in concept, rather, it is wholly urban oriented.

Why is it wholly urban oriented? There is a litany of complex answers to this question, however, though complex they are simply understood by anyone with a concern for our rural sector.

Mr. President, the National Development Bank is proposed as a keystone to the President's urban policy. Its design process included no rural advocates. Its proposed Board of Directors—the Secretaries of HUD, Commerce, and Treasury—does not include the most obvious member were this bank to have a truly rural focus—the Secretary of Agriculture.

The major structural barrier in the National Development Bank to rural development assistance regards eligibility criteria. The National Development Bank's eligibility criteria relies heavily upon rates of unemployment in an area. This is an implicit urban bias because rural unemployment rates and levels of underemployment are notoriously underestimated. And although it is said that rural areas would compete only with other rural areas for the National Development Bank's service, there is no provision in the legislation to guarantee that rural areas receive an equitable portion of the Bank's financing.

Mr. President, the National Development Bank is an urban development bank—make no mistake.

Now, I have absolutely no qualms with developing a bank to assist our beleaguered cities. They need it, they deserve it, and I will support such an institution.

But please, do not pull the urban wool over our rural eyes. Let no one pretend any longer that the urban development bank is even going to begin to serve the credit needs of rural America.

As I have stated, the need for an urban development bank is great. But so too is the need for a rural development bank—this cannot be denied.

Mr. President, the lack of credit for rural development projects is infamous. This Government has begun to engender an atmosphere in rural areas which would be more attractive to private development. For example, the Farmer's Home Administration provides some loans for public and nonprofit associations's water supply and sewer services improvement. But we have not taken the most critical, most important, most meaningful step toward raising the quality of life in rural areas. We must take this critical step. We must create a banking mechanism which will finally bring financial backing to credit starved rural America.

The concept of a rural area spurs many deep and romantic ideals in the heart of Americans. We hear "rural" and we think of peaceful, bucolic country hills. We see expansive plains free from congestion, overpopulation, and smog. We drive through rural America and marvel at the quaint towns and weathered rustic homes of our rural residents. This rural America that we hold in the mind's eye is out there, and I thank God that it is.

However, Mr. President, there is another side to rural America. A side which, ironically, is masked by its own calm beauty. The weathered homes make terrific snapshots but we must think of the people who live in those drafty shacks with no plumbing, no sewage facilities, and no jobs.

Mr. President, one-third of our population is rural and yet this population holds 41 percent of the Nation's poor, over 50 percent of the substandard housing, less than 12 percent of our medical doctors, 53 percent of the educationally deprived children, and on and on. Rural America needs help—Federal help. Now.

Mr. President, rural America needs help to get off of the treadmill of Federal social service aid and onto the path of indigenous private and community development.

The vast majority of this assistance must come from the private sector. The National Rural Development Bank Act of 1978 will stimulate this private sector activity. It will help keep rural credit funds in rural areas and small communities. And, it will help get new credit funds to rural areas from the major money markets.

Now, I must admit I have some reservations about creating another Federal bank. But this one is necessary. Surely, a government which goes to great lengths to create international and urban development banks can have no argument with us when we look at the proposed National Development Bank, see that it has no rural focus, and hence decide to try to bring similar banking services to where it is perhaps most necessary—rural America.

Mr. President, who can in good conscience argue against a rural development bank which is a bank for banks which will ultimately be of no cost to the Federal Government, which encourages local development autonomy and is essential to America's development?

Mr. President, I am not about to advance the position that this bill, as now written, is perfect. Admittedly certain sections must be revised, expanded, or contracted and redefined. Rather, I think of the bill as a mound of clay which I am placing on the public potter's wheel. Public comment, hearings both here and around the country, and expert commentary will be relied upon to help shape and design this bank legislation. This design process will take place during the next several months.

Mr. President, at the start of the 96th Congress, I will be reintroducing this bill in a revised form—a form which the public will mold, a form which is economical, equitable, and expedient.

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

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

S. 3552

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "National Rural Development Bank Act of 1978".

TITLE I—NATIONAL RURAL DEVELOPMENT BANK ACT OF 1978

SEC. 101. The Rural Development Act of 1972 is amended by adding at the end thereof the following:

"TITLE VII—NATIONAL RURAL DEVELOPMENT BANK ACT OF 1978

"Subtitle A—Findings, Purposes, and Definitions

"SEC. 701. TITLE AND FINDINGS AND PURPOSE.—(a) This title may be cited as the "National Rural Development Bank Act of 1978".

"(b) Congress hereby finds that—

"(1) community services and facilities and the income earning opportunities needed by farm and forestry people to increase their incomes and raise their quality of life are shared by all other residents living in rural areas;

"(2) to raise rural income and increase the accessibility to farm and rural residents of high-quality community facilities and services, it is necessary that all the resources in rural communities be used at maximum effectiveness and efficiency;

"(3) the conduct of industry and commerce, as well as farming and forestry, provide jobs and income that contribute to the tax base necessary to establish and maintain adequate rural facilities and services; the same circumstances are essential to expanding the service loads and hence the abil-

ity of rural electrification and telephone systems to pay overhead costs for service to farmers and other rural residents and repay indebtedness on Government-insured and guaranteed loans;

"(4) balanced geographic distribution of the Nation's population is essential to the prosperity, general welfare, and domestic tranquility of the urban as well as the rural areas of the United States;

"(5) to achieve and maintain balanced geographic distribution of the Nation's population, it is necessary to attain balanced geographic distribution of profitable private economic enterprises, income earning opportunities, and high-quality community facilities, services, and public works;

"(6) additional capital investment and financial resources are essential to establish and operate private economic enterprises, public works, community facilities, and services in rural areas;

"(7) much of the needed investment must come from outside of rural areas;

"(8) much of the outside investment and credit needed by rural areas will be made available by the Nation's existing network of commercial and investment banks, the Farm Credit System, and other rural financial institutions, and by other private enterprises and local and State governments buttressed and supplemented by the direct, insured, and guaranteed loans, technical assistance, and grants provided under the Consolidated Farm and Rural Development Act and other titles of this Act;

"(9) the size of investment or credit required by the sponsors of significant rural development projects often exceeds the regulated lending limits and investment standards of existing rural financial institutions (even when a part of the loan is insured or guaranteed under the Consolidated Farm and Rural Development Act) so that existing arrangements do not provide fully to rural investors and financial institutions the liquidity, flexibility, and usable financial resources they require to be fully responsive to expanding rural development investment and credit needs;

"(10) the potential investors, public or private, who wish to construct and operate significant rural development projects do not have sufficient access to investment funds from existing credit and investment entities.

"(c) It is the policy of Congress to meet the need for additional investment funds by establishing a local-lender-and-borrower-owned facility that will provide equity-participation investment funds to sponsors of rural development projects and financial assistance to local lenders and to those with whom loans extended by local lenders are refinanced, discounted, rediscounted, or to whom such loans are sold.

"(d) It is therefore the purpose of this title to provide for a permanent rural development investment and financial institution that will organize and make available a stable, continuous, and dependable source of financial resources that will provide equity-participation investment, loans, and the discounting, rediscounting, refinancing, and purchase of loans extended by rural financial institutions to the residents of rural areas, agricultural producer organizations and other cooperatives (except where they are able to obtain needed credit from the Banks for Cooperatives under the Farm Credit Act of 1971), rural industrial and commercial enterprises, quasi-public bodies in rural areas, Indian tribes on Federal and State reservations or other federally recognized Indian tribal groups, and units of general and special purpose government in rural areas to establish, construct, and operate private and public facilities, works, and services in rural areas and provide remunerative employment to increasing numbers of rural residents.

"SEC. 702. DEFINITIONS.—As used in this title—

"(a) The term 'rural area' means all territory of a State, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, American Samoa, or Guam that (1) is not within any standard metropolitan statistical area, as designated by the Office of Management and Budget, and (2) in addition, all territory within any such standard metropolitan statistical area that is also within counties, parishes, towns, plantations (in Maine), and townships having a population density of less than two hundred persons per square mile, as determined by the Secretary of Agriculture according to the latest decennial census of the United States.

"(b) The term 'rural development purpose' means any project undertaken by any private industrial or commercial enterprise or by any multistate region, State, multijurisdictional general purpose planning and development district, or local government or instrumentality thereof, that contributes or will contribute to attainment of the objectives of the revitalization and development of rural areas as provided in section 901(a) of the Agricultural Act of 1970, or the enhancement of any rural area as a place to live and make a living. Such term specifically includes, but is not limited to, projects that provide increased employment or income for or directly benefit rural residents and that—

"(1) establish or improve public works or community services, or facilities;

"(2) encourage private investment in, or promote the establishment and expansion of, industrial or commercial enterprises, including, but not limited to, investor-owned and cooperative marketing and other service associations and enterprises;

"(3) provide manpower development and training;

"(4) improve the quality and accessibility of rural community facilities and services;

"(5) promote the conservation, development, and proper utilization of natural resources;

"(6) establish and improve public educational facilities, including, but not limited to, community and junior colleges, vocational and technical schools, and other institutions of higher education, and encourage the development of improved educational methods;

"(7) establish and improve land, water, and air transportation systems and service;

"(8) assist in the solution of problems related to law enforcement activities;

"(9) establish safe, sanitary, and comfortable housing;

"(10) establish and improve health care and preventative practice facilities and services, including, but not limited to, facilities for vocational rehabilitation, and generally promote improved health and nutrition of residents of rural areas;

"(11) provide direct financial incentives to industry to create jobs in rural areas; or

"(12) establish and improve facilities and services that will enhance the quality of the environment and provide abatement and control of pollution.

"(c) The term 'rural development project' means an organized proposal or activity that does or will contribute to the attainment of one or more rural development purposes.

"(d) The term 'local general government' means the government of a municipality, county, parish, town, or township as such terms are defined and used by the United States Bureau of the Census.

"(e) The term 'Board' means the National Rural Development Bank Board established under subtitle B of this title.

"(f) The term 'Bank' means the National Rural Development Bank established under subtitle C of this title.

"(g) The term 'Participant' means any rural bank or other rural financial institution designated as a Participating Rural Development Financial Institution under subtitle D of this title.

"(h) The term 'Supporting financial institution' means any person or financial institution within the United States that has purchased, discounted, rediscounted, or refinanced all or part of a rural development loan extended to an eligible sponsor by a Participant.

"(i) The term 'rural development loan' means an identifiable unit of credit or other financial assistance extended to an eligible sponsor to construct or operate a rural development project.

"(j) The term 'Governor' means the executive officer of the National Rural Development Bank.

"(k) The term 'financial assistance' means (1) the purchase of legal obligations and the discount, rediscount, and refinancing of any note, draft, or other obligation and similar legal instruments evidencing and securing the repayment of a secured rural development loan advanced by a rural financial institution for the establishment or operation of any project required to attain a rural development purpose, regardless of whether such loan is insured or guaranteed in whole or in part by an instrumentality of the Federal Government; (2) the providing of funds for joint-venture equity investment in rural development projects; or (3) the extending of loans to eligible sponsors of rural development projects who are unable to obtain needed credit from other existing financial institutions at reasonable rates.

"(l) The term 'joint-venture equity investment' means the investment of funds by the Bank jointly with another private or public rural development project sponsor to establish and operate a rural development project.

"(m) The term 'eligible sponsor' means—

"(1) any of the following who propose to or are engaged in establishing or operating a rural development project:

"(A) public and quasi-public bodies;

"(B) cooperative associations as defined in the Agricultural Marketing Act (42 Stat. 388; 12 U.S.C. 1141j(a)), if such associations are unable to borrow from the Banks for Cooperatives;

"(C) other cooperatives;

"(D) corporations;

"(E) partnerships;

"(F) individual proprietors;

"(G) multijurisdictional general purpose planning and development districts established by the legislature or Governor of a State;

"(H) persons and firms;

"(I) owners of rural homes;

"(J) municipalities;

"(K) resource conservation and development project sponsors under title III of the Bankhead-Jones Farm Tenant Act;

"(L) sponsoring associations carrying out projects under the Watershed Protection and Flood Prevention Act;

"(M) corporate entities established by sponsors of concerted education and training service projects carried out jointly by the Department of Agriculture, the Department of Health, Education, and Welfare, and the Department of Labor;

"(N) councils of government established under State law if rural areas are included within their jurisdiction;

"(O) private associations;

"(P) local development districts organized under the Appalachian Development Act;

"(Q) economic development districts organized under the Economic Development Act of 1965;

"(R) technical vocational schools;

"(S) Indian tribes on Federal and State reservations or other federally recognized Indian tribal groups; and

"(T) resource conservation and develop-

ment districts under the Bankhead-Jones Farm Tenant Act; and

"(2) whose proposed or operating project is declared eligible based upon—

"(A) review of the proposed project by the governing body of the multijurisdictional general purpose planning and development district, if any, established by the legislature or Governor of the State concerned and a certification by such body that the proposed private or public facility, work, or service is not inconsistent with the current areawide general purpose development plan, if any, for the multijurisdictional district;

of the State concerned and a certification by such body that the proposed private or public facility, work, or service is not inconsistent with the current areawide general purpose development plan, if any, for the multijurisdictional district;

"(B) determination that the private or public facility, work, or service provided by the project will be located in and operate primarily in a rural area to increase the employment of, or for the benefit of, rural residents and that the proposed project promises to make a net increase in the number of jobs, or median family income or improve the quality of life in the rural area served;

"(C) determination that the proposed undertaking is not inconsistent with the Federal, State, or local laws or regulations relating to protecting the quality of the environment.

"(n) The term 'voting stockholder' means any Participant, borrower, or Joint-venture-cosponsor who owns voting stock in the Bank.

"(o) The term 'Joint-venture-cosponsor' means an eligible sponsor who joins with the Bank in making a joint-venture equity investment in a rural development project under provision of subtitle E of this title.

"Subtitle B—National Rural Development Board

"SEC. 703. THE NATIONAL RURAL DEVELOPMENT BANK BOARD; NOMINATION AND APPOINTMENT OF MEMBERS; ORGANIZATION AND COMPENSATION.—(a) There is hereby established a National Rural Development Bank Board (hereinafter referred to as the 'Board') composed of thirteen appointed, three ex officio, and twelve elected members. The appointed members shall be appointed by the President, by and with the advice and consent of the Senate, not more than seven of whom shall be from the same political party nor more than one of whom shall be from any one State. In making appointments to the Board the President shall select persons who are especially qualified to serve on the Board because of their education, training, and experience and shall provide a fair representation on the Board of the different geographic regions and minority persons of the United States and the several economic interests in rural development. The representative of the Secretary of Agriculture on the Farm Credit Board, the Governor of the Farm Credit Administration, and the Governor of the Bank shall be ex officio members of the Board and shall not be eligible to vote. One elected member shall be chosen by voting stockholders of the rural areas served by each regional office of the Bank.

"(b) All members of the Board shall be citizens of the United States and not less than twenty-one members, exclusive of ex officio members, shall be legal residents of rural areas in which the Bank is authorized by this Act to extend financial assistance for projects to carry out rural development purposes.

"(c) The Board shall elect a chairman and vice chairman from among its appointed and elected members. The Board shall elect a secretary from among its members or from outside its membership. Such officers shall be elected for terms of one year and shall hold office until their successors have been elected.

"(d) No member of the Board, other than the ex officio members, shall, while serving as a member of the Board, be an officer or employee of the United States or of the Bank or of the Farm Credit System.

"(e) Appointed and elected members of the Board shall serve for terms of six years, except that (1) a person appointed to fill an unexpired term shall serve only for the remainder of the term for which his predecessor was appointed or elected, and (2) with respect to the first members appointed and elected to such Board, five shall be appointed and five elected for terms of six years, five shall be appointed and five elected for terms of four years, and three shall be appointed and two elected for terms of two years. A vacancy on the Board shall not affect the power of such Board to act. Members shall serve until their successors are duly appointed or elected and qualified.

"(f) The Board is authorized to establish its own rules of procedure for conducting its business, except that a majority of all members of such Board shall constitute a quorum for the transaction of its business.

"(g) Each appointed and elected member of the Board shall receive $200 a day for not more than one hundred days of meetings each year and all members shall be reimbursed for travel and expenses incurred in attending meetings of such Board and in discharge of their official duties with due regard to laws with respect to allowances which may be made on account of travel and subsistence expenses of officers and employees and of the United States. Nothing in the preceding sentence shall be construed to limit the number of days of meeting each year to one hundred days.

"(h) The Board shall hold at least six regularly scheduled meetings a year and such additional meetings at such times and places as it may determine. Special meetings shall be held at any time at the call of the chairman or by any three members of such Board.

"SEC. 704. POWERS OF THE BOARD.—The Board shall establish the general policy for the guidance of the Bank in carrying out this title; may require such reports as it deems necessary from the Bank; and shall provide for the examination of the condition of and general supervision over the performance of the powers, functions, and duties vested in the Bank and in Participants, which, in the judgment of the Board, relate to matters of broad and general supervisory, or policy nature. The Board shall function as a unit without delegating any of its functions to individual members, but may appoint committees and subcommittees for studies and reports for consideration by such Board. It shall not operate in an administrative capacity.

"SEC. 705. ANNUAL REPORT.—The Board shall make an annual report to Congress on the condition of the Bank, including analytical program evaluation and cost effectiveness studies, and recommendations it deems necessary to improve the operation of the Bank in providing supplementary investment required to attain the purpose of this title.

An annual report shall also be prepared by the Board describing the type rural development projects financed by the Bank, geographic distribution of the Bank's loans, the number of loans made to minority related rural development projects, and the level of the Banks loan activities directed toward rural areas with poverty levels above the national average.

"Subtitle C—National Rural Development Bank

"SEC. 706. ESTABLISHMENT; TITLE.—There is established a National Rural Development Bank as a federally chartered instrumentality of the United States subject to policies of the Board. Its charter may be modified from time to time by the Board in any manner not inconsistent with the provisions of this title as may be necessary or expedient to implement this title.

"SEC. 707. CORPORATE EXISTENCE; GENERAL CORPORATE POWERS.—The Bank shall be a body corporate, subject to the general supervision of the Board and shall have power to—

"(1) adopt and use a corporate seal;

"(2) have succession until dissolved under the provisions of this title or other Acts of Congress;

"(3) make contracts;

"(4) sue and be sued;

"(5) acquire, hold, dispose, and otherwise exercise all the usual incidents of ownership of real and personal, tangible and intangible property necessary or convenient for its business;

"(6) operate under the policy direction of the Board;

"(7) prepare and disseminate information to the general public on use, organization, and functions of the Bank and to investors on merits of its securities;

"(8) require appropriate bonds or other provision for protection of the assets of the Bank against losses occasioned by employees;

"(9) prescribe rules and regulations necessary or appropriate for carrying out the provisions of this title;

"(10) prescribe its bylaws, subject to approval of the Board, and provide in such bylaws for—

"(A) the classes of its stocks and the manner in which such stock shall be issued, transferred, and retired;

"(B) the election or appointment of its officers and executive employees;

"(C) property acquired, held, or transferred;

"(D) the conduct of its general business; and

"(E) the exercise and enjoyment of the privileges granted to it by law;

"(11) deposit its securities and its current funds with any member bank of the Federal Reserve System, and pay fees therefor and receive interest thereon as may be agreed. When designated for that purpose by the Secretary of the Treasury, it shall be a depository of public money, except receipts from customs, upon such regulations as may be prescribed by the Secretary; may be employed as fiscal agent of the Government, and shall perform all such reasonable duties as a depository of public money or financial agent of the Government as may be required of it. No Government funds deposited under provisions of this subsection shall be invested in loans or bonds or other obligations of the bank;

"(12) buy and sell obligations of or insured or guaranteed by the United States or of any agency thereof, or securities backed by the full faith and credit of such agency, and make such other investments as may be authorized by the Board;

"(13) delegate to Participants and Joint-venture-cosponsors such functions vested in or delegated to the Bank, as it may determine appropriate;

"(14) exercise by its authorized officers, employees, or agents all such incidental powers as may be necessary or expedient to carry out the business of the Bank;

"(15) purchase, refinance, or discount rural development loans and participants in such loans made by local rural financial institutions from such institutions and from other financial institutions that have purchased, discounted, or refinanced such loans; and

"(16) make joint-venture equity investment in rural development projects.

"SEC. 708. APPOINTMENT OF GOVERNOR; SAL-

ARY AND EXPENSE ALLOWANCE.—(a) The Governor shall be appointed by, and serve at the pleasure of, the Board.

"(b) The compensation of the Governor shall be at the rate prescribed for positions in level IV of the Executive Schedule provided for under section 5315 of title 5, United States Code. The Federal Board shall fix the allowance for his or her necessary travel and subsistence expenses or per diem in lieu thereof.

"SEC. 709. COMPLIANCE WITH BOARD ORDERS.—The Governor shall be responsible; subject to the supervision and control of the Board, for carrying out the functions of the Bank and the policies of such Board. The Governor shall carry out all orders and directives received from the Board.

"SEC. 710. RURAL DEVELOPMENT BANK ORGANIZATION.—The Governor is authorized, in carrying out the powers and duties now or hereafter vested in the Governor by this title and acts supplementary thereto, to establish and to fix the powers and duties of such offiers to serve within regions, divisions, and instrumentalities as the Governor may deem necessary to insure the proper and efficient administration of the functions of the Bank including the establishment of Regional Banks coterminous with the twelve regions of the Farm Credit System.

"SEC. 711. ADMINISTRATIVE EXPENSES.—The Bank may, within the limits of funds available therefor, make necessary expenditures for personnel, services, and rent at the seat of Government and elsewhere; contract stenographic reporting services; purchase and exchange of law books, books of reference, periodicals, and newspapers; expenses of attendance at meetings and conferences; purchase, operation, and maintenance at the seat of Government and elsewhere of motor-propelled passenger-carrying vehicles and other vehicles; printing and binding; and such other facilities and services, including temporary employment by contract or otherwise, as it may from time to time find necessary for the proper administration of the provisions of this title.

"SEC. 712. ENUMERATED POWERS.—The Bank shall, in addition to the corporate powers enumerated in section 707, have the following powers, functions, and responsibilities in connection with the provision of financial assistance to Participants, to Joint-venture-cosponsors, and to those who purchase, discount, or refinance rural development loans extended by Participants:

"(1) to make studies of rural lending and investment needs, the need for better geographic distribution of population and economic opportunity, appraisal and credit standards, and credit requirements of rural industrial and commercial enterprise;

"(2) to develop acceptable national and regional standards, procedures, and appraisal forms; and

"(3) to prescribe price and cost levels to be used in such standards, joint venture investment, appraisals, and lending.

"SEC. 713. GOVERNANCE OF POLICIES, PROGRAMS, AND PROCEDURES OF THE BANK.—(a) The Board shall establish and promulgate policies and regulations, not inconsistent with provisions of this title, to govern the policies, programs, and procedures of the Bank.

"(b) The policies of the Bank, for so long as the Secetary of the Treasury holds stock in such Bank for the United States, shall be subject to prior approval by the Secretary of the Treasury.

"SEC. 714. FINANCIAL AND OTHER SUPERVISION.—The Bank, Participants, and Joint-venture-cosponsors shall be subject to the supervision of the Farm Credit Administration with respect to all procedures relating to financial examinations, including audits. The Board shall arrange with the Federal Farm Credit Board to utilize the services of the Farm Credit Administration examiners for investigative, accounting, and administrative auditing of the work of the Bank in an orderly, efficient, and effective manner. The Farm Credit Administration is authorized to provide such services on a mutually agreeable reimbursable basis.

"SEC. 715. EXAMINATIONS AND REPORTS; AUDITS.—(a) Except as provided in this title, each office and division of the Bank, Participants, and Joint-venture-cosponsors, at such times as the Board may determine, shall be examined and audited by examiners of the Farm Credit Administration on a reimbursable basis, but in no event shall any such institution be examined and audited less frequently than once a year. If the Board determines it to be necessary or appropriate, the required examinations and audits may be made by independent certified public accountants, certified by a regulatory authority of a State, in accordance with generally accepted auditing standards. Upon request of the Governor of the Bank, credit examiners shall also make examinations of any organization other than a national bank, to which, or with which, the Bank contemplates extending financial assistance or delegating authority under this title. For the purposes of this title, examiners of the Farm Credit Administration shall be subject to the same requirements, responsibilities, and penalties as are applicable to examiners under the National Bank Act, the Federal Reserve Act, the Federal Deposit Insurance Act, and other provisions of law and shall have the same powers and privileges as are vested in such examiners by law. A report of each audit of the Bank or other institution for any fiscal year shall be made by the Farm Credit Administration through the Board to the President of the United States and to Congress not later than six months following the close of such fiscal year. The Farm Credit Administration shall be reimbursed by the Bank for the cost of performing such audits.

"(d) The Bank, Participants, and Joint-venture-cosponsors shall be subject to audit by the General Accounting Office at such times and to such extent as the Comptroller General of the United States shall determine.

"SEC. 716. CONDITIONS OF OTHER BANKS AND LENDING INSTITUTIONS.—The Comptroller of the Currency is authorized and directed, upon request of the Board to furnish for the exclusive and confidential use of the Board such reports, records, and other information as the Comptroller may have available relating to the financial condition of national banks through, for, or with which the Bank has made or contemplates making discounts, loans, or delegations of power.

"SEC. 717. CONSENT TO THE AVAILABILITY OF REPORTS AND TO EXAMINATIONS.—Any organization other than State banks, trust companies, and savings associations shall, as condition precedent to security discount privileges or delegated powers with the Bank for the exclusive and confidential use of the Bank, file with such Bank its written consent to examination by the Board examiners as may be directed by the Farm Credit Administration; and State banks, trust companies, and savings associations may be required in like manner to file a written consent that reports of their examination by constituted State authorities may be furnished by such authorities upon request of the Farm Credit Administration.

"SEC. 718. REORTS OF CONDITIONS OF INSTITUTIONS RECEIVING LOANS OR DEPOSITS OR REDELEGATED POWERS.—The executive departments, boards, commissions, and independent establishments of the Government of the United States, the Federal Deposit Insurance Corporation, the Comptroller of the Currency, the Board of Governors of the Federal Reserve banks are severally authorized under such conditions as they may prescribe, upon request of the Board, to make available to the Bank in confidence all reports, records, or other information relating to the condition of any Participant or Joint-venture-cosponsor to which the Bank has or is contemplating extending financial assistance or for which it has or contemplates using as a custodian of securities or other credit instruments, or which it is using as or contemplates using as a depository, or to which it has or contemplates delegating powers under this Act. The Federal Reserve banks in their capacity as depositories, agents, and custodians for bonds, debentures, and other obligations issued by the Bank or book entries thereof are also authorized and directed, upon request of the Board to make available for audit all appropriate books, accounts, financial records, files, and other papers.

"SEC. 719. JURISDICTION.—The Bank, Participants, and Joint-venture-cosponsor shall for the purposes of jurisdiction be deemed to be a citizen of the State, commonwealth, or District of Columbia in which its principal office is located. No district court of the United States shall have jurisdiction of any action or suit by or against any private financial institution exercising delegated powers under this title, upon the ground that it was incorporated under this title or that the United States owns any stock thereof, nor shall any district court of the United States have jurisdiction, by removal or otherwise, of any suit by or against such institution except in cases by or against the United States or by or against any officer of the United States and except in cases by or against any receiver or conservator of any such institution appointed in accordance with the provisions of this title.

"SEC. 720. STOCK ISSUANCE; RETIREMENT; FRANCHISE TAX.—(a) The Bank shall issue stock which shall be purchased by the Secretary of the Treasury on behalf of the United States as an initial investment in the stock of such Bank to help such Bank to inaugurate financial assistance operations. During the time such stock is outstanding, the pertinent provisions of the Government Corporation Control Act shall be applicable to the Bank. Notwithstanding the requirements for annual audits and annual reports to Congress contained in sections 202 and 203 of the Government Corporation Control Act the operations of the Bank shall also be subject to audit by the General Accounting Office at such times and to such extent as the Comptroller General of the United States shall determine.

"(b) For any year or part thereof, in which the Secretary of the Treasury holds any stock in the Bank, such Bank, before declaring any dividends, shall pay to the United States as a franchise tax a sum equal to the lower of (1) 25 per centum of its net earnings for the year, or (2) a rate of return on such investment calculated at a rate determined by the Secretary of the Treasury equal to the average annual rate of interest on all public issues of debt obligations of the United States issued during the fiscal year ending next before such tax is due, multiplied by the percentage that the number of days such stock is outstanding is of three hundred and sixty-five days. Such payments shall be deposited in the miscellaneous receipts of the Treasury.

"SEC. 721. CAPITALIZATION OF THE BANK.—Subject to the provisions of this title, and approved of the Board, the Governor is authorized to issue from time to time and to have outstanding voting and nonvoting capital stock of an aggregate par value of not to exceed the par value of stock purchased by the Secretary of the Treasury plus not to exceed 2 per centum of the amount of outstanding financial assistance and joint-venture equity investment.

"SEC. 722. BANK STOCK; VALUE; SHARES; VOTING; DIVIDENDS.—(a) The capital stock of the Bank shall be divided into shares of par

value of $5 each and may be of such classes as may be determined by the Board.

"(b) Voting stock of the Bank shall be held only by such Participants as obtain financial assistance from the Bank and Joint-venture-cosponsors, which stock shall not be transferred, pledged, or hypothecated except as authorized pursuant to this title. Any Participant or Joint-venture-cosponsor may elect to receive nonvoting stock in lieu of voting stock.

"(c) Nonvoting stock may be issued to the Secretary of the Treasury and may also be issued to Participants. When a Participant reduces its total outstanding indebtedness to the Bank, or when a Joint-venture-cosponsor has retired the Bank's investment, its voting stock may be converted at par value, or such greater value as the Bank may from time to time determine, into nonvoting stock, or may be redeemed in cash or as a credit to extinguish final indebtedness at such value as the Bank may from time to time determine. Nonvoting stock or other evidences of indebtedness of the Bank held by the Secretary of the Treasury may be retired at any time, subject to approval of the Board, and shall be retired each year to the extent of the availability of earnings in accordance with the provisions of this Act.

"(d) The earnings of the Bank shall be determined in accordance with approved accounting principles and practices, as established by the Board subject to examination under policies of the General Accounting Office. Earnings shall be distributed as follows:

"First, not less than 10 per centum of net earnings for the year shall be paid into the reserve fund of the Bank until said reserve fund shall equal 150 per centum of outstanding stock.

"Second, not less than 10 per centum of net earnings for the year shall be paid into the capital surplus fund of the Bank.

"Third, the franchise tax shall be paid as required by section 720(b) for any year in which any stock is held by the Secretary of the Treasury.

"Fourth, not less than 10 per centum of net earnings shall be used for retirement of nonvoting stock and other evidences of indebtedness, of the Bank held by the Secretary of the Treasury.

"Fifth, dividends shall be paid on nonvoting stock held by investors other than the Secretary of the Treasury at a rate not exceeding the average cost to the Bank of funds obtained through issuance of bonds, debentures, and other evidences of indebtedness in its funding operations.

"Sixth, dividends shall be paid on voting stock of the Bank as determined by the Board.

"(e) Dividends shall not be payable on any stock held by the Secretary of the Treasury.

"SEC. 723. POWER TO BORROW, ISSUE NOTES, BONDS, DEBENTURES, AND OTHER OBLIGATIONS.—The Bank, subject to supervision of the Board, shall have power to issue its own notes, bonds, debentures, or other similar obligations, fully collateralized by the notes, mortgages, joint-venture equities, and security instruments it holds in the performance of its functions under this title in such sums, maturities, rate of interest, and terms and conditions of each issue as it may determine.

"SEC. 724. AGGREGATE OF OBLIGATIONS; SECURITY.—(a) No issues of long-term notes, bonds, debentures, or other obligations by the Bank shall be approved in an amount that, when added to the amount of other bonds, debentures, long-term notes, or other similar obligations issued and outstanding, exceeds twenty times the capital and surplus of the Bank, or such lesser amount as the Board shall establish by regulation.

"(b) The Bank shall have on hand at the time of issuance of any long-term notes, bonds, debentures, or other similar obligations, and shall at all times thereafter maintain, free from any lien or other pledge, notes, and other obligations representing rural development loans made, refinanced, rediscounted, or purchased under the authority of this Act, equities in joint-venture equity investments, obligations of the United States or any agency thereof direct or fully guaranteed, other readily marketable securities approved by the Board, or cash, in an aggregate value equal to the total amount of long-term notes, bonds, debentures, or other similar obligations outstanding for which the Bank is primarily liable.

"SEC. 725. LIABILITY OF THE BANK.—(a) The Bank shall be fully liable on notes, bonds, debentures, or other obligations issued by it.

"(b) The United States shall not be liable or assume any liability directly or indirectly thereon.

"SEC. 726. BONDS AS INVESTMENTS.—The bonds and other similar obligations issued under the authority of this title shall be lawful investments for all fiduciary and trust funds and may be accepted as security for all public deposits. Any obligation issued by the Bank pursuant to this title shall be deemed to be exempt securities within the meaning of laws administered by the Securities and Exchange Commission, to the same extent as securities that are direct obligations guaranteed as to principal or interest by the United States.

"SEC. 727. PURCHASE AND SALE BY FEDERAL RESERVE SYSTEM.—Any members of the Federal Reserve System may buy and sell bonds, debenture, or other similar obligations issued under the authority of this title, and any Federal Reserve bank may buy and sell such obligations to the same extent and subject to the same limitations placed upon the purchase and sale by such banks of State, county, district, and municipal bonds under section 14(b) of the Federal Reserve Act.

"SEC. 728. PURCHASE AND SALE OF OBLIGATIONS.—The Bank may purchase its own obligations and may provide for the sale of obligations issued by it, through a fiscal agent or agents, by negotiation, offer, bid, or syndicate sale, and to deliver such obligations by book entry, wire transfer, or such other means as may be appropriate.

"SEC. 729. INVESTMENTS AND GUARANTEES.—The Bank is authorized to—

"(1) buy and sell securities it has guaranteed or whose mortgages it has insured or in which it has invested;

"(2) invest funds not needed in its financing operations in such property and obligations as it may determine;

"(3) guarantee securities in which it has invested for the purpose of facilitating their sale; and

"(4) guarantee and insure rural development loans made by other lenders.

"SEC, 730. VOLUNTARY LIQUIDATION; INSOLVENCY; RECEIVERSHIPS; AND CONSERVATORS.—(a) The Bank shall not go into voluntary liquidation without the consent of the Board and with such consent may liquidate only in accordance with regulations prescribed by the Board.

"(b) Upon default of any obligation by the Bank such Bank may be declared insolvent and placed in the hands of a conservator or a receiver appointed by the Board and the proceedings thereon shall be in accordance with regulations of the Board regarding such insolvencies.

"SEC. 731. FINANCIAL ASSISTANCE.—(a) The Bank is authorized to extend financial assistance to eligible sponsors, Participants, and such financial institutions as have extended financial assistance to Participants in accordance with provisions of this title.

"(2) The Bank is authorized to invest its funds in joint-venture equity investments in rural development projects.

"(c) The Bank shall develop criteria to assure that projects assisted by it are not inconsistent with the comprehensive planning, if any, for the development of the multi-jurisdictional general purpose planning and development districts in which such projects are proposed to be located, and to assure that such projects will not be disruptive of Federal programs that authorize assistance for the development of like or similar projects in the same rural area.

"(d) Financial assistance extended under this section may not exceed the total capital cost of the project to be financed.

"(e) In any case in which the Bank undertakes to provide assistance to a State or local government under subsection (a) of this section for the development of a project for which any other department or agency of the Federal Government (under another law of the United States) will also provide funds—

"(1) the assistance provided by the Banker under subsection (a) may be in the full amount needed by the State or local government to finance such project (including the amount of the funds which will be provided by such other department or agency), but the funds to be provided by such other department or agency with respect to such project shall become payable (notwithstanding any contrary provision in the law under which they are payable) to the Bank in lieu of being paid directly to such government; and

"(2) the Bank may accept in return (A) an obligation or obligations of such State or local government covering only the difference between such full amount and the amount of the funds that are payable with respect to such project by such other department or agency, plus (B) a commitment from such other department or agency to pay the funds that are to be provided by it and are payable to the Bank as described in paragraph (1), in order to insure that such State or local government will not have to include within its debt limit that portion of the indebtedness incurred for the financing of such development that is attributable to funds provided by such other department or agency.

"SEC. 732. INTEREST RATES AND OTHER CHARGES.—Financial assistance provided by the Bank shall bear interest at a rate or rates, and on such terms and conditions, as may be determined by the Board from time to time. In setting rates and charges, it shall be the objective to provide the types of financial assistance needed on a sound business basis at the lowest reasonable cost, taking into account the cost of money to the Bank, the necessary reserves, capital surplus, and expenses of the Bank, and the orderly retirement of the capital subscriptions of the United States. The security documents may provide for the interest rate or rates to vary from time to time during the period of the assistance in accordance with the rate or rates currently being charged by the Bank.

"SEC. 733. SECURITY.—Financial assistance extended by Regional Banks established pursuant to the provisions of section 710 of this title shall be secured by all of the best available security owned or to be acquired by the beneficiary as may be required adequately to secure the obligation.

"SEC. 734. DELEGATION OF DUTIES AND POWERS TO PARTICIPANTS AND JOINT-VENTURE-COSPONSORS.—The Bank is authorized, by order, rule, or regulation, to delegate to any Participant, Joint-venture-cosponsor, or Supporting financial institutions who extend fi-

nancial assistance to any Participant such of the duties, powers, and authority of the Bank with respect to such Participant or the officers and employees thereof, in the rural area wherein such Participant is located, as may be determined to be in the interest of effective administration. Any Participant, or other person to which any such duties, powers, or authority may be delegated, is authorized and empowered to accept, perform, and exercise such duties, powers, and authority as may be so delegated to it.

"SEC. 735. AGREEMENTS FOR SHARING LOSSES.—The Bank may enter into agreements with Participants, Joint-venture-cosponsors, or eligible sponsors for sharing the gains and losses on financial assistance extended and joint-venture equity investments made under this title.

"SEC. 736. NATURE OF OBLIGATIONS.—All obligations issued by the Bank shall be lawful investments, and may be accepted as security, for all fiduciary, trust, and public funds the investment or deposit of which shall be under the authority or control of the United States or of any officer or employee thereof.

"SEC. 737. TAX STATUS.—(a) The real property and tangible personal property of such Bank shall be subject to Federal, State, and local taxation to the same extent, according to its value, as similar property held by other persons is taxed.

"(b) The income of the Bank and from any obligations purchased by such Bank from any Federal, State, or local governmental or quasi-governmental body, and any obligation issued by such Bank shall be subject to Federal, State, and local taxation to the same extent as the income of obligations of private corporations are taxed.

"(c) The Bank shall be liable for the franchise tax as provided by section 720(b) of this title.

"(d) Notwithstanding the foregoing provisions of this section, the Bank shall not be subject to Federal, State, or local income taxes for any period in which capital stock in such Bank is held by the Secretary of the Treasury for the United States.

"Subtitle D—Participating Rural Development Financial Institutions

"SEC. 738. DESIGNATION.—Any National or State bank, savings institution, credit union, or other financial institution making loans in rural areas for rural development purposes, shall, upon application, be considered for designation as a Participating Rural Development Financial Institution, referred to in this title as a "Participant".

"SEC. 739. FUNCTIONS OF PARTICIPANTS.—Any Participant and any Supporting financial institution, is authorized, subject to provisions of this title, to obtain financial assistance from the Bank and to issue obligations for purchase by the Bank, and to perform such other duties as the Bank may delegate and the Participant or Supporting financial institution agrees to undertake.

"SEC. 740. PURCHASE OF CAPITAL STOCK.—(a) Any Participant may purchase voting capital stock in the Bank in an amount (at par value) equal to at least 1 per centum and not more than 10 per centum of the amount of the financial assistance received from the Bank.

"(b) Participants are authorized to purchase voting stock of the Bank.

"(c) Any of the institutions listed in section 738 of this title may purchase nonvoting stock in the Bank equal to at least 1 per centum and not more than 10 per centum of the financial assistance received.

"SEC. 741. GOVERNANCE OF PARTICIPANTS.—With respect to all evidence of financial assistance and other obligations that a Participant shall present to the Bank, the policies, rules, regulations, and procedures followed shall be in accordance with the rules and regulations established by the Board. The designation of any institution as a Participant may be canceled by the Bank. Any Participant whose designation has been canceled under this section may appeal the cancellation to the Board. The decision of the Board shall be final. The Board shall establish appropriate rules and regulations and review bodies to implement expeditious, orderly, and fair consideration of appeals filed by Participants objecting to canceled designations or other matters related to their relationship to the Bank.

"SEC. 742. TERMS AND CONDITIONS.—The terms and conditions under which financial assistance may be made available to Participants, directly or through other financial institutions, shall be established by the Board. Such terms and condtions may vary depending on the rural development purpose for which such assistance is to be used and the practices of the supporting regional financial institutions involved.

"SEC. 743. A Participant, as a condition of eligibility for financial assistance with respect to any rural development loan it has extended, shall require the deposit by the borrower of such loan of 5 per centum of the amount of that part of the loan for which the financial assistance of the Bank is requested. Such amount shall be utilized by the Participant to purchase on behalf of the borrower voting capital stock of the Bank and shall transmit such stock to the borrower.

"Subtitle E—Joint-Venture Equity Investment in Rural Development Projects

"SEC. 744. JOINT-VENTURE-COSPONSORS; INVESTMENT IN JOINT-VENTURES WITH ELIGIBLE SPONSORS.—(a) The Bank is authorized, subject to regulations approved by the Board, to make investments in rural development projects proposed or established by Joint-venture-cosponsors directly, or through a Participant.

"(b) The Board shall establish standards and criteria to govern the making of investments in joint-ventures with Joint-venture-cosponsors.

"SEC. 745. The Bank and the Joint-venture-cosponsor with whom the Bank has entered into a joint-equity investment in a rural development project shall share in the profits of the project in the same ratio as the amounts of their several investments.

"SEC. 746. Such joint-venture rural development projects shall be subject to all Federal, State, and local taxes.

"SEC. 747. No rural development project shall be eligible for joint-venture investment by the Bank if the project can otherwise obtain necessary credit or investment for the full amount of the investment from any obtained elsewhere on reasonable terms.

"SEC. 748. The investment made by the Bank in joint-venture projects shall not exceed the extent to which the total cost of the project exceeds the amount that can be obtained eleswhere on reasonable terms.

"SEC. 749. The joint-venture agreement between a Joint-venture-cosponsor and the Bank shall provide—

"(1) that such cosponsor will, as soon as financially able, purchase the investment of the Bank, and

"(2) the control over the joint-venture shall be apportioned between the Bank and the cosponsor in accordance with the relative amounts of investment of each in the project.

"SEC. 750. A Joint-venture-cosponsor may purchase not less than 1 per centum and not more than 10 per centum of the Bank investment in a joint-venture of voting capital stock of the Bank.

"SEC. 751. SEPARABILITY.—If any provision of this title, or the application thereof to any person or in any circumstances, is held invalid, the remainder of this title, and the application of such provision to other persons or in other circumstances shall not be affected thereby.

"SEC. 752. RESERVATION OF RIGHT TO AMEND OR REPEAL.—The right to alter, amend, or repeal any provision or all of this title is expressly reserved.

"SEC. 753. APPROPRIATIONS.—There is authorized to be appropriated to the Secretary of the Treasury an amount not to exceed $200,000,000 annually for not to exceed ten years from date of enactment of this title for the purchase of capital stock of the National Rural Development Bank."

SEC. 102. AMENDMENTS TO OTHER LAWS.—(a) Section 5315 of title 5, United States Code, is amended by adding at the end thereof the following:

"(95) Governor of the National Rural Development Bank."

(b) Section 5316 of title 5, United States Code is amended by adding at the end thereof the following:

"(132) Deputy Governor of the National Rural Development Bank.".

(c) Paragraph Seven of section 5136 of the Revised Statutes (12 U.S.C. 24) is amended by adding at the end thereof a new sentence as follows: "Notwithstanding any other provision in this paragraph, the association may purchase the stock, bonds, or other obligations of the National Rural Development Bank created pursuant to the authority of the Rural Development Bank Act of 1978.".

TITLE II—GENERAL PROVISIONS

EFFECTIVE DATES

SEC. 201. The provisions of this Act shall take effect one hundred and twenty days after the date enactment of this Act, or on such earlier date as the President may prescribe and publish in the Federal Register, except that at any time after the date of enactment of this Act, (1) the additional administrators provided for in section 301 of this Act may be nominated and appointed as provided in that title, and (2) the Secretary may promulgate regulations at any time after the date of enactment of this Act. Funds available to any department or agency (or any official or component thereof), functions of which are transferred to the Secretary of Agriculture by title III of this Act, may, with approval of the Director of the Office of Management and Budget, be used to pay the compensation and expenses of any officer appointed pursuant to title III of this Act until such time as funds for that purpose are otherwise available.

The ACTING PRESIDENT pro tempore. The bill will be received and appropriately referred.

PRESIDENTIAL VETO OF PUBLIC WORKS BILL

Mr. LEAHY. Mr. President. I wish to send my congratulations to President Carter for his courageous and successful veto of the public works bill. He had my total support in his stand. Here is why:

I have spent a lot of time in the past few months in the Appropriations Committee room.

I went back to that room recently and sat alone under the chandeliers. I looked up at the cascading tiers of glass and the rich-colored murals on the walls and

ceiling. I thought of all the billions we appropriated.

It is so easy to say: "Million—billion—trillion." Add a few zeroes and change the first letter and spend more money. Speaking for myself as a member of the Appropriations Committee, I am numbed by the sheer volume of figures of dollars passing before my scrutiny. And I would venture to say many of my congressional colleagues are equally numbed.

What does it all add up to? Inflation, that word that we all use liberally sprinkled through press releases and newsletters and speeches. Even the economists do not understand the vicious cycle of inflation, but we throw it around when it suits the cause we advocate at the moment.

I know something about the word inflation. It starts under those beautiful chandeliers. It rebounds in the bureaucracy, spreads through the economy and drives up to the cost of everything from toothpicks to clothing. We can help stop inflation and follow President Carter's courageous lead. All we have to do is stop spending so much money.

Easier said than done? Sure. But after the President's veto, we are going to spend less. Let us just continue the momentum he has begun.

Mr. President, I yield the remainder of my time to the distinguished Senator, my friend from Wisconsin.

Mr. PROXMIRE. Mr. President, I thank the distinguished Senator from Vermont from my heart. I appreciate it very much. He is most accommodating and helpful.

HUMAN RIGHTS AND GENOCIDE CONVENTION INEXTRICABLY LINKED

Mr. PROXMIRE. Mr. President, concern for human rights cannot be the sole responsibility of governments. Other organizations, other sectors of society, must recognize that human rights—above all the right to live—must be actively protected by all.

I am heartened that the National Academy of Science has recognized the sacredness of human life. Robert W. Kates reports in the August 11 issue of Science magazine that the scientific community has assumed the burden of caring about those who are oppressed within their own community.

Indeed, though Mr. Kates specifically discusses the insidious torture of Indonesian scientists, he ultimately makes a statement affirming the fundamental importance of human rights for all.

I read:

Beginning in 1945 and up to the present, a major international shift took place in human rights activities. Human rights today are not merely moral rights, they are international legal rights. An internationally accepted code of human rights—economics, social, political, and religious—has been developed. Most nations have not ratified that code, fewer Nations implement those rights. . . . But almost all nations give lip service to it, and many nations have signed treaties that accept at least a portion of the evolved code. There is an international standard for human rights.

The document Mr. Kates refers to is the "Universal Declaration of Human Rights." One of the specific conventions embodied in this declaration is the Genocide Convention.

Mr. President, if the scientific community can arrive as such an all-encompassing edict for human rights, why cannot the U.S. Senate?

We can, Mr. President.

We can start by ratifying the Genocide Convention.

Mr. President, I ask unanimous consent that an article appearing in Science Magazine of August 11, 1978, be printed in the RECORD.

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

[From Science, Aug. 11, 1978]

HUMAN ISSUES IN HUMAN RIGHTS

(By Robert W. Kates)

To be active in defense of human rights is to confront human issues both disturbing and difficult. For almost 2 years a committee of the National Academy of Sciences (NAS) has sought to develop a sustained program of human rights activity appropriate to its membership and its tradition of concern for the rights of scientific workers.

THE ACADEMY COMMITTEE

The Committee on Human Rights was chartered by the council of the academy and is composed of seven members of the academy and three liaison members from the National Academy of Engineering and the Institute of Medicine (1). Exceptional support is given to it by the staff of the Commission on International Relations (2). The committee received financial support from the academy's endowment funds.

Our activity focuses on the plight of individual scientists, engineers, and medical personnel suffering severe repression. Such cases may originate in the files of Amnesty International, with the initiative of a member of the academy, in a letter from a victim's friend or family, or in the informal reviews that we have undertaken of the fate of scientific workers in different areas.

When a case of severe repression has been identified, we begin a further process of inquiry that always involves consultations with a responsible spokesperson of the country where our colleague resides or is imprisoned and, where possible, with members of human rights organizations and scientific institutions, with a representative of the U.S. embassy in the country involved, and with the victim's family and friends. A great deal of care goes into these inquiries as we try to maintain the same standards of evidence, balance, and open-mindedness that characterize academy assessments on scientific matters.

When a clear-cut case has been developed—clear-cut in the sense that there is a strong basis to assume that an individual is, indeed, undergoing severe repression—we formulate a series of requests appropriate to the case and prepare a public statement and the requests are reviewed by the academy's 12 elected councillors; when approved, sometimes after revision, they are made public. Once this is done, our committee tries to undertake a sustained effort in behalf of the aggrieved individual, combining public remonstrance with appeals to the concerned government, their national academy if such exists, or other scientific institutions, and providing moral support to the individual and his or her family.

A major feature of the committee's effort is our correspondent network of some 350 members of the academy who have volunteered to receive communications from the committee and to act upon them. Thus, the efforts of the committee are amplified as correspondents write or cable governmental representatives, offer support to families, and call attention to the plight of individuals within their professional societies, at their workplace, or through their international contacts.

Currently, inquiries and other efforts are being directed in behalf of individuals in 11 countries, and public statements have been issued in behalf of 18 individuals: Federico Alvarez-Rojas, Claudio Santiago Bermann, Gabriela Carabelli, Juan Carlos Gallardo, Antonio Misetich, Eduardo Pasquini, and Elena Sevilla of Argentina; Vladimir Lastuvka and Ales Machacek of Czechoslovakia; José Luis Massera of Uruguay; Sergei A. Kovalev, Yuriy F. Orlov, and Antoliy B. Shcharanskiy of the U.S.S.R.; T. W. Kamil, I. Made Sutayasa, Bursono Wiwoho, and Kamaluddin Singgih of Indonesia; and Ibrahima Ly of Mali.

The last five cases, which we have just formally adopted, can demonstrate some of the committee's process. The Indonesian scientists have each been held incommunicado from immediate families and relatives for long periods of time. They are representative of a much larger number of Indonesians (3) who also are being held, often without trial, without access to legal counsel, and without other opportunity to have their arrest and detention clarified or adjudicated.

T. W. Kamil, about 50 years old, is one of Indonesia's leading linguistic scholars from the University of Jakarta; he studied at the University of Michigan. He was arrested on 30 October 1965 and has been detained since that time. He is reported to be held at Nusakembangan prison.

I. Made Sutayasa, believed to be about 36 years old, was an archeologist employed at the National Research Center of Archeology until 1975 when he was arrested in Jakarta upon his return from a conference of archeologists in Australia. He has not been formally charged or tried; it is believed he is being held on the island of Bali. He is married and has four children and may have been a member of the Indonesian Communist Party before it was banned.

Bursono Wiwoho, about 55 years old, was professor of educational psychology at Gadjah Mada University in Jogjakarta, Java. Professor Wiwoho had been a member of the National Planning Board under the Sukarno government and at the time of his arrest in late 1965 was chairman of the Indonesian Association of Scientists. He is reported to be either in Jogjakarta prison or detained on Buru Island, the location of a permanent resettlement camp for untried political prisoners. He participated in the nationalist movement to gain independence from the Dutch, after which he studied in Prague from 1951 to 1954 where he earned a degree in psychology. He later headed the psychology department of Gadjah Mada University in Jogjakarta and was a founder of the Indonesian Scholars Association. He is reported to be in poor health.

Kamaluddin Singgih, age 47 years, was teaching in the department of mechanical engineering at the Technological Institute in Bandung when detained January 1966. Later that same year he was released to assist in flood control projects—only to be taken into custody again in January 1967. Originally imprisoned in Salmba prison in Jakarta, he is now on Buru Island. Singgih studied physics and engineering at Stuttgart between 1960 and 1965 and was reputed to be sympathetic to the Communist Party.

Our information concerning these Indonesian colleagues is thinner than for most of our cases. Three of them have been in de-

tention for upwards of 12 years and their very isolation makes it difficult to obtain current information about them. Thus we have quietly and privately sought—so far without success—to obtain clarification as to their status from the government of Indonesia.

We know somewhat more about Ibrahima Ly, a Ph.D. in mathematics from Moscow State University and, until his arrest and imprisonment, a mathematics teacher at the Ecole Normale Superieure in Bamako, Mali. He was arrested in June 1976 along with 14 other persons who were accused of writing a political tract that urged Malians to vote "no" in a referendum called by the Malian government to approve a new constitution. He was subsequently brought to trial in April 1975 under charges of subversion against the government, found guilty, and sentenced to 4 years of imprisonment.

Our list of concerns does not always get longer. The scientific community can share in the satisfaction that Juan Carlos Gallardo of Argentina has been released and is again working in physics in the United States and that Elena Sevilla should follow shortly. And among those cases that were resolved during the course of our inquiries, we note that:

Ismail Mohammed, who spoke out against segregationist policies in South Africa and was detained there in September 1976 and fired from his university post, is now practicing mathematics again at another university.

Grigoriy Chudnovskiy, a gifted young Soviet mathematician was permitted to leave the U.S.S.R. with his brother, David, who is also a mathematician, and his elderly parents; he is currently in the United States receiving treatment for myasthenia gravis.

Taysir al Arouri, a Palestinian physicist, who was detained for 2 years without charge or trial by the Israeli government, has been released; it is hoped that he will return to his position at Bir Zeit University, teaching physics and mathematics.

Professor "X," an African mathematician, fearful of his life if he returns to his country, has had his visa extended to remain in the United States.

In all of these cases, our inquiries were some of many such efforts and remonstrances from scientific societies and individual scientists. We can all share in the satisfaction of their resolution.

But these are still the exceptions. Four Argentinian physicists (Alvarez-Rojas, Carabelli, Misetich, and Pasquini) are simply reported as "not registered" by the Argentinian government. Massera enters his third year in prison in Uruguay despite his willingness to leave the country and take up an offer of a post in Italy. Kovalev enters his fourth year in prison despite offers from Stanford and Cornell for visiting posts. In Czechoslovakia, the appeal by Machacek has been rejected and Lastuvka's sentence has been reduced by 1 year by the Czechoslovakian Supreme Court. They still remain as the first imprisoned victims of the Charter 77 movement, a Czechoslovakian effort to monitor human rights. Orlov and Shcharansky have been summarily tried and found guilty in the U.S.S.R.

As we sought to develop our program in our initial year of activity, we faced three major issues:

Whose human rights?
Which human rights?
How do we act for human rights?

WHOSE HUMAN RIGHTS?

The issue of whose human rights we were concerned with touches on the essence of a basic question that we had to consider: "Are scientists special?" After some months of discussion and reading, the consensus of our committee was negative.

Scientists are not special, neither as victims nor as torturers do we deserve to be singled out. It is true, as the Ziman report (4) states, that science as an activity has certain characteristics—a reverence for truth that leads its practitioners to query and dissent, a process of verification that requires open dissemination and communication, a universality of discourse and goals whose common language and pursuits go beyond national borders—that may be readily seen as threatening to authoritarian regimes or even in conflict with nation-building goals. But the Sierra Chica prison in Argentina is filled not with scientists but with young workers and students. As Philip Handler put it in an interview in BioScience (5):

"* * * tortured shoemakers hurt quite as hard as tortured scientists. Protesting only for scientists doesn't quite fit with my own beliefs about all of this. Scientists happen to be a little bit more visible. The world knows about them. The shoemakers are taken off behind the barn and shot."

If we scientists are not special, though, why limit our human rights activities to our own—to scientists, engineers, and health personnel? Our answer is simply: they are our own. We hope that other groups—trade unions, bar associations, women's groups, and shoemakers everywhere are equally or more active. But we will surely be more effective in indentifying victims, in documenting their cases, and in supporting them, if we can appeal to that special quality of collegiality that we share and if we can use for such appeals the established avenues of scientific communication. In so doing, however, we know that in many, if not most cases, the nameless victims of repression have few if any scientists among them, and in some cases, scientists serve with the repressors.

Having chosen to limit our efforts to "our own" we were still left with some issues of definition: how far do we extend the concept of scientist and at what point in a career does an individual become a scientific colleague? Our answer, in keeping with the universality of science, was to seek a similar universality of outreach: not merely to the well-known and well-connected, not only to the ideologically similar, but to all victims in science, engineering, and medicine wherever they may be.

It is understandable that our academy officers have taken the strongest possible position in defense of Sakharov, a foreign associate of the academy; that as academicians who are well known and well connected we know and thus respond to the victims from our own ranks; or even that some of us more readily respond to victims of our own personal ideological persuasion. But it cannot be, and it is not, the position of our committee to limit our efforts to such cases.

Thus we have spent a considerable portion of our collective energy on trying to extend our knowledge of the plight of individuals in the less-known areas of the world and to examine the situation in our own and other countries of similar ideological persuasion. We have done so even at the cost of limiting our efforts in behalf of better-known cases, often to the pique and annoyance of our own members and colleagues.

We are, of course, limited in just how well we extend ourselves. In many parts of the world, science is poorly developed and so are our contacts with those areas. And we surely miss or rationalize away some of the travesties of human rights in our own midst. But it is not for want of trying.

WHICH HUMAN RIGHTS?

In considering the second issue—Which human rights?—I urge a reading of the Ziman report. (4) It makes one basic point and makes it well. Beginning in 1945 and up to the present, a major international shift took place in human rights activity. Human rights today are not merely moral rights, they are international legal rights. An internationally accepted code of human rights—economics, social, political, and religious—has been developed. Most nations have not ratified that code, fewer nations implement those rights, and in only one case, the Council of Europe, does an effective international appeals court exist (6). But almost all nations give lip service to it, and many nations have signed treaties that accept at least a portion of the evolved code. There is an international standard for human rights.

Using this standard is extremely helpful to us in our selection process. We do not have to sit in judgment of our colleagues now more than 12 years in Indonesian prison camps or 13 months in Lefertovo prison. When the Israeli government says that Taysir al Arouri "incited terrorist activities" or Uruguayan officials say that Massera was found guilty of "subversive association" (7) we do not need to make judgments that are clearly beyond our knowledge. It is sufficient to know that Al Arouri has been detained without being tried or charged under so-called Jordanian Administrative Law (which is really the relic of the British Mandate Law and which ironically was used to imprison many preindependence Israeli patriots). And to know that Massera probably has been tortured and has certainly suffered physical impairment, even though Uruguay has an established tradition of allowing opponents exile and there is a post in Italy for him and his wife (who is also imprisoned).

Thus, we draft our requests—an end to torture, rights to trial, to representation, to visitation, to courtroom observers, to receive and send scientific literature, to exile (as opposed to continued detention), to humanitarian release (in case of hardship), and to extension of existing amnesty. All of these are rights implicit in the international code.

In requesting compliance with the international code, we need not underestimate the threats that nations perceive from dissidents: we live in a world where terrorism is a reality and not limited to national liberation or the overthrow of tyranny, where subversion and dissent may threaten all but the stringest and oldest of societies. Nonetheless, the prisons of the world would empty of prisoners of conscience if countries would adhere to the minimal rights of the Universal Declaration of Human Rights and its successor documents.

If we take international rights seriously and try to use them effectively to refute the charge of intervention in the internal affairs of other countries, we cannot choose them selectively. We Americans have an ideological bent that selectively equates human rights with certain civil and political rights, ignoring many other rights embodied in those covenants. Those who would dispute our right to speak out raise this issue repeatedly with us. Here are three examples. A member of an American scientific society who was born in Argentina, writes an open letter to the society's president condemning his action to protest the repression of Argentinian colleagues:

"You [the President] have called attention to nefarious practices in Argentina. Well, I must tell you that the average citizen there has more freedom in some aspects than we have here. Have you heard . . . that hundreds of thousands of elderly people, and some not so elderly, in certain areas of the United States are locking themselves up and starving because of the fear of street violence. Our American cities are filled with men and women like the elderly couple in New York who committed double suicide recently for fear of going out and being mugged again. Have you . . . written letters to President Carter about this shameful problem . . . [a] problem unknown in Argentina?"(8).

The Iranian representative to the World Bank writes:

"In spite of some 30 years of debate over this complex issue in the United Nations, American and Western libertarian philosophy still regards 'human rights' in a very narrow context: as essentially political, universal and timeless.

"But as far as the third world is concerned, they are largely one-sided, passive and abstract. They reflect political rights for the redress of grievances, personal immunity for unlawful or unnecessary search and seizure, habeas corpus privileges, due process of law for incarceration or imposition of fines, the absence of cruel and inhuman punishment, and a host of other individual freedoms of action.

"But they are silent about the society's obligation toward the individual; they say little about the right to employment, the right to obtain a meaningful education, the right to enjoy a minimum of life's amenities. These 'active' and 'positive' sides (that is, society's obligations) are either ignored or considered as secondary in the roster of Western "human rights'."(9)

A Soviet legal expert echoes these sentiments:

"When they discuss human rights, many Western ideologists emphasize not socioeconomic problems but the freedom of the individual. Without question [these are] an essential element of democracy.

"All these are not enough, however, in our view. We believe that society must also guarantee the individual the right to education, to work, and to material security. . . . There are now 17 million unemployed in the industralized capitalist countries . . . we have no unemployment [in the USSR] since the beginning of the thirties." (10).

I have the impression that many human rights activists respond to these concerns as if they were red herrings to be ignored or a rationalization for repression and not to be credited with serious attention. In my opinion, this would be in error. To justify a sentence for Kovalev or Orlov by the fact that we tolerate a high unemployment rate in the United States or to excuse the thousands of kidnappings in Argentina on the basis of the muggings that occur in the United States would clearly be nonsense. But to ignore the substance of these challenges would be a serious mistake.

The international codification of human rights provides for economic and social rights as well as political rights. To use one of the examples cited: it is indeed shameful that in the richest nation on earth 6 to 7 percent of the work force is almost always out of work, and 30 to 40 percent of black youth seem permanently unemployed. Our most rational goals for unemployment ranges from 4 to 6 percent; in contrast, not only in socialist countries, but in many Western European countries, a 1 percent rate is considered a national calamity.

Let us welcome a genuine dialogue. As we point out to our Soviet colleagues that their remarkable employment record is not enhanced by denying dissidents the right to work, let us also consider ways in which we in science and technology may work to enhance the right of all to work, to have security in our cities, and to meet basic human needs.

There is another view as to which human rights can be asserted. It is the view of Sir Andrew Huxley and other British scientists within the Royal Society. He distinguishes between defense of the political rights of dissident scientists and the defense of scientific rights in the face of intrusion of the state. He notes:

"The persecutions of the present day are not directed against scientific doctrines or against scientific enquiry as such; they are directed against individual citizens who have had the courage to speak up against oppressive features of the regimes under which they live. Among these brave individuals there are, for example, writers and medical men as well as scientists. The appropriate reaction therefore comes from us not as scientists but as citizens; if we wish to join in some corporate protest, it should be through one whose prime concern is with science. If a scientific body publicly takes a step whose justification is political and not scientific, it will lose the right to claim that it is acting purely in the defense of science on some future occasion when it wishes to speak out against, say, a repetition of the Lysenko affair." (11)

In choosing the clear-cut case of Lysenko and the role of some political dissidents, Sir Andrew has the advantage of posing the extreme cases to support his opinion. Unfortunately, we find it more difficult to grapple with the continuum of repression, to determine just what is scientific and what is political. To cite just two examples:

Some Argentine scientists appear to have been denounced, killed, or imprisoned because they differed on scientific policy with the military or were actively reformist in the governance of their institute or university.

Many Soviet scientists who are clearly political dissidents are punished by manipulating the institutions and even the literature of science: they are denied work, advancement, and degrees, and their works are even excised from the literature. Pressure is brought on their colleagues to acquiesce to or carry out these acts.

Drawing lines in science and human rights is difficult. We presume little righteousness in the way we have drawn ours, but we fail to see the incongruity of a scientific society concerning itself with the human condition of fellow scientists as well as with their scientific doctrine.

HOW DO WE ACT FOR HUMAN RIGHTS?

Having chosen to speak to the internationally agreed-upon human rights of individual scientists, the issue of method still remains. How do we act in behalf of those rights?

Our major effort has been to develop an approach that matches patience with persistence. Our committee began work a year prior to President Carter's initiatives, and the academy's human rights activities date back to 1956. But we are sufficiently wise, or cynical, to note how cyclic and fluctuating public and government interest in current issues seem to be. Ours is a nation given to hyperbole; we fear that the crusade for human rights may go the way of the "great society" or the "war against poverty." It is irresponsible for members of human rights groups to raise the hopes of victims for redress and then turn to some other seemingly more current or pressing issue. Thus we have tried to develop a capability for patient, sustained, and persistent inquiry and support.

At the same time we have had to face (and continue to face) various tactical issues. From time to time we have been pressed by academy members and friends toward quite differing views. One member stated his dilemma as follows:

"I applaud Carter's statements on human rights as an aspect of national policy. Will a letter from a lowly academic and civil servant, even though a member of NAS, really add anything to Carter's forceful statements and the NAS Committee declaration? Whatever it does, will it also be at the cost of the cordial working relations, indeed friendships, that I have managed to open up over the last decade with a number of Soviet scientists not to mention the matter of field access? Or worse, will it get my Soviet friends in trouble? It is easy to be for human rights when you're not personally threatened by their loss."(8)

After much thought, this member did write one of the most moving letters I have encountered, expressing to Soviet authorities that it was the very respect and affection he had for their country and for his scientific colleagues that impelled him to appeal in behalf of an imprisoned colleague.

A very different view is expressed by a participant in the exchange program organized by the academy:

"Our experience at a meeting in the USSR shows that generalized protest is almost useless, but specific threats and promises can accomplish a lot.

"My protest is against the Academy's decision to exert no actual pressure on the Soviets. Therefore since the Academy is useless on this issue, individuals and groups of American scientists have to protest against the Academy as well as against Soviet behavior." (8)

In response to this and similar concerns, our position continues to be to hold to the universality principle, to not restrict the channels of scientific communictation in the name of trying to maintain and extend them. This is our institutional position and it is my own. But it is not necessarily the position of all individual scientists. Scientific communication is in the last analysis a voluntary act, like so much we do. Increasingly, more and more scientists may withhold their participation in exchanges with individuals or groups they feel are unresponsive or even complicit in repressing colleagues. This has clearly been the response in the wake of the Orlov conviction in the U.S.S.R. His heavy sentence, closed trial, and the apparent treatment of his family and friends dismayed much of the scientific community. Individuals and groups, many with deep personal commitment to scientific exchange with the Soviet Union, canceled or delayed their planned trips, seminars, and meetings.

THE DISTORTIONS OF HUMANITY, NATIONS, AND SCIENCE

How we allow the pain of the victim and the cacophony of protest to enter the quiet and generally well-mannered house of international science is a question that will persist and recur. But lurking in the nether darkness of questions asked but not answered are the most troubling of all issues, those raised by the profound distortions of humanness, nationhood, and science that follow in the wake of repression.

Torture is widespread. According to Amnesty International it occurs in some 60 nations. It is not limited to the Idi Amins or to the secret police of the world.

Our own country was accused by responsible observers of countenancing the use of torture and serious violations of human rights in South Vietnam and of permitting the teaching of highly questionable interrogation techniques in countries receiving assistance in the training of domestic police. Because of the European Covenant on Human Rights, Britain has compensated victims of inhuman and degrading techniques used in Northern Ireland.

It is not clear how much technical skill is needed to employ the electric shock apparatus used in basement cells. And one cannot imagine the professional standards of the doctors who patch up the victims in silence or of the psychiatrists who prescribe "treatment" for the dissidents they label insane. But surely they demonstrate that our scientific ethic is not universal and that it fails us now, as it did when horrors were perpetrated in scientifically run concentration camps.

For scientists to be active in defense of human rights is to learn and relearn what Rabelais knew in 1532: "Science without conscience spells but destruction of the spirit". (12)

REFERENCES AND NOTES

1. Christian Anfinsen, Lipman Bers, Clifford Geertz, Franklin Long, John Ross, and Berta V. Scharrer serve with me from the academy. Daniel Drucker and William Slich-

ter are the liaison members of the National Academy of Engineering, and Adam Yarmolinsky is the liaison member for the Institute of Medicine.

2. Murray Todd serves as Executive Secretary, assisted by Jay Davenport, Sandra Erb, and Gerson Sher.

3. Estimated by the Indonesian government to number 29,000, of whom 10,000 were to be released in December 1977 and the remainder by the end of 1978. These estimates are contested by Amnesty International and some Indonesian human rights releases and purported leaders who place the number in excess of 50,000.

4. Our most valuable reading was the report of a committee chaired by J. Ziman: The Council for Science and Society in collaboration with the British Institute of Human Rights, *Scholarly Freedom and Human Rights* (Rose, London, 1977).

5. E. M. Leeper, interview with Philip Handler, "Academy shifts emphases to keep up with the times," *BioScience* 27, 244 (April 1977).

6. For a less optimistic view and excellent review of the status of implementing these rights, see William Korey, "U.N. human rights: Illusion and reality," *Freedom at Issue* 42, 27 (September–October 1977).

7. Communications to the Committee on Human Rights (1977).

8. Communication to the Commitee on Human Rights, paraphrased slightly to preserve anonymity (1977).

9. Jahangir Amuzegar, "Rights and wrongs," *New York Times* (29 January 1978), section IV, p. 17.

10. Interview with Vladimir Kudryavtsev, "Human rights: How they are understood in the U.S.S.R.," *Soviet Life* (July 1977).

11. Excerpt from an address by Andrew Huxley to the British Association for the Advancement of Science, August 1977. Reprinted in *Chemical and Engineering News* (26 September 1977), p. 5.

12. Francois Rabelais, *Gargantua and Pantagruel*, book II, chapter 8 (1532) (Heritage Press, New York, 1942).

13. I gratefully acknowledge the assistance of M. Berberian, C. Gediman, E. Grohman, and the staff and members of the Committee on Human Rights in the preparation of this article.

WISCONSIN CONSTITUENTS REPLY TO PROXMIRE QUESTIONNAIRE

Mr. PROXMIRE. Mr. President, briefly on another subject, I just received responses to a questionnaire sent out to my constituents in Wisconsin. Some 10,000 respondents replied, and the questionnaire brought some surprising responses. For instance, a majority favored reinstituting the draft, which surprised me because I am opposed to the draft, and I felt a majority would oppose it. The majority was narrow, but in a time of peace that, frankly, very much surprised me.

Also a decisive majority favored a universal system requiring all Americans to serve for 2 years in the military or some other Government agency. That would be both costly and a direct interference with individual freedom, as well as highly inflationary, but this is what the majority of my consistuents have called for.

While I expected a majority of Wisconsin citizens to agree that inflation is our No. 1 problem, I was astonished by the overwhelming agreement. A huge 81 percent called it our No. 1 problem. Crime was a distant second with 9 percent of the respondents calling it most important.

A final surprise was the overwhelming support for stricter enforcement of the 55-mile-per-hour speed limit. Again and again I have met Wisconsin citizens who were protesting the 55-mile-per-hour speed limit. But here we have the most emphatic kind of endorsement, better than 2 to 1. A ringing 68 percent of the respondents support stricter enforcement compared to only 32 percent who oppose it.

Wisconsinites overwhelmingly supported the President in his veto of the defense bill containing the nuclear aircraft carrier, and also agreed with the President on lifting the embargoes against Turkey and Rhodesia. They favored an economic embargo of Uganda but decisively rejected military intervention by the United States to bring down the Idi Amin regime.

Mr. President, I ask unanimous consent that a copy of the questionnaire with the questions and answers be printed in the RECORD.

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

LAST MONTH'S QUESTIONNAIRE RESULTS

Here are the highlights of how you voted in response to the September newsletter.

By the overwhelming margin of 92 percent to 8 percent, you emphatically agreed with my attempt to cut $25 billion or 5 percent from the federal budget. Wow! and Hooray! Among the areas you singled out for cuts were foreign aid, Congress, general government, and welfare.

You opposed the nuclear aircraft carrier 72 percent to 28 percent and supported the lifting of the embargoes against Turkey and Rhodesia. You approved of an economic embargo against Idi Amin's Uganda but strongly resisted the use of force to bring down his regime.

Your answers indicated a skepticism toward the all volunteer force but support for a universal system of service.

Printed below is a list of all the questions and your answers given in percentages.

What do you think about the following foreign policy issues?

1. The President has vetoed the Military Procurement Bill due to the insistence of Congress in funding a nuclear aircraft carrier at a cost of $2.4 billion.

Do you agree or disagree with the President?

	Percent
Agree	72
Disagree	28

2. The Congress has voted to lift the embargo on arms sales to Turkey.

Do you agree or disagree with this decision?

	Percent
Agree	66
Disagree	34

3. The Congress has voted to lift the embargo aganist Rhodesia if the country has free supervised elections with all blacks and whites voting.

Do you agree or disagree with this vote?

	Percent
Agree	84
Disagree	16

4. U.N. Ambassador Andrew Young has come in for criticism lately.

How do you assess the job he has been doing?

	Percent
Acceptable	35
Unacceptable	65

5. Do you believe the United States should initiate a full economic embargo against the regime of Idi Amin in Uganda?

	Percent
Yes	82
No	18

6. Should the United States use force, if necessary, to bring down the Idi Amin government in Uganda?

	Percent
Yes	17
No	83

7. Do you think the United Nations should take military action, if necessary, to stop the genocide occurring in Cambodia?

	Percent
Yes	44
No	56

8. One new strategic plan under consideration by the Pentagon is to dig thousands of missile silos and move a number of missiles around from silo to silo. Critics say this will accelerate the arms race and make more targets in the U.S. come under fire. Proponents say this plan will help keep our land based missiles invulnerable.

Do you agree or disagree with this new plan?

	Percent
Agree	36
Disagree	34
Undecided	30

9. There has been a great deal of discussion lately about whether or not the all volunteer army is working.

Do you think the all volunteer force is effective?

	Percent
Yes	42
No	58

Do you think we should reinstitute the draft?

Yes	52
No	48

Do you think women should be able to volunteer for combat duty as do men?

	Percent
Yes	61
No	39

Do you think a universal system (where everyone must serve for two years in the military or some other government agency) is a good idea?

	Percent
Yes	60
No	40

10. Do you think the United States should provide either economic or military aid to the Peoples Republic of China (Mainland China) if requested?

	Percent
Yes	26
No	74

11. If the price of obtaining full diplomatic relations with the Peoples Republic of China (Mainland China) is breaking off relations with the Republic of China (Taiwan), should we do that?

	Percent
Yes	24
No	76

WHAT IS YOUR OPINION ABOUT THE FOLLOWING DOMESTIC ISSUES?

12. What do you believe is the No. 1 problem facing the United States today? (Choose one).

	Percent
Unemployment	6
Inflation	81
Faster economic growth	1
Crime	9
Relations with the Soviet Union	3

13. Would you favor a cut of $25 billion or 5 percent from President Carter's proposed

$500 billion budget as one way of fighting inflation?

	Percent
Yes	92
No	8

14. Which of the following areas would you be willing to see cut if you favor a reduction in the Federal budget of up to 5 percent?

a. Defense	Percent
Cut	36
Not cut	64
b. Foreign Aid	
Cut	89
Not cut	11
c. Law enforcement	
Cut	12
Not cut	88
d. Post Office	
Cut	66
Not cut	34
e. Parks and recreation	
Cut	53
Not cut	47
f. Agriculture supports or research	
Cut	39
Not cut	61
g. Supports or aid for business	
Cut	59
Not cut	41
h. Space exploration	
Cut	63
Not cut	37
i. Veterans benefits	
Cut	29
Not cut	71
j. Environmental projects	
Cut	57
Not cut	43
k. Job and employment training programs	
Cut	50
Not cut	50
l. Assisted housing	
Cut	56
Not cut	44
m. Highways and mass transit	
Cut	39
Not cut	61
n. Health	
Cut	30
Not cut	70
o. Education	
Cut	44
Not cut	56
p. Welfare	
Cut	83
Not cut	17
q. Congress	
Cut	86
Not cut	14
r. Social Security	
Cut	27
Not cut	73
s. General government	
Cut	93
Not cut	7

t. My No. 1 candidate for spending cuts is Welfare (which received a higher proportion of the votes in this category than any other, 35 percent of the total).

The fate of President Carter's National Energy Plan remains very much in the news. Congress has been studying the plan since April 20th of last year.

How would you vote on the following proposals?

15. Coal Conversion: require industries that us oil and natural gas to shift to coal.

	Percent
Yes	67
No	33

16. Utility Rate Reform: higher rates as energy use increases; lower rates for less energy use during off-peak periods.

	Percent
Yes	69
No	31

17. Tax large cars with low fuel efficiency: the gas guzzler tax.

	Percent
Yes	60
No	40

18. Ban gas guzzlers altogether.

	Percent
Yes	39
No	61

19. Provide low interest loans and low income grants to homeowners and renters to make energy conservation improvements.

	Percent
Yes	65
No.	35

20. Give tax credits for the installation of solar energy equipment.

	Percent
Yes	64
No	36

21. Give tax credits for residential insulation.

	Percent
Yes	64
No	36

22. Approve deregulation of domestic oil prices.

	Percent
Yes	45
No	55

23. Approve deregulation of domestic natural gas prices.

	Percent
Yes	44
No	56

24. Oil and gas taxes: impose a big tax increase on oil and natural gas to discourage demands with rebates to consumers through tax cuts.

	Percent
Yes	25
No	75

25. Stop federal funding of the breeder reactor which produces weapons grade plutonium.

	Percent
Yes	50
No	50

26. Provide for stricter enforcement of the 55 mph speed limit.

	Percent
Yes	68
No	32

Mr. PROXMIRE. I thank the distinguished Senator from Vermont, and I yield back the remainder of the time.

Mr. ROBERT C. BYRD. Mr. President, how much time was yielded back?

The ACTING PRESIDENT pro tempore. The Senator yielded back 3 minutes.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that 2 minutes of that be given to Mr. BAYH and 1 minute to Mr. GARN.

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

EXTENDING THE DEADLINE FOR RATIFICATION OF ERA RESOLUTION (H.J. RES. 638)

Mr. BAYH. Mr. President, I ask unanimous consent that in an effort of being fair that the time from here on in, instead of being charged to the Senator from South Carolina, who has the time, be taken out of both sides equally.

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

Mr. BAYH. Mr. President, I would like to make one observation. We are meeting here today to take another small step toward completing the goal established by our Founding Fathers and Mothers over 200 years ago of full equality for all of our citizens. The extension of the equal rights amendment, of course, is the business before the Senate, and several of our Members will be addressing themselves to that later on this morning.

It seemed to me to be both appropriate and prophetic that the distinguished Member of this body who is now Presiding Officer (Mr. PROXMIRE) opened this morning's session urging this country to ratify the Genocide Convention.

Indeed, the goals of America are the kinds of goals that should be spread and cultured, nursed openly, and harvested wherever human souls live. If there is any country in the world that should be committed to the principles of the Genocide Convention—which, by the way, says the United States itself condemns genocide—it seems to me the United States ought to be leading the charge.

I congratulate the distinguished Senator from Wisconsin for this participation and insistence, and I think we are going to win that battle, just as we are going to win this one. That, too, will be another small step in achieving the goals this country stands for.

The PRESIDING OFFICER. The Chair thanks the distinguished Senator from Indiana.

Under the previous order, the Senator from South Carolina (Mr. THURMOND) is recognized for not to exceed 8 minutes. The time lost had to be prorated.

Mr. THURMOND. Mr. President, I rise today to announce my opposition to House Joint Resolution 638. I want to stress, however, that my opposition is not based on the merits of the equal rights amendment but on the belief that the proposal to extend the time to ratify this amendment is unconstitutional and fundamentally unfair. A close study of this issue reveals that a time limit once established on a proposed amendment cannot be extended. However, if for some reason this body chooses to overlook that constitutional restriction, an extension still would require a vote of a two-thirds majority and should allow States the right to change their mind and rescind prior ratifications. I will make a brief statement on each of these points.

Mr. President, during the debates on this issue, much has been said about the 7-year time limit. Some argue that this is only a procedural matter and can be extended at the will of Congress. A close study of the Supreme Court decision in Dillon against Gloss and the history behind that case illustrates clearly that this is not so.

Congress for the first time set a time limit for ratification on the 18th amendment. There were several reasons for this, but the one most often stressed during the congressional debates was that some amendments never ratified were still lingering from the 19th century. Opponents challenged this in Dillon arguing that article V of the Constitution allowed Congress to propose amendments but not to set time limits. The

Court ruled, however, that the time limitation was valid because article V permitted Congress to set a reasonable time for ratification. The Court in fact stated that a time limit was proper in that "all may know what it is and speculation on what is a reasonable time may be avoided." Further, the Court defended the limitation as insuring an opportunity to act on the amendment with regard to the sentiment and needs of the time and if not ratified during that period "it ought to be regarded as waived, and not voted upon, unless a second time proposed by Congress." It is clear from this decision, that once the time period is set, as it is here, the amendment must be ratified by the required number of States within that period. House Joint Resolution 638 violates these principles in that it does not propose the ERA anew but attempts to extend a time limitation that in fact cannot be extended. Moreover, by extending the period, the Congress is setting a precedent that promotes speculation of when an amendment will have final action, contrary to the Court's decision.

While testifying during the hearings on this resolution our former colleague, Sam Ervin, who amply illustrated his firm grasp of constitutional principles both on this floor and as chairman of the Subcommittee on the Constitution, pointed out another concept in the Dillon case. In discussing the amending process, the Court declared that proposal and ratification of amendments "are not treated as unrelated acts, but as succeeding steps in a single endeavor." Extending the ratification period is adding another endeavor to the process and thus as Senator Ervin stated it "undertakes to do in two endeavors what the Supreme Court declared must be done in one."

Mr. President, another reason why I cannot support this measure is the rejection by the Senate of two amendments which could have restored some constitutional integrity and fairness to House Joint Resolution 638—I am speaking, of course, of the amendment which would have required two-thirds majority for extension and the amendment which would have allowed States to rescind their ratifications during the extended period.

Mr. President, it is the clear mandate of article V of the Constitution that an amendment to the Constitution be proposed by a two-thirds majority of both bodies of Congress. This mandate was expressed when, by a two-thirds vote, the ERA, with the 7-year time limit, was proposed to the States as an amendment to the Constitution. House Joint Resolution 638 is an important part of that amendment; in fact, it is the only lifeline it has after March 22, 1979. It is, therefore, mandatory that the measure also comply with the two-thirds requirement of article V.

Mr. President, the proponents of House Joint Resolution 638 argue that the debate on the ERA is still very much alive and should not be forced to end next year; however, this measure will allow debate to continue only in the States that have not yet ratified. The basic unfairness of this is why I supported the amendment of the Senator from Utah, which would have allowed all the States to debate this issue during the extension period. However, this amendment was rejected and the Senate is now left with a "stacked deck" which, by its very nature can only benefit one side.

In conclusion, Mr. President, I implore my colleagues not to consider a vote on this measure as synonymous with a vote on the ERA, because it is not. This measure concerns important constitutional principles which can be sustained only by voting against House Joint Resolution 638. To forsake these principles for the ERA, regardless of its merits, would indeed be an injustice to the Constitution.

The PRESIDING OFFICER. Under the previous order, the Senator from Arizona (Mr. DECONCINI) is recognized for not to exceed 15 minutes.

Mr. DECONCINI. Mr. President, I have drafted and submitted to the chair an amendment to House Joint Resolution 638. I do not call it up at this point because I have become convinced that it would be inappropriate as an amendment to a House joint resolution. My amendment makes a change in Federal law, and is not part of the "incidental" powers of Congress under article V.

However, Mr. President, I believe that the amendment I have drafted raises a very important and serious issue which my colleagues should consider. My concern is the use of Federal tax moneys for the support—directly or indirectly—of boycotts. Clearly, Mr. President, Americans individually and collectively possess the right to engage in boycotts.

The question I raise, however, is substantively different. Should Federal tax dollars collected from all Americans for necessary governmental services go to private organizations to pursue economic boycotts? I cannot believe anyone in the Chamber would support such a proposition. Yet, it appears that there is little concern or agitation over this matter. I see a serious threat to the amending process in the involvement of Federal dollars with an economic boycott of States that fail to ratify a proposed amendment. It was the clear intent of the framers that the power to ratify be given to the States. The use of Federal moneys, even indirectly, to force States to ratify subverts that grant of power. I urge my colleagues, especially those who support the ERA as I do, to give serious thought to the precedent established if we continue to give Federal funds to groups supporting the boycott. The States must be free of any Federal influence in their decisions on ratification, no matter what the merits of the proposed amendment. This question transcends the issue of the equal rights amendment. It touches the foundations of our Federal form of government.

A second aspect of the boycott that troubles me is the effect it is having on those the ERA is designed to aid—women in low-paying jobs. The loss of revenue by States being boycotted occurs mostly in the tourism and convention related industries. These losses are massive by current estimates: $160 million in Atlanta, Ga., $19 million in Missouri, $185 million in Las Vegas, according to newspaper sources. Yet, there is no indication these State legislatures have changed their votes because of the boycott. On the contrary, they have filed suit against the National Organization for Women, which indicates to me a hardening of attitudes against the ERA. What has resulted from the boycott is that losses in the convention industries have forced employers to reduce the number of service employees: maids, waitresses, cooks, and maintenance personnel. These women are most in need of the income their low-paying jobs provide. In conclusion, the boycott, in my opinion, is neither facilitating passage of the ERA nor benefiting those women most in need of protection.

Mr. President, in spite of my serious concern and objection to the boycott and to the Federal involvement with those who support it, I will vote to extend the time for ratification of the equal rights amendment. I have supported equality for women long before I was elected to this body. I find no merit to the argument that the family can survive only at the price of denying women full equality under the law. I find no substance to the contention that women will be unable to continue in their roles as mothers and wives if they have to bear the burdens of full equality. It has long been my belief that these arguments misapprehend the nature of equality and women in our society. Equality can mean no less than the freedom to chose one's role in life unhindered by artificial barriers. Yet in our society today, those barriers still exist for women who chose or are by circumstances forced to be self-sufficient and independent. No woman will be denied the right to parent her children or assume the role of homemaker because she has full equality under the law. Rather, this right will be insured because of her status as parent and spouse without denying her other rights because of her status as a woman.

Mr. President, the history of our Nation has been one of a continually expanding franchise. From the narrow electorate of propertied white adult males, the right to vote has been expanded to include minorities, women, and persons over 18 years of age. These rights were not won easily. Ratification of the equal rights amendment will not be done easily. It is consistent with this expanding franchise that the equal rights amendment be made part of our Constitution. I firmly believe it will be accomplished, and I am committed to accomplishing it. My belief goes beyond political necessity or basic fairness, it is grounded in fundamental morality. I believe the Creator endowed each of us with the gift of life. To allow discrimination based on race or sex denies this fundamental truth.

Mr. President, the issue of equal rights for women has been mired in unreasoned emotionalism and uninformed fear. It is ironic that the most ardent opponents of equal rights are women. I empathize their fears, for surely equality represents

a new chapter in the history of American women and of the American society. And surely we cannot now know all this equality will bring. Yet, I cannot sympathize with their fears, for my understanding of our Nation's history and my own experience tell me that the expansion of equality has always improved the lot of the whole.

Mr. President, the issues we have decided—extension, recission, and majority vote—are of importance in their own right. Yet, they pale in comparison to the fundamental nature of the issue of women's equality. That decision will alter the course of our Nation permanently, and is inexorably wedded to the course of the human race as a whole.

Mr. BAYH. Mr. President, I yield to the Senator from California.

The PRESIDING OFFICER (Mr. MELCHER). The Senator from California.

Mr. CRANSTON. Mr. President, for many months now I have been studying carefully the issues surrounding the debate on the proposed ERA extension. The decision I reached to fully and wholeheartedly support the extension was not one made lightly. While I have consistently been a supporter of ERA, I was acutely aware throughout my examination of the extension question itself, and of the related issues of simple majority vote and rescission, that any action taken by the 95th Congress on these matters would establish a significant constitutional precedent.

There are those who argue that this Congress should not address the extension issues since the precedents for these issues are not precisely established. Mr. President, I reject that argument. I do not believe that is just cause for us to defer making responsible judgments on these issues. Certainly, it is our responsibility to examine the extension questions in their historical constitutional, legislative, and judicial context, and to chart from those precedents a future course. This was the approach which guided the formulation of my own conclusions on the extension questions.

HISTORY OF THE ERA

The matter of the ERA extension is the latest aspect of an endeavor that has been half-a-century in the making.

The equal rights amendment was first introduced in the Congress in 1923. Nearly 50 years later it won final approval—the House of Representatives, on October 12, 1971, passed by a vote of 354 to 23 the resolution (H.J. Res. 208) proposing the amendment to the States. On March 22, 1972, by a vote of 84 to 8, the Senate passed the resolution. I voted in favor of passage.

Mr. President, the argument is being advanced that the passage in recent years of Federal legislation and the issuance of Executive orders designed to eliminate sex discrimination and promote affirmative action makes the equal rights amendment unnecessary. I disagree.

Just last year the U.S. Civil Rights Commission undertook a title-by-title review of the United States Code in which it found over 800 instances of sex bias in our Federal laws. We have made progress in recent years in enacting legislation aimed at eliminating sex bias, but there is much that remains to be done. When we consider, for example, the fact that women today earn only 59 percent of what men earn, it is obvious that we have a long way still to go. Passage of the ERA would establish a needed national policy against sex discrimination, and would be a giant step toward the eventual elimination of sex bias.

The resolution proposing the ERA to the States reads as follows:

HOUSE JOINT RESOLUTION 208

Proposing an amendment to the Constitution of the United States relative to equal rights for men and women.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That

The following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States within seven years from the date of its submission by the Congress:

"SECTION 1. Equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex.

"SECTION 2. The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.

"SECTION 3. This amendment shall take effect two years after the date of ratification."

Mr. President, to date 35 States have ratified the ERA. Ratification by three additional States is necessary to achieve the three-fourths required by the Constitution for the amendment to become law.

The resolutions proposing extension of this time period, House Joint Resolution 638, which sucessfully passed the House of Representatives on August 15 by a vote of 233–189 and Senate Joint Resolution 134 which is currently pending before the Senate Judiciary Committee and of which I am an original cosponsor, have been offered in recognition of the fact that debate on the ERA and the need for its enactment is still very much with us. Extension of the time for ratification will permit the remaining 15 States to consider this vital measure.

HOUSE JOINT RESOLUTION 638

Mr. President, today we are considering House Joint Resolution 638 which proposes to extend the deadline for ratification of the equal rights amendment from March 22, 1979 to June 30, 1982—a 3-year, 3-month, and 8-day extension.

THE POWER OF CONGRESS TO EXTEND THE RATIFICATION PERIOD

Mr. President, central to the measure before us is the question, Does Congress have the power to extend the ratification period?

Article V of the Constitution sets forth the constitutional amendment process. No mention is made of time limits for consideration by the States of proposed amendments. For the first 17 amendments, no deadlines were imposed.

Mr. President, on two occasions the Supreme Court has referred to article V with regard to time limitations on the ratification process.

The case of *Dillon* v. *Gloss*, 256 U.S. 368 (1921), involved a defendant convicted of an offense under a statute passed by Congress to enforce the 18th amendment (the prohibition amendment). The defendant contended, inter alia, that Congress had no power to set a time limit for ratification, and that, as a result, the amendment itself was void since the 65th Congress had placed a 7-year limit on ratification.

In rejecting this argument, the Court stated:

Of the power of Congress, keeping within reasonable limits, to fix a definite period for the ratification we entertain no doubt. As a rule the Constitution speaks in general terms, leaving Congress to deal with subsidiary matters of detail as the public interests and changing conditions may require; and Article V is no exception to the rule. Whether a definite period for ratification shall be fixed so that all may know what it is and speculation on what is a reasonable time may be avoided, is, in our opinion, a matter of detail which Congress may determine as an incident of its power to designate the mode of ratification. 256 U.S., at 375–76.

The second case, *Coleman* v. *Miller*, 307 U.S. 433 (1939), involved, inter alia, the claim that the "Child Labor Amendment" proposed by Congress in 1924, without Congress having set a time limit for ratification, could no longer be ratified by the State of Kansas in 1937, since 13 years had elapsed since its submission to the States. The Court reiterated in Coleman that the question of what constitutes a reasonable period of time for purposes of ratification of a proposed amendment "lies within the congressional province."

The 7 year time period originally set for ratification of the equal rights amendment was not a part of the text—or substance—of the proposed amendment; it was a part of the proposing language. The 7-year limit was chosen only because that was the time frame Congress had initiated when the 18th amendment and subsequent amendments were proposed to the States.

The Department of Justice, in preparing for the President a position paper on the ERA extension question, undertook a study of the possible reliance by ratifying States on the 7-year limit in the proposing language. The study concluded that no such reliance could be documented—those States which approved House Joint Resolution 208 were ratifying the substance of the resolution and not the proposing language which includes the reference to the 7-year time frame.

Mr. President, in answering the question; does Congress have the power to extend the ratification period, I can only conclude: Yes.

And I have concluded in the affirmative, as well, to the question, should Congress extend the ratification period.

The Court, in Coleman against Miller, in addition to recognizing the right of Congress to determine what constitutes a reasonable period of time for purposes of ratification, also set forth a number of factors which Congress might consider

in making such a determination. Specifically, the Court in Coleman referred to the following factors:

. . . the nature and extent of publicity and the activity of the public and of the legislatures of the several States in relation to any particular consideration . . . When a proposed amendment springs from a conception of economic needs, it would be necessary, in determining whether a reasonable time had elapsed since its submission, to consider the economic conditions prevailing in the country, whether these had so far changed since the submission as to make the proposal no longer responsive to the conception which inspired it or whether conditions were such as to intensify the feeling of need and the appropriateness of the proposed remedial action. In short, the question of a reasonable time in many cases would involve . . . an appraisal of a great variety of relevant conditions, political, social, and economic. [307 U.S. 433, 453–3 (1939).]

Mr. President, when we consider, for example, that women represent 41.9 percent of the labor force, that 70 percent of the women in the labor force work because they are the sole support of their families or their income is needed to bring the family income up to $10,000, and when we consider that women earn 59 percent of what men earn and the percentage continues to decline, there is no doubt in my mind that the economic needs of women today are such, to use the words of the Court, "as to intensify the feeling of need and the appropriateness of the proposed (equal rights amendment)." In addition, when we consider the fervor with which those favoring and those opposing the ERA are currently debating this issue, there is no doubt in my mind that the issue is very much still alive.

Thus, Mr. President, there is no doubt in my mind that Congress both has the power and should exercise that power to extend the period for ratification of the proposed equal rights amendment.

A SIMPLE MAJORITY VOTE IS SUFFICIENT TO EXTEND THE RATIFICATION PERIOD

Mr. President, another question relative to the extension resolution is whether it's approval requires a two-thirds majority vote of each House of Congress, or whether a simple majority vote by each House is sufficient.

Mr. President, article V of the Constitution is very explicit about the few instances for which a super majority vote is required. These instances are impeachment, expulsion of a member, ratification of a treaty, overriding of a presidential veto, or proposal of an amendment. A super majority vote is not required for matters of detail incident to the process of ratification, such as setting the mode for ratification or certifying final ratification. Since the time period for ratification is also such a detail—it has nothing to do with the substance of the proposed ERA—it seems clear to me that it should not require a two-third's vote.

Mr. President, the House Judiciary Committee thoroughly examined this question as one factor of its consideration of the extension resolution. It voted 23 to 8 to consider the extension resolution in the context of a simple majority vote rather than in the context of an alternative proposal which would have required a two-thirds vote.

Accepting that a majority vote is sufficient, a related question has been raised concerning the necessity for a Presidential signature in order to render effective the extension resolution. The question has been raised because there is no precedent as to the effect of a joint resolution which has passed by simple majority vote and which does not include signature by the President.

Mr. President, now is the time for us to set that precedent.

It is clear that the Executive has no role to play in the amendment process. The Supreme Court so held in the case of *Hollingsworth* v. *Virginia*, 3 Dall. 378. which was decided in 1798. Article V sets forth as Congress' responsibility that of establishing the mode of ratification. There have been instances in our history where the President has played a symbolic role by signing a proposed amendment, as in the case of President Lincoln and the 13th amendment, and in signing certifications of ratification, as in the case of President Johnson in signing the 24th and 25th amendments, but by their actions these Presidents were merely proclaiming their own personal support for the amendments, and not asserting any claim of power in affecting the amendment process.

Thus, Mr. President, it is my position that a simple majority vote is sufficient for approval of the extension resolution, and certainly a presidential signature is unnecessary in rendering its effectiveness.

SHOULD THE EXTENSION RESOLUTION INCLUDE PROVISION FOR STATES TO RESCIND PRIOR RATIFICATION

Mr. President, it is being argued that if an extension resolution is approved, it is "only fair" that it include a provision allowing States to rescind their previous ratification. I disagree.

In my judgment, an amendment to House Joint Resolution 638 allowing rescission would be contrary to constitutional, congressional, and judicial history. It appears that the provision of the right to rescind would itself require a separate amendment to the Constitution. Moreover, an amendment to House Joint Resolution 638 allowing rescission would be an inappropriate ursurption by this Congress of the power of a subsequent Congress to interpret the validity of a State's ratification.

Mr. President, in looking to constitutional history for guidance on the question of rescission, scholars agree that the only original framer of the Constitution who addressed the matter was James Madison. During the constitutional ratification debates in the State of New York, Madison stated, in a letter to Alexander Hamilton, that a State's ratification must be unconditional and irrevocable.

Throughout our country's history, Madison's principle has been upheld and accepted. Congress has consistently taken the position that a State's attempt to rescind is ineffectual.

In 1868, Congress adopted a resolution declaring that the 14th amendment had been ratified, discounting the rescission of two of the States which had previously ratified. These States, New Jersey and Ohio, were counted within the 28 States (which at that time constituted the required three-fourths majority) required for ratification.

The issue again arose in 1920 in connection with the 19th amendment. Tennessee attempted to rescind its ratification. Its action was disregarded.

In 1924 an amendment to article V of the Constitution was proposed to specifically allow States to rescind ratification. In introducing the proposal, which failed, its sponsors stated:

It is apparent that under Article V, as now drawn, no State can change its vote from the affirmative to the negative . . . once ratified by a State, that State can not change, even though it does so before a sufficient number of States have ratified. . . .

Mr. President, these constitutional and congressional precedents were cited by the Supreme Court in the Coleman case in commenting on the decision of the Kansas Supreme Court. The Kansas court has stated in its opinion that:

It is generally agreed by the lawyers, statesmen and publicists who have debated this question that a state legislature which has rejected an amendment proposed by Congress may later reconsider its action and give its approval, but the ratification, once given, cannot be withdrawn.

Mr. President, it was the Coleman case, too, which made it clear that the Congress sitting at the time the State ratifications are presented will be the interpreter of artivle V as to whether the requisite number of States have approved an amendment.

Mr. President, it is my view that there is no constitutional basis for attaching a rescission amendment to the pending resolution. Indeed, the constitutional precedents weigh against permitting such an amendment.

CONCLUSION

Mr. President, it took 72 years for women to win the right to vote. The effort to secure constitutional equality for women has been 55 years in the making. That effort is on the threshold of completion. Approval of House Resolution 638 is important to final accomplishment of this human rights quest to establish a constitutional foundation for the elimination of sex bias in our Nation.

I am proud to cast my vote in favor of this historic measure.

Mr. President, it has been a great privilege to work with Senator BIRCH BAYH and others who have led this effort to bring this measure to the floor, to surmount the obstacles that lay in its path in terms of the issue of rescission, the issue of whether or not two-thirds approval was required, and other questions that were raised about this measure. The people across the country who have fought the battle for ERA, the many women and the many men who have worked with them, have done a magnificent job and I congratulate all who have been involved in the struggle.

The PRESIDING OFFICER. Under the previous order the Senator from Minnesota (Mrs. HUMPHREY) is recognized for not to exceed 15 minutes.

Mr. BAYH. A parliamentary inquiry, Mr. President.

The PRESIDING OFFICER. The Senator will state it.

Mr. BAYH. I ask the distinguished Presiding Officer if it is a fair interpretation of our present time situation that the Senator from Minnesota is the next who has a special order but the unused time of the Senator from Arizona has been given to the Senator from Indiana to be shared with other colleagues. Is that correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. BAYH. I thank the Chair.

The PRESIDING OFFICER. The Senator from Minnesota.

Mrs. HUMPHREY. I thank the Senator from Indiana.

Mr. President, we are here today to consider House Joint Resolution 638, legislation that would extend the period of time by 3 years and 3 months for the States' consideration of the equal rights amendment. Mr. President, I strongly support the ERA and I strongly support the ERA extension legislation. In fact, I testified before Senator BAYH'S Subcommittee on the Constitution in support of the proposal that we are considering today.

As a member of a distinct senatorial minority of two, I am sure my male colleagues can understand my very strong and deep feelings about the unequal status of women in this country. The absence of women in this very Chamber is, to me, as a Senator, a vivid daily reminder of the continuing barriers to women's full participation in the resolution of the fundamental social, economic, and political questions confronting our Nation. If I successfully accomplish only one task in my short term of office, I should like to think that I have helped to convince some of my more skeptical colleagues of the vital importance of the ERA and of the equally vital need for the extension legislation.

Before proceeding, however, I would like to read the ERA amendment for the benefit of my colleagues. The proposed equal rights amendment to the United States Constitution would provide the following:

"SECTION 1. Equality of Rights shall not be denied or abridged by the United States or by any state on account of sex.

"SEC. 2. The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.

"SEC. 3. This amendment shall take effect two years after the date of ratification."

That is all the propcsed amendment says, yet in a whole variety of areas, misunderstandings about the impact of ERA on American life abound. And it is due in part to such misunderstanding about the original amendment that some in this Chamber are opposed to the extension legislation we are considering today.

For these reasons, I think it is important to point out some of the prevailing myths and to clarify what the ERA would and would not do, if ratified. The general principles on which the equal rights amendment rests are quite simple. Essentially, the amendment requires that our Government—Federal, State, and local—treat each person, male and female, as an individual; that is, the amendment prohibits discrimination on the basis of a person's sex. It is also important to point out that the amendment is applicable only to governmental action; it does not affect private action or social relationships between men and women.

As noted by the report of the House Judiciary Committee on the equal rights amendment:

The Equal Rights Amendment embodies a moral value judgment that a legal right should not depend upon sex but upon other factors—factors which are common to both sexes. This judgment is rooted in the basic concern of (our) society with the individual, and with the right of each individual to develop his own potentiality. . . . However, the resolution does not require that women must be treated in all respects the same as men. 'Equality' does not mean 'sameness'.

Opponents of the equal rights amendment would have us believe that passage of the amendment would threaten our family life and ultimately undermine the advances women have secured thus far. For example, the question of the impact of the ERA on domestic relations has generated considerable controversy.

Opponents often argue that ratification of the ERA would threaten the very basis of family life by requiring that wives take paying jobs outside the home to share equally in the responsibility of family support. I should like to paraphrase a Yale Law School study and a report of the Association of the Bar of the City of New York that examined this question.

According to these studies, the ERA would not require mathematically equal contributions to family support from husband and wife. Instead, the support obligations of each spouse would be defined in functional terms based on the resources of husband and wife, their earning power and, most importantly, their nonmonetary contributions to the family welfare. These would be permissible and practical under ERA. Thus, passage of the ERA would not weaken family life by requiring wives to take on paying jobs outside the home. Quite the contrary. Under ERA, homemakers' contributions to family life would be recognized, valued and taken into account. Under ERA, the American homemakers' status would be enhanced.

I can assure my colleagues that I would never support any proposal that I believed would, in any way, undermine American family life or create added unnecessary burdens for American women.

Another area of misunderstanding with regard to the impact of the ERA involves military service. It is true that women who are physically and otherwise qualified to serve in combat and noncombat positions in the Armed Forces will not be prohibited from doing so under the equal rights amendment. However, there are a number of facts in this regard that should be pointed out.

First, studies have shown that 9 out of 10 positions in the Armed Forces are noncombat positions. Moreover, a study of the 1971 draft revealed that of the 1.9 million men in this country eligible for the draft, less than 1 percent of the eligible males in the entire country were ever assigned to a combat unit. And given the extremely high physical standards required for combat duty, it is fair to assume that significantly less than 1 percent of all women in this country would qualify for such positions.

Second, Congress has traditionally established a number of exemptions from military service. I believe Congress can continue those exemptions and draft them in a sex-neutral way. For example, it could be that under ERA, an exemption could be established for any parent, mother or father, or for the parent that has the primary responsibility for rearing the children.

Looking at the facts in this way, I feel it is clear that passage of the ERA would not create insurmountable problems with respect to women and military service. In fact, the integration of women in the services would allow them access to GI and other benefits which they have in the past been denied.

Another area of misunderstanding about the ERA involves protective legislation. Opponents argue that ratification of ERA would rob women of all the legislative protections and exemptions which they have finally secured after long struggle.

It is true that many States have laws which restrict the conditions of employment of females. Yet many of these laws confer no real benefit. Under ERA, certain discriminatory laws which entirely prohibit women from certain occupations would be unconstitutional. But those laws which do confer genuine benefits and which provide real protection will, it is to be expected, be extended to apply to both men and women equally. As pointed out in testimony during Senate hearings on the ERA:

"The fears of some opponents of the Equal Rights Amendment that its adoption would nullify laws that presently protect women are unfounded—since the equality of treatment can be achieved by extending the benefits of those laws to men rather than by removing them for women.

These, then, are the facts in response to some of the concerns about the original equal rights amendment that have generated the opposition to the extension legislation that is under consideration today.

I know that many of these fears are prompted by most well-intentioned motives. The opponents fear that the ERA would irreparably and irrevocably change our society. I too believe that the ERA would bring about changes in American society—yet slowly—and only for the better. In fact, those 16 States which have passed ERA amendments to their State constitutions have not witnessed any immediate or dramatic changes in culture or lifestyles. These States have simply affirmed on the public record their commitment to guarantee equal rights for all citizens.

In my testimony before Senator BAYH'S Subcommittee on the Constitution, I stated that I believed the extension legislation should be passed for three principal reasons. First, ratification of the

ERA represents the will of the majority. To date, 35 States representing 73 percent of the population have ratified the equal rights amendment. If, after 7 years, only a minority of Americans had indicated their support for the ERA, it would be difficult to make a case for extension legislation. However, in view of the fact that a majority of Americans have already expressed their support for this proposal, allowing the States to continue consideration of the ERA under the present circumstances is clearly consistent with our most fundamental ideals.

The second reason that I believe the extension legislation should be supported is that the forging of a national consensus on any important issue takes a long time. The ERA obviously has raised a host of questions unanticipated by its proponents. Comprehensive examination of these questions may take longer than anticipated, but because the course of debate does not conform to an arbitrary timetable is not a justifiable reason to cut it short prematurely.

Finally, I believe the extension legislation should be enacted because, despite progress in the area of women's rights, the ERA is still needed. Recent court rulings, especially the Bakke decision, have made clear that the "equal protection clause" of the 14th amendment which presumably guarantees equal protection of the law to all citizens, does not automatically and under all circumstances apply to women.

Clearly, enactment of the equal rights amendment is needed to give an unmistakable signal to the courts on the will of the American people with respect to equal rights for women.

And I feel that ratification of the ERA is needed from a broader perspective as well. Over two centuries after establishing a national commitment to preserve and enhance liberty, justice and inalienable rights for all, ratification of the equal rights amendment—finally—would put our society formally on record in support of equal rights for the majority of its citizenry.

Unfortunately, there are no precedents to guide us with respect to the question of extending the deadline for the States' consideration. Yet clearly, the ERA is an issue of great significance to many, many Americans—both men and women—and under these circumstances plain common-sense tells us that we should permit the ongoing debate in the States to continue. I urge my colleagues to approve the proposed legislation to extend the deadline for ratification of the ERA by the States.

Mr. President, I think it would be appropriate to recall the words of Hubert Humphrey on women's rights. In urging ratification of the ERA, he said:

> It now is time that we allow women to take their share of responsibility for the successes and failures of the future.
>
> It is time to put a stop to the cultural and educational practices which rigidly mold women from their earliest years to seek and expect second rate wages and positions of employment with no opportunity of advancement.
>
> It is time we took advantage of the vast talents of over half our population.

Mr. President, as a woman and as a Senator I feel deeply privileged to have the opportunity to cast my vote in favor of House Joint Resolution 638.

Mr. BAYH. Mr. President, I yield myself 30 seconds to say to my distinguished colleague from Minnesota that she quoted a great Senator, who said it not one iota better than the present Senator from Minnesota.

This Senate and this country and the women of America are deeply indebted to the distinguished Senator from Minnesota, not only for her remarks, but for the active participation and the force she brought as an original sponsor of this measure, as well as the hard work she devoted during those critical days we went through this last week.

Several Senators addressed the Chair.

The PRESIDING OFFICER. Under the previous order, the Senator from Utah (Mr. GARN) is recognized for not to exceed 15 minutes.

Mr. RIEGLE. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. RIEGLE. I was under the impression that the time agreement for the Senator from Utah was to commence at 9:30. Am I mistaken in that notion?

Mr. GARN. That was my understanding, Mr. President.

The PRESIDING OFFICER. There were a series of 15-minute orders and that unconsumed time has been yielded back to the Senator from Indiana.

Mr. BAYH. With all respect, the unconsumed time was yielded to the Senator from Indiana.

The PRESIDING OFFICER. The Chair has just stated that.

The Senator from Indiana may yield his time as he sees fit.

Mr. BAYH. How much time does the Senator want?

Mr. RIEGLE. Perhaps 2 minutes.

Mr. GARN. Mr. President, I ask unanimous consent that the time between now and 9:30 be given to the Senator from Indiana to dispose of.

Mr. BAYH. I object to that because I want my friend from Utah to express himself.

Mr. GARN. No, I said between now and 9:30. Mine would be 9:30 to 9:45. There are 3 minutes before that. Now, if we quit talking about it——

The PRESIDING OFFICER. The Chair has already stated the Senator from Indiana had that time.

Mr. BAYH. I yield the last 3 minutes of this additional time to the Senator from New York.

I apologize to the Chair for the confusion.

Mr. JAVITS. Mr. President, I am grateful to Senator RIEGLE for yielding to me, as I have other conferences to attend, and I thank the Senator from Utah.

Mr. President, as is not untypical of this Chamber, all is quiet. There are few Senators here on the eve of a very momentous vote. I think it is as momentous as the grant of suffrage to women years ago and it is likely to materially influence the politics and history of our country, because, Mr. President, while the Federal statutes are quite replete with measures which provide for equal pay for women, equal opportunities in employment, and in many other areas of what we call civil rights and civil liberties, the fact is that State laws are also replete with all kinds of discrimination against women in connection with marriage, in connection with the opportunities for different types of employment, in connection with the conditions under which they work.

Mr. President, these will be clarified by this amendment. This amendment will have a major, perhaps even an earth-shattering effect, and that is the way it is intended to be. That is why we want a constitutional amendment.

Mr. President, also, we must remember that the amendment will change the climate in this country. There will be a new recognition by women of their responsibilities as well as of their opportunities.

I see them participatng far more than they have in the life of the country.

Now, let us take the Congress as an example, Mr. President. In this Chamber, we have two women. Yet, they constitute half the population.

Mr. President, the American voter wants to choose, as he has chosen 98 men and 2 women. But, Mr. President, this is because women have not bid for that kind of responsibility, with the background, the experience, and the public knowledge of this which men have acquired in this country and which they have held over the centuries. Comparably, the numbers in the House of Representatives in terms of percentage are even smaller.

This is but one example of the new climate, the new relationship, toward the social order of our country and its political order which women will assume.

Mr. President, I consider it an unusual, historic privilege, having served here for so long, to speak in behalf of the ERA this morning, when it is very likely to pass its test here and to have an opportunity to be approved by the States, and to express my devout hope that at long last justice will be done and the ERA will have its opportunity.

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

The Senator from Utah is recognized, under the previous order, for 15 minutes.

Mr. GARN. Mr. President, as we come to this vote, the only real disappointment I feel is that those of us who are opposed to the extention never were able to separate the issue of ERA from the process. I feel badly about that; because, however people feel about ERA—for or against—I think we are abusing the Constitution, and it should not have been done for ERA, for abortion, for population election of the President, or for any constitutional amendment. I sincerely mean that, regardless of the amendment that has been before us. My position would have been exactly the same in trying to defend the constitutional amending process.

Today, an editorial in the Washington Post—which does not too often agree with my positions—is significant. I will read a couple of paragraphs from it and

then will ask unanimous consent that the entire editorial be printed in the RECORD.

They speak about how they are in favor of ERA and always have been, and state:

Our concerns were with the fairness and the wisdom—in terms of precedents as well as politics—of changing a time limit once the Congress had established it. We believed such a change might diminish support for the ERA as well as destroy the useful idea that amendments should represent the prevailing national consensus during a predetermined period of time.

Those were my concerns, Mr. President: Fairness and wisdom.

They conclude by saying:

We would rest easier with this extension if Congress had adopted the view that during those 39 months states could also rescind their prior ratifications. That would have reduced the drawbacks of the precedent that is being created. But that view has been rejected on both sides of Capitol Hill.

Mr. President, I ask unanimous consent to have the editorial printed in the RECORD.

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

THE ERA EXTENSION

It is almost a foregone conclusion that Congress will approve today a 39-month extension of the period during which states can ratify the Equal Rights Amendment. The House passed the necessary resolution in August, and the votes by which amendments to the resolution have been defeated in the Senate suggest that the Senate will pass it easily today. Although we have expressed reservations in the past about the wisdom of this extension, we join now with those who are urging the Senate to approve it overwhelmingly.

Our reservations about the ERA extension never included the basic argument made against it on Capitol Hill—that Congress lacks power to extend. The Constitution gives Congress the principal role in the amending process, and it can do almost anything it wants in terms of time limits and tabulating state ratifications. Our concerns were with the fairness and the wisdom—in terms of precedents as well as politics—of changing a time limit once Congress had established it. We believed such a change might diminish support for the ERA as well as destroy the useful idea that amendments should represent the prevailing national consensus during a predetermined period of time.

Proponents of the extension have a strong case that the ERA ought to be regarded differently from most other constitutional amendments. Unlike most of the others proposed in the last century, which dealt with the structure or powers of government, ERA is directed at a social, economic and moral issue: the status of women in society. Unlike the others, it has been subjected to an unprecedented outpouring of deceitful or untrue propaganda. And, most important, unlike the others, the ERA has never been given fair consideration in several state legislatures where internal politics or procedural games have taken precedence over honest consideration.

A majority of the Members of Congress—and the President—have been persuaded by these arguments that the unfairness already done to the ERA by its opponents more than offsets the potential unfairness of a ratification extension. Insofar as that is a judgment on the tactics employed in the past by some of those opposed to the ERA, we agree; they have not been willing to let the ERA stand or fall on its own merits.

A year ago, when this extension was proposed, it seemed possible that it would not be needed. There was hope then that in certain state legislatures—most notably Illinois, Florida and Virginia—the issue would be handled fairly this year. But it was not. This, more than anything else, negates any concerns that an extension is either unfair or politically unwise.

Because of what has happened in the legislatures, it is not unreasonable for Congress to decide that proponents of the ERA should have an additional 39 months to persuade a handful of states that it should be ratified. The time period is short—less than half of what was sought a year ago—and the issue is very much alive. More than two-thirds of the states have already said they want this amendment in the Constitution. The extension is, in reality, a concession by Congress that it misjudged six years ago the time needed for a controversial amendment to receive fair consideration in 50 legislatures.

We would rest easier with this extension if Congress had adopted the view that during those 39 months states could also rescind their prior ratifications. That would have reduced the drawbacks of the precedent that is being created. But that view has been rejected on both sides of Capitol Hill. One can hope, at least, that the value of this extension as a precedent will be discounted in the future because of the peculiar nature of the factors that made it necessary now.

Mr. GARN. I also share that view; and I am disappointed, once again, that we were not able to separate the emotion of those who very much favor ERA, and have a right to do so, from the constitutional process in trying to bend it so that the ERA could be passed.

Mr. President, we are about to vote on House Joint Resolution 638, the resolution purporting to extend the period during which States may ratify the proposed equal rights amendment. It is important to clarify what we are voting on, and to review some of the arguments advanced for and against the extension, so that the American people will understand what Congress is trying to do today—and, what is perhaps more important, what we are not trying to do.

Five points stand out above all:

First, the extension resolution is unconstitutional. Congress does not have the power to bind the 35 States that ratified the ERA resolution containing limiting language, to a similar but distinct resolution that omits the limiting language.

Second, the extension resolution could have had a limited constitutional effect, of creating a new 39-month period in which 38 States might ratify the ERA, if it had been passed properly. Since the resolution was not called up under a two-thirds rule, however, and since it did not pass the House by a two-thirds vote, it cannot operate as a new proposal of an amendment that could be ratified by the States.

Third, the debate in Congress on the extension resolution was largely directed to the merits of the ERA, rather than to the very different question of constitutionality of extension. This underscores the very limited value of this resolution even as persuasive authority for the courts, who will ultimately have to rule on the constitutionality of the rescission. That so many Members of Congress were unable to separate their desire for the ratification of the ERA from their judgment on the constitutional effect of a rescission underscores the danger of the argument that questions of amendment procedure are "political questions," on which Congress can do anything it wishes without the chastening effect of judicial review.

Fourth, to the extent that proponents of the extension did address the constitutionality of extension, and of the related question of rescission, they largely relied on several myths about the text, history, and interpretation of article V of the Constitution. Some of these myths were of very recent vintage, woven specially for the occasion of the debate on this unprecedented and unconstitutional resolution.

Fifth, and most important of all, both the proponents and the opponents of this resolution seem to be in agreement that State legislatures are free to rescind their ratifications of the ERA. Let me repeat that: even the ardent proponents of this extension, and the Senators who voted against the Garn amendment that would have recognized the right to rescind, indicated very clearly that States may rescind their ratifications. We disagree only on who has the right to determine the validity of those rescissions. Some, including Senator BAYH and the other major proponents of extension, feel that a future Congress will sit in judgment on the rescissions. Others, including myself, feel that the U.S. Supreme Court will ultimately decide whether the rescissions are valid. The message to the States should be clear: If you no longer approve of the ERA, then rescind your ratification. It is the only way you can signal to the ultimate tribunal that you no longer can be counted as part of the "contemporaneous consensus" needed for ratification. The entire Congress agrees that a contemporaneous consensus is necessary, and that some future tribunal will have to judge whether it exists. So no State should be dissuaded from rescinding. On the contrary, there is more reason now than ever before for States to take affirmative action to indicate their change in sentiment.

I will discuss each of these points briefly, Mr. President, but I cannot exhaust the list of things that are wrong with this resolution in the short time available. There will be lawsuits over this resolution; indeed, it might be called the Constitutional Lawyers Relief Act of 1978. I hope that the courts, in reviewing the record, will consider all the floor proceedings and all the data and opinions inserted in the RECORD by myself and others over the last 6 weeks or so. After a review of those data and opinions and these proceedings, I am confident that the action we are about to take will not bear scrutiny.

I hope the Court ultimately will look at just the constitutional process. They will not be involved in the politics of deciding whether they are for or against a particular amendment.

I. THE UNCONSTITUTIONALITY OF THE EXTENSION RESOLUTION

Mr. President, article V of the Constitution, like many other provisions in that document, is very short. It provides as follows:

The Congress, whenever two-thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two-thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as part of this Constitution, when ratified by the Legislatures of three-fourths of the several States, or by Conventions in three-fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress: Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate.

Article V does not attempt to set out every detail of the amending process. But it does state certain principles, assigning the power of proposal to Congress, and of final ratification to the States.

It has been suggested that where the Constitution is silent, Congress is free to legislate. This is contrary to the general principle that our Federal Government is one of limited powers, and to the principle announced in the 10th amendment that residual power is in the States rather than in the Federal Government. Nevertheless, it is arguable that as an incident to its power to propose amendments and to designate the mode of ratification. Congress may enact "housekeeping" legislation to provide for matters of detail that may arise in the amending process.

Congress may not, however, use its "housekeeping" power to alter the delicate balance of State and Federal power in the amending process. It may not, under the pretext of providing for a situation not expressly mentioned in article V, do violence to the principles clearly stated by that article.

Article V does not expressly mention extension. Nor does it mention rescission. Nor, for that matter, does it mention any number of other hypothetical proposals; but the absence of a specific reference in the Constitution is hardly evidence that the framers intended Congress to have a free hand in deciding whether a certain procedure is valid or invalid. On the contrary, a procedure may be so far-fetched that the framers never thought anybody would propose it, and felt no need to prohibit it. Article V, for instance, does not expressly prohibit Congress from unilaterally deciding to treat Puerto Rico as a State for the purpose of securing a three-fourths majority of the States; but nobody would seriously propose that Congress may do so.

Taking a careful look at this extension resolution, I think it is fair to say that it falls into the class of procedures so far-fetched that the framers would not have thought they needed to prohibit it, It is certainly not a matter of detail. It takes way from the States the right to ratify or reject the proposal they were presented in 1972, retroactively turning each State ratification into a blank check made to the order of Congress. This violates the balance of State and Federal power that was so carefully drawn in article V.

Here is what happened in 1972. Congress presented the States with a resolution containing certain limiting language. The resolution stated that—

[T]he following article . . . shall be valid . . . as part of the Constitution when ratified by the legislatures of three-fourths of the several States within seven years . . .

Thirty-five States ratified that resolution. As Prof. Jules Gerard has pointed out, 24 States expressly mentioned the time limit in their ratifying resolutions. The other States also ratified the entire resolution, as limited by the time limit. They ratified no other resolution. Congress now proposes to take the ratifications of House Joint Resolution 208 of 1972, and to declare unilaterally that those ratifications are also to be regarded as ratifications of House Joint Resolution 638 of 1978, which does not contain the 7-year time limit, but substitutes a longer time limit.

Senator BAYH has admitted during this debate that Congress would be powerless to bind the 35 ratifying States to this new congressional resolution if the time limit were in the text of the proposed amendment. But he argues that since the time limit was in the resolving clause and not in the text, Congress is free to go back and take out the limiting language. This is wrong, for two reasons. First, it ignores the fact that every State had the time limit on the bargaining table when it ratified. There is no need to rely on hypothetical "reliance" by the States, although Professor Gerard makes a persuasive case that such reliance did exist. Simple contract law, which is after all just a way to determine whether there has been a meeting of the minds between parties to a transaction, is enough. The States that ratified the resolution with the limiting language cannot be presumed to have given their acceptance to a resolution containing no such language.

The history of the amending process provides another equally strong reason to reject the reasoning of Senator BAYH, which is also the reasoning of the Justice Department and of the majority of the "constitutional experts" Senator BAYH has relied upon in debate. The location of the limitation in the resolving clause was clearly intended to differ only in style, not in substance, from a limitation in the text.

Grover Rees III has detailed this history in his memorandum to the House subcommittee:

The Effect of the Location of the Seven-Year Limitation.

If the seven-year limitation were in the text of the proposed amendment itself, it is difficult to imagine anyone suggesting that Congress could now change the text and thereby bind states which had previously ratified the amendment to the new language. The time limit is, however, located in the preamble, or "resolving clause."

Since Congress presented its entire resolution to the states, the location of the time limit should make no difference. The seven-year provision was on the bargaining table, so to speak, when the states indicated their assent. The location should only make a difference if the legislative history affirmatively suggests that the states had reason to know that the seven-year limitation was not binding on Congress, and could be changed at will. There is not a trace of any such evidence in the history of the E.R.A. or of constitutional amendments generally; indeed, there is affirmative evidence to the contrary. It is clear that the location of the time limit in the resolving clause was purely a matter of form, to which no substantive importance was attached by those who drafted and voted on the E.R.A.

Interestingly, the location of the seven-year limitation seems to have been the work of Senator Ervin, an E.R.A. opponent. When the amendment was introduced in the 91st Congress, it contained no time limit at all. During debate on the resolution, Senator Ervin introduced an amendment which, among other things, imposed a seven-year limit. He said it "would require" that ratification occur within seven years for the E.R.A. to be valid, adding:

Certainly, any proposed amendment to the Constitution of the United States for which there is any real demand can be ratified by the legislatures of the required number of States within 7 years after the date of its submission.—[116 Cong. Rec. 36302 (1970)]

Senator Dole added that the "provision requiring that the amendment be ratified within 7 years has been included in amendments proposed by Congress commencing with the 18th, and will prevent an anomaly amendment from lingering in limbo for an indefinite number of years." Id. 36450. That proponents of the limitation intended it to have the same effect as similar clauses in prior amendments is significant, since until the 23rd Amendment, these clauses were all contained in the text of the amendments themselves.

Senator Ervin's amendment to the E.R.A. resolution passed, over the opposition of Senator Bayh and other leading E.R.A. proponents (Senator Bayh expressing his opposition to other parts of the Ervin amendment, and not mentioning the time limitation). The E.R.A. was not passed by the Senate in the 91st Congress, but when it was introduced in the 92d Congress (H.J. Res. 208, S.J. Res. 8, 9), it contained the time limitation exactly as worded by the Ervin amendment. The Ervin language remained in the resolution as approved by the Senate Judiciary Committee. The committee report, submitted by Senator Bayh, noted under "Legislative History" that the time limit had been included as a result of the Ervin amendment in the 91st Congress [Sen. Report No. 92–689, 92d Cong., 2d Sess. 1972 at 4–5]. The report also stated: "The proposed Equal Rights Amendment reads as follows: . . . the following article . . . shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States within seven years from the date of its submission . . ." Id. at 1–2 (emphasis added). The report added:

This is the traditional form of a joint resolution proposing a constitutional amendment for ratification by the States. The seven year time limitation assures that ratification reflects the contemporaneous views of the people. It has been included in every amendment added to the Constitution in the last 50 years. It is interesting to note that the longest period of time ever taken to ratify a proposed amendment was less than 4 years.—[Id. at 20]

Not a word in the legislative history of the E.R.A. indicates that Senator Ervin, who proposed the time limitation, or the Senate Judiciary Committee, who reported it favorably,

or anyone in Congress or in the state legislatures, intended the limitation to have any different substantive effect because of its location in the resolving clause rather than in the text. The obvious reason is that language in the resolving clause does not actually become part of the Constitution when the amendment is ratified, whereas a limitation in the text would "clutter up" the Constitution with language which had become ineffective. That no substantive distinction was drawn is underlined by the committee report's casual inclusion of the resolving clause in what purports to be a recital of the text of the Amendment. Moreover, the numerous references to similar language in past amendments imply that the E.R.A. provision was intended to have the same effect as the previous limitations, most of which had been contained in the text of the amendments, and which therefore clearly could not have been tampered with by Congress after some states had ratified.

It is instructive to examine the first instance in which Congress placed the time limitation in a resolving clause, rather than in the text of a proposed amendment which ultimately became part of the Constitution. The 23rd Amendment, granting the Presidential vote to residents of the District of Columbia, was proposed by S.J. Res. 39 in the 86th Congress. This resolution originally contained no language about the D.C. vote at all, but was instead a resolution, favorably reported by the Senate Judiciary Committee, to propose a constitutional amendment providing for emergency interim appointments of members of the House of Representatives. The Senate added the D.C. language, and then the House kept the new language and deleted the original language about House appointments. The resolution itself, however, had a long and well-documented legislative history, with particular reference to the seven-year time limitation for ratification.

The committee report on S.J. Res. 39 [Sen. Report No. 86–561, 86th Congress, 1st Sess.], says the resolution was "identical in text" to S.J. Res. 8, which had passed the Senate in the 84th Congress. S.J. Res. 8, when introduced by Senator Kefauver in the 84th Congress, contained a time limitation in the text of the amendment. Prior to committee hearings on the resolution, Kefauver apparently wrote to a number of constitutional law scholars, asking for suggestions on the language of the amendment. Only one response of those printed in the record of the hearings recommended a change in the location of the seven-year limitation. Professor Noel Dowling of Columbia Law School drafted an entire new version of the resolution, noting:

"The 7-year limitation is put in the resolution rather than in the text of the amendment. There is no doubt about the power of Congress to put it there; and it will be equally effective. The usual way, to be sure, has been to write the limitation into the amendment; but we hope such an unnecessary cluttering up of the Constitution can be ended."

[Hearing before a Subcommittee of the Committee on the Judiciary, United States Senate, 84th Cong., 1st. Sess., on S.J. Res. 8 (1955), at 34]

The committee substituted Dowling's language for the original. In response to a question from Senator Russell in Senate floor debate, Senator Kefauver stated:

"The general idea was that it was better not to make the 7-year provision a part of the proposed constitutional amendment itself. It was felt that that would clutter up the Constitution. Sometimes that is done. We wanted to put the 7-year limitation in the preamble. So the intention of the preamble is that it must be ratified within 7 years in order to be effective."—[101 Cong. Rec. 6628 (1955)]

In response to Senator Russell's continued questioning, Senator Kefauver agreed to an amendment, which was then passed by the Senate, to insert the word "only" before "if ratified . . . within 7 years" in the resolving clause. Senator Kefauver made it clear that he and the Judiciary Committee staff felt the addition of the word would not change the effect of the limitation. Id.

Professor Dowling's letter, and the subsequent exchange on the Senate floor, are the only evidence of legislative intent behind the location of the time limit in the resolution that eventually became the vehicle for ratification of the 23rd Amendment—the apparent model for subsequent proposed amendments which include the limit in the resolving clause. They indicate that the change was made purely in the interest of a more elegant Constitution, and with no intention of altering the substantive effect of the time limitation so as to allow Congress to modify it after ratification by a number of states.

In conclusion, Mr. President, Congress may not make an offer to the States, secure acceptance of that offer, and declare unilaterally 7 years later that the acceptance applies to a different offer. And no "housekeeping" power in Congress can justify such an enhancement of the limited congressional role in the amending process at the expense of the role given to the States by article V.

II. THE FATALLY DEFECTIVE PROCEDURES

As I have pointed out, Mr. President, Congress is perfectly free to resubmit the ERA for ratification by the States, and to designate a reasonable time for such ratification. If we had followed the proper procedures in adopting the resolution we are about to vote upon today, it could fairly be construed as such a referral to the States. However, the U.S. Supreme Court has pointed out in Powell against McCormack that Congress may not use mere nomenclature to do something with a simple majority vote when the Constitution requires a two-thirds vote to achieve the same effect. Thus the House could not "exclude" Adam Clayton Powell under a rule requiring a simple majority, since the Constitution required a two-thirds vote to "expel" him. And we cannot "extend" the ERA by a simple majority vote and pass it on to the States for 3 additional years, when to achieve the same effect by an original proposing resolution would require a two-thirds vote of both Houses, by the clear language of article V.

Prof. Charles Black of the Yale Law School, in a letter I have already inserted into the RECORD, presents yet another reason that this extension proposal, to have whatever validity it might have under any theory of the amending process, needs a two-thirds vote in each House:

It is my opinion that a two-thirds vote is required for this extension proposal. As I said in my testimony before the House Subcommittee, the original resolution that passed both Houses of Congress and sent ERA to the country was worded in a clearly and expressly conditional form, providing that the text of the amendment should have validity as part of the Constitution, if the ratification took place within seven years. This integral proposal—a proposal for validity conditioned on a certain time-limited event—was the only thing that any body ever voted on or could have voted on; it was, in fact, the only proposal ever made to the States. It is impossible to know how many votes on the proposal were influenced by the inclusion of this time limitation. We do know that it was carefully considered and intended to have serious effect as a part of the proposal. But the main strength of my case is in the text of the proposal itself. It proposes that validity be conditional on ratification within seven years. That conditional proposal was the only proposal that ever passed. It seems to me plainly to follow that an alteration in the content of the proposal has to be passed by the same majority required to pass the proposal.

I think that if the act of extension were to have been offered on the day following the passage of the original proposal, and if it had been suggested that a simple majority vote was enough, the ludicrousness of this position would have been entirely clear, but I can't see why it would make any difference that a good deal of time has elasped.

Some people say that this matter of time pending is a "mere" procedural matter. This kind of thing is somewhat hard to understand on the part of lawyers, because lawyers know that the difference between a lynching and a fair trial is only a matter of procedure. I would add that nothing could be more important than the following of meticulously correct procedure with respect to the amendment of the American Constitution—the basic document legitimating our government.

III. THE FAILURE TO ADDRESS THE REAL ISSUES

From the moment that this extension proposal began to surface, it became clear that its only chance for success was for the proponents to focus on the merits of the ERA and to ignore or gloss over the grave constitutional questions involved. Mr. President, if this extension proposal had been suggested in connection with an antiabortion amendment, or even with a noncontroversial amendment to provide for the Presidential succession or to make the marigold the national flower, this Congress would not have given it the time of day. But the lobbyists for the extension made it clear that they regarded a vote on extension as a vote on the ERA. Senators were told, "We know that if you're for women, you'll find a constitutional argument that will allow you to vote for the extension." And too many Senators who discussed this extension proposal were unable to confine themselves to its constitutional merits. Instead, they said how much they loved their daughters, and spent time refuting the idea the ERA would lead to co-ed restrooms and homosexuality in the schools. Those were not the issues.

Perhaps it is unfair to blame Senators and Congressmen from concerning themselves with the political aspects of the problem. They are legislators, and it is their job to vote for the result they think desirable for their constituents. But who will ensure that the proper constitutional procedures are followed? Traditionally, that is the function of the courts. Yet the extension proponents claim that the courts will not intervene in this case, even if Congress should act in a constitutionally questionable manner. They say it is a nonjusticiable "political question." Yet the precedents for such a view, which I shall discuss, are very weak; and the practical folly of it, the real danger of it, could not have been more vividly illustrated than by the

fact that when we should have been calmly and dispassionately analyzing the meaning of article V, we were instead worrying about restrooms and constituent pressures. I look forward to the day, and it is certain to come, when this issue will get the fair trial it deserves, in a tribunal whose job it is to adjudicate and not to legislate. I am confident that the U.S. Supreme Court will not shirk its responsibility to give article V of the Constitution a day in court.

IV. CONSTITUTIONAL MYTHOLOGY

As I have indicated before, Mr. President, the few constitutional arguments that were advanced for the extension resolution rested on a novel and flawed view of the amending procedure. It is a view in which Congress reigns supreme, performing the multiple roles of prosecutor, judge, jury and executioner.

Here are some of the elements of this Byzantine model of the amending process, some of the myths about the text and history of article V that have been thrown together especially for the purpose of this debate:

First, there is the myth that article V commits the final resolution of constitutional questions arising in the amending process to Congress. Some Members of Congress may even have operated under the impression that the text of article V contained such a grant of power. The following excerpt from the House subcommittee hearings illustrates this fact:

Ms. HOLTZMAN. Does Congress have to accept the ratifications by two-thirds vote?

Professor BLACK. Cetrainly not. No, indeed.

Ms. HOLTZMAN. Isn't that inextricably linked to the substance?

Professor BLACK. But the acceptance of ratification by Congress is not an article V power. It is not so stated. It is not in article V. As a matter of fact——

Ms. HOLTZMAN. Where is it?

Professor BLACK. It is not anywhere. There is no statement as to who accepts ratification. It is a matter of practice from time to time. And it has been changed from time to time.

* * * * *

Ms. HOLTZMAN. Profesor Black, surely there must be something in the Constitution that gives Congress the power to accept amendments?

Professor BLACK. If you say so, show it to me. If you say there is. I would think that would put the burden on you to tell me where it is. I don't happen to recall if there is a passage like that.

I don't have the whole thing memorized by heart, but I don't believe there is.

Ms. HOLTZMAN. So Congress has no constitutional power to determine whether ratifications have properly taken place, whether 38 States have ratified?

Other Members of Congress have suggested that Congress has an implicit right to resolve all constitutional questions in the amending process, despite the absence of any language in article V suggesting such a power. The only authority for such a congressional power is in the case of Coleman against Miller. That case was widely criticized, even at the time it came out, as confusing and internally inconsistent. Professor Orfield, the most widely recognized contemporary expert on the amending process, did not know what to make of it. The case, even if it can somehow be reconciled with commonsense and with the clear language of article V, does not have anything to do with extension. Nobody had ever suggested extension at the time. And since the holding of Coleman was that some cases arising out of the amending process, but not others, were nonjusticiable, it cannot be authority for anything outside its own facts.

Most important, Coleman has been implicitly overruled by much later and more reasoned Supreme Court decisions, including Baker against Carr and Powell against McCormack.

Powell is the strongest case. Adam Clayton Powell had been denied his seat in the House, and he sued the Speaker of the House and won, over the strong contention of his opponents that this was a "political question" on which the House could do anything it wanted and be immune to judicial review. The Court actually reversed the House's judgment on its own internal rules. Can it thus be seriously argued that the Court will close its eyes while Congress tampers with the very structure of the Constitution? I think not. And I think it unfair to continue citing Coleman as if it were a respected and undisturbed precedent.

The reasoning of Powell and of Baker leaves no room for the reasoning of Coleman. The Court will not shy away from an issue because it involves a possible conflict with Congress, or because Congress has done the allegedly unconstitutional action in the past, or because Congress has used nomenclature to make the appearance of doing something it has a right to do, while achieving a result it is otherwise prohibited from achieving. But Senator BAYH has said that Coleman is still good law because Powell distinguished it. That assertion, Mr. President, simply does not survive a careful reading of Powell. It is true that Coleman was one of a laundry list of old cases that Powell cited for the proposition that there are such things as political questions. But that was all. There was no discussion of Coleman, and no examination of its logic or its facts. You cannot read Powell and continue to hold the belief that the courts will blindly give effect to an unconstitutional act of Congress, on the strength of the "political questions doctrine." Yet that is what the proponents of extension would have us believe.

Another myth concerns the case of Dillon against Gloss. Contrary to what has been asserted, this case did not recognize any right in Congress to extend a ratification deadline. Dillon merely stated the obvious:

That Congress has the power to limit its own proposals, by imposing a reasonable time limit in the first place.

Dillon did not hold that Congress could come back, after 35 States had voted on its original proposal, and change that proposal without giving the States a chance to indicate whether they liked the change.

On the contrary, Dillon affirmed the concept that a "contemporaneous consensus" was needed for ratification. As such, the only importance that case has for the present debate is to underscore the right of each State to rescind its ratification—especially if the period is extended beyond the original 7 years.

Perhaps the newest and most creative myth to emerge from these proceedings is something called "Madison's Principle." Nobody had ever heard of "Madison's Principle" until just a few months ago, when the Assistant Attorney General of the United States unearthed a letter from James Madison to Alexander Hamilton, took it entirely out of context, misstated its conclusion, and elevated the remains into a sacred precedent.

What really happened was that New York was considering the adoption of the original Constitution. Some members of the New York legislature were concerned that the document contained no bill of rights, and they wanted to ratify the Constitution with the condition or proviso that a bill of rights be ratified by other States. Madison replied that such a conditional ratification would not be enough to make New York a member of the Union. That is all that happened.

Several points need to be made about Madison's letter: First, it did not even purport to interpret article V, the provision for constitutional amendments. Indeed, article V had not even been adopted. The New York Legislature was discussing the ratification of the Constitution itself, not of any amendment to it. Senator BAYH has suggested that what Madison thought about the adoption of the Constitution must have been the same as what he thought about the ratification of amendments. But that suggestion cannot stand in the face of the clear action of the framers when they wrote two different articles for the two different procedures—article V for amendments to the Constitution, and article VII for the adoption of the Constitution itself by the 13 original States. The two articles contain entirely different formulas and procedures, because they involve two entirely different situations. So even if Madison really had said that the States could not rescind, it would have had no bearing on article V, which is the only question before us today.

But even assuming for the sake of argument that Madison was talking about constitutional amendments, a close examination of his words tends to support the State right to rescind. What Madison said was that a conditional ratification is no ratification:

A reservation of a right to withdraw if amendments be not decided on . . . is a conditional ratification, that . . . does not make New York a member of the New Union, and consequently . . . she does not be received on that plan. Compacts must be reciprocal, this principle would not in such a case be preserved.

What Madison was saying was that if two parties to a compact ratify it with different thoughts in mind, there is no meeting of the minds, and so the compact is totally ineffective. Applying this reasoning to rescission and extension, if a State ratified in the erroneous impression that it could rescind—or on condition that the proposal expire in 7 years—

its ratification would be totally ineffective. Instead, the proponents of extension without rescission would have us believe that a conditional ratification would be absolutely valid, as though it contained no condition at all. This is simply not what Madison was saying. The proponents of an unfair extension should be ashamed to give Madison's name to their novel and meet-to-order "principle."

One of the biggest distortions concerns the so-called "historic precedent" of the 14th amendment. I think it is important to review what actually happened on that day in 1868, to show how weak the precedent really is. The reconstruction precedent is discussed in a comment in volume 37 of the Louisiana Law Review:

On July 20, 1868, Secretary of State William Seward announced that he had received documents from legislatures in at least three-fourths of the states purporting to certify ratification of the fourteenth amendment. He noted, however, that he had also received official notice that Ohio and New Jersey had withdrawn their consent to the amendment. Expressing his "doubt and uncertainty" as to the legality of these resolutions, he certified that if the Ohio and New Jersey ratifications were still in force, the amendment was valid as part of the Constitution.

On the following day, both houses of Congress passed a resolution declaring that three-fourths of the states, including Ohio and New Jersey, had ratified and that the amendment was part of the constitution. The record of the proceedings suggests bluntly that the Republican majority neither knew nor cared whether the Constitution gave states the right to rescind. The Senate passed the resolution without debate and without a roll-call vote. In the House, the entire debate appears to have lasted only a minute or two. A Massachusetts Republican moved to send the resolution, not to the Judiciary Committee, but to the Committee on Reconstruction. A Democrat protested that "it is an important question, and should go to the committee on the Judiciary." The Republican floor leader then indicated that his intention was to "pass it now," without any committee consideration at all. After some discussion of the idea of adding Georgia to the list (on the strength of a telegram in the possession of the Speaker which a Democrat suggested was a fabrication), the resolution was passed by a near-perfect party line vote. The Congressmen who voted that Ohio and New Jersey could not rescind were, virtually man for man, those who five months earlier had voted to impeach President Andrew Johnson for his refusal to obey unconstitutional orders.

It should be emphasized that this Congressional action was never tested in court. By the time the Supreme Court was called upon to construe the fourteenth amendment, in the 1873 *Slaughterhouse Cases*, four additional states had ratified the amendment so that ratification *vel non* by Ohio and New Jersey was a moot point.

Apparently, the resolution of the Reconstruction Congress was not regarded as an important precedent even by contemporaries. The discussion over including Georgia—whose ratification would have brought the total to three-fourths even without Ohio and New Jersey—suggests that the Republican leadership was not entirely confident the gambit would succeed. Moreover, two years later New York rescinded its ratification of the fifteenth amendment, and the Secretary of State did not certify the amendment as valid until enough states had ratified so that New York's action was moot. Shortly thereafter, the Senate twice rejected attempts to declare that no state might rescind its ratificaton of any future amendment.

The Justice Department, and the Assistant Attorney General in particular, have done yeoman service in the creation and promulgation of tall stories about the amending process. In addition to "Madison's Principle," the Assistant Attorney General's memorandum to the House subcommittee contained the following language:

However, the 92d Congress did not put a time limit in the text of the ERA but rather stated in the proposing resolution that the States should have at least 7 years to consider ratification of the amendment.

The fabrication, out of whole cloth, of the words "at least," gives one a bit of the flavor of the Justice Department's approach. Of course, the Assistant Attorney General posed not as an advocate of the administration's position on the ERA, determined to get it through whatever the effect on the integrity of the amending process, but as a counselor, whose role is "not to discuss the merits of the proposed extension but rather to provide whatever legal advice I can regarding the constitutional issues raised by this resolution."

The national press subsequently reported that the Justice Department had "ruled" that Congress could extend and that States could not rescind. I suppose that after we pass this resolution, there will be reports that Congress has "ruled" about extension and rescission. But, of course, the Assistant Attorney General and the Congress cannot "rule" anything about the Constitution. As Professor Black put it when he spoke to the House subcommittee, "Congress has the right to say anything it wants to, but the question is whether the Supreme Court should give effect to what they say, as it is with all questions of constitutionality of acts of Congress."

All of these myths are part of the central fallacy that this is a matter resolved by precedent, so that Congress need not consider the constitutionality or fairness of what it is doing. Mr. President, there are no precedents here. And the only thing that can be said about the weak and illogical precedents that have been advanced is what the Supreme Court said in Powell against McCormack:

That an unconstitutional action has been taken before surely does not render that same action any less unconstitutional at a later date. . . . The relevancy of [such] cases is limited largely to the insights they afford in correctly ascertaining the draftsmen's intent. Obviously, therefore, the precedential value of these cases tends to increase in proportion to their proximity to the Convention in 1787.

The advocates of extension have cited a few isolated incidents that began with the reconstruction. Those precedents, if anything, show why even more concern for fairness and constitutionality is needed when we are dealing with the Constitution than with ordinary legislation, and why there is a pressing need for judicial review of congressional actions that affect the structure of the Constitution.

The political branches, Congress and the executive, have shown what they can do when they go about making rules of constitutional law. Now it is time for the judicial branch to straighten out the mess we have made, to restore some fairness and logic and certainly to the amending process.

V. THE STATE RIGHT TO RESCIND

I cannot emphasize too strongly, Mr. President, that this resolution does not affect in any way the State right to rescind ratification of proposed constitutional amendments. That right exists. It is a necessary conclusion from the concept of "contemporaneous consensus" of which Hamilton spoke in the Federalist No. 85, and which was affirmed by the Supreme Court in Dillon against Gloss. And it flows from pure fairness and common sense. If you have 38 States that have indicated their consent to a proposal, and four that have withdrawn, then you have a "consensus" of only 34. That is not enough.

The Senate rejected my amendment, which would have reaffirmed the right to rescind, as a limitation to mitigate the unfairness of rescission. But if there is an absolute right to rescind, flowing from the constitutional requirement of consensus, then nothing we do here can detract from that right.

Yet the opponents of my amendment did not base their opposition on the absence of a state right to rescind. I quote Senator BAYH:

Anyone listening to my voice or anyone else's voice who is responsibly debating this on the other side of this issue has to have heard us say that we do not know what the answer to this is, that the proper time to decide is after the necessary three-fourths of the States have ratified.

It was by appealing to the Senate to be "neutral" on the question of rescission that Senator BAYH ably persuaded 54 Members of this body to reject my amendment:

I do not see how the rescission effort is going to be blunted in any way by a neutral action here when it has not been blunted by specific legal advice to the contrary up to now.

Those are the words of Senator BAYH. And I agree that the rescission effort should not be blunted, for it is a just and good effort.

The right to rescind has long had the support of thoughtful scholars. In 1942, Prof. Lester Orfield wrote the definitive treatise on the amending process. In "Amending the Federal Constitution," Professor Orfield indicated that the right to rescind was fair and logical:

Ratification by less than three-fourths of the states is ineffectual. Such is the theoretical approach. But there are even stronger practical arguments. It is more democratic to allow the reversal of prior action. A truer picture of public opinion at the final date of ratification is obtained. No great confusion is likely to result from such a rule. Not to allow reversal of an acceptance may cause a cautious legislature not to act.

Moreover, Professor Orfield, writing only a few years after the Coleman decision—the major "precedent" cited by opponents of rescission, although its fact had nothing to do with rescission—largely discounted the effects of that case, and concluded that "there has as yet been no test of the finality of a ratification."

Prof. Charles Black, who of all the eminent constitutional scholars invited

to speak before the House subcommittee, was the only one who had previously published anything about the amending process, strongly supports the right to rescind. He calls the view that an affirmative vote cannot be reconsidered, but that a negative vote can be reconsidered time and time again, a "silly lobster-trap" model of the amending process.

Senator Sam Ervin, a former Member of this body who has long been respected for his sincerity and erudition in constitutional law, believes strongly in the right to rescind.

But that is not all. Outside the context of the ERA controversy—that is, when they were able to separate the constitutional question from the desirability of a particular amendment—the Senate unanimously passed a bill that recognized a State right to rescind. The vote was 84 to 0. That was in 1971. The report of the Judiciary Committee—signed by Senator BAYH, among others—strongly endorsed the right to rescind:

> The question of whether a State may rescind an application once made has not been decided by any precedent, nor is there any authority on the question. It is one for Congress to answer. [Note that this statement deals with an application of a state for a Constitutional convention.] Congress previously has taken the position that having once ratified an amendment, a State may not rescind.
>
> The committee is of the view that the former ratification rule should not control this question and, further, should be changed with respect to ratifications. Since a two-thirds consensus among the States in a given period of time is necessary to call a convention, obviously the fact that a State has changed its mind is pertinent—An application is not a final action. It merely registers the State's views. A State is always free, of course, to reject a proposed amendment. On these grounds, it is best to provide for rescission. Of course, once the constitutional requirement of petitions from two-thirds of the States has been met and the amendment machinery is set in motion, these considerations no longer hold, and rescission is no longer possible. On the basis of the same reasoning, a State should be permitted to retract its ratification, or to ratify a proposed amendment it previously rejected. Of course, once the amendment is part of the Constitution this power does not exist.

The current struggle illustrates the unfairness of denying the right to rescind. Thirty of the thirty-five States that ratified the ERA did so in 1972 or 1973. Since then there have been five additional ratifications—and four rescissions. The ERA was aging gracefully toward a peaceful death when the ratifications that had not been rescinded would expire according to their own terms. Now this has been cast into doubt. There is a greater incentive than ever for States that no longer support the ERA to take affirmative action to indicate their rejection. Before today, there was perhaps no need for that. But Congress has left the States with no choice.

Senator BAYH and others are of the opinion that some future Congress, the Congress that is sitting when there are 38 ratifications by the most inflated count, will be the ultimate tribunal to rule on whether the rescissions are valid. I personally believe the Supreme Court will rule. In either case, one rescission should be enough, because if there are 38 ratifications and one rescission, there is no "contemporaneous consensus" of 38 States. But suppose there are 12 rescissions. Suppose there are 20. If there are only four or five, then perhaps Senator BAYH's future Congress could ignore them, by saying that they are from small and unimportant States, or that ERA opponents distorted the issues, or that we simply love our wives and daughters enough not to quibble over a few States. But what about 20 rescissions? Would Congress declare an amendment adopted that had only 18 States currently endorsing it? And would the Supreme Court close its eyes and give effect to such a declaration? I think not.

So the message to the States is clear. Rescission is not only permissible; after today, it may be the only way to avoid being counted as part of a trumped-up "consensus." Under Senator BAYH's theory or my own, a State that wants out of that nonexistent consensus should signal that intention immediately by rescinding its ratification of ERA.

VI. ONE EXTENSION DESERVES ANOTHER

Finally, Mr. President, I point out that we are about to vote on this resolution; 10 days ago, before the debate had even begun, we set an arbitrary time for the vote. Yet the issue is still alive. There is more feeling, pro and con, on this resolution today than ever before. Why cut off the debate at some arbitrary point?

Mr. President, I propose that we go ahead and hold the vote this morning. Give every Senator 15 minutes to make up his or her mind. But at the expiration of that 15-minute period, do not just shut off the debate. Instead, I suggest that the "no" votes on this resolution—those of us who will vote against the resolution because we do not feel it is fair—be considered final and binding on the Senators who cast them. I have worked very hard in trying to oppose this resolution, and I think it is important. I would like to continue the debate. So I propose that after the vote, I be granted an additional 2 weeks to try to get Senators who voted "yes" to change their minds.

Some may ask why I am proposing that only one side be given the chance to change their minds. The answer is simply that I want to win. I want all votes on my side locked into place, and we will work on Senator BAYH's side for 2 weeks to try to change them.

There must be some moment of finality to this whole rollcall process, and I think it should be after I have won. That is when we will cut it off. So when a Senator finally sees the light and votes my way, his decision-making power lapses. But that is no reason to shut off the debate altogether. After all, what is fair is fair.

Obviously, I say this with tongue in cheek, but I think it makes my point. That is what I have been trying to accomplish in behalf of the Constitution of the United States during the last 2 weeks.

Mr. President, I yield the final 5½ minutes of my time to the distinguished Senator from Virginia.

Mr. SCOTT. I appreciate the Senator from Utah yielding to me.

Mr. President, there is no doubt in my mind that every Member of the Senate wants equal rights for women—in the field of employment opportunities, in salaries, in promotion. They believe in the concept of equal pay for equal work. That is where the discrimination is against women.

However, there is no precedent for extending the time for a constitutional amendment.

It has never been done before. Doubt arises regarding the meaning of the language that is in this resolution that is before us. It could include sending women into the front line in combat in infantry positions. It could remove the traditional control of the States over marriage and divorces. It could tend to legitimatize homosexual marriages, male and male, female and female. That sounds a little ridiculous to us, if we just think of it out of context, and yet we know that there are people who will take such cases into court and say there can be no discrimination of any kind on the basis of sex.

There is also doubts regarding the procedure that could lead to further judicial encroachment into the legislative field. The proponents would pass this joint resolution by a majority vote. They would not have it signed by the President. If we look at article I, section 7 of the Constitution we find that all regular bills and resolutions are signed by the President. Then if we look at article V, that is the amending article, it provides that there shall be a two-thirds vote of each House of Congress on constitutional amendments. Neither of these provisions of the Constitution are being followed. It was not reported by the Subcommittee on the Constitution which held hearings on the matter. It was not considered by the full Judiciary Committee. We do not even have a Senate measure before us. It is a House resolution that was brought in before us under very unusual procedure.

Mr. President, we are asking that there be court interpretations of the things that the House of Representatives and the Senate should pass upon.

It would be preferable in my judgment to defeat this resolution and pass a revised constitutional amendment, properly worded and pass it by two-thirds vote. I believe it could be ratified within a year's time, as most of our constitutional amendments are ratified.

Mr. President, if there is any time remaining I reserve it.

The PRESIDING OFFICER. Who yields time?

Mr. BAYH. Mr. President, I yield myself just 30 seconds to say that I concur with the Senator from Virginia. If the courts do rule on this issue, I hope the courts look at the procedure and I hope the courts will look and understand that the reason that measure did not come out of the Judiciary Committee was because of the position of the Senator from

Virginia where he, as one man, was in a position to use his rights, which is certainly his right to keep that bill in committee and I hope that the court weighs the rights of one U.S. Senator against the rights of about 110 million women. And I think we know how the scales of justice are weighing those rights.

Mr. SCOTT. Mr. President, will the Senator yield very briefly?

Mr. BAYH. I only had 30 seconds.

The PRESIDING OFFICER. The Senator from Virginia has 2 minutes remaining.

Mr. SCOTT. Is it not a fact that had the Subcommittee on the Constitution considered it, it would have been a 3-to-3 vote? The Senator knows this. I know it. So do not blame one man. Blame two men and one woman.

Mr. BAYH. The Senator would not have had to put it in the subcommittee, but when it got in the full committee he knows very well, he said he is going to take advantage of his rights. I do not criticize him for doing that. But in looking at why we are here now without following what he described as the normal committee process, we are using the rules of the Senate which make it possible for us to avoid one person or two people or three people, a small minority of the people from blocking the wishes of the majority.

Mr. SCOTT. The Senator is entirely right that I would have attempted to do this, but I do not recall saying that I would have.

Several Senators addressed the Chair.

The PRESIDING OFFICER. Under the previous order the Senator from Indiana is recognized for not to exceed 15 minutes.

Mr. BAYH. Mr. President, I yield 2 minutes to our distinguished colleague from Michigan who has been such a force in this effort to get equal rights for women and men.

Mr. RIEGLE. I thank the Senator for yielding. I briefly wish to make a few points.

First, I commend the Senator from Indiana for his really astonishing leadership under the most trying circumstances in bringing this issue through today and hopefully to a successful vote in just a matter of minutes.

I also commend Senator HUMPHREY for her leadership and for the really exquisite statement that she also made today in behalf of this extension.

What we seek here is only equal justice under the law, in Federal laws and in State laws. Those who say we should use the 14th amendment should know that we have not been successful in using the 14th amendment. We need something that can address the intricacies of the law. There are 800 differentiations on sex alone in the Federal Code, and tens of thousands of differentiations in the 50 States laws that have to be set right. We can do that in one blow with the equal rights amendment.

It is interesting with respect to a time limit. There was no time limit on the women's suffrage amendment, and that to me is the closest parallel to the equal rights amendment today. In fact, there should not even be a time limit on the ERA in my judgment.

If we are successful at 10 a.m. with our vote I say to those within earshot who care about equal rights that we must take this new time period, if it is granted, and go to work immediately in all of the 15 States that remain. It is going to be essential that we get those remaining three States and we get them as quickly as possible.

The kind of obstruction and misrepresentation and the kind of phony arguments that have been raised over the last 7 years will continue to confront us. I think it is essential that we not lose a moment's time in going out and using this extension to get this job done and to see to it that the women of the country are elevated from second class citizenship to exactly the same footing under the law that men have enjoyed for 200 years. Then we can do down the road together, men and women alike, having the same laws, protections, guarantees, and opportunities available without regard to sex.

So I hope that when we call the roll very shortly, we will have a strong vote in favor of extension which ultimately means a vote for equal justice under the law.

The PRESIDING OFFICER. The Senator from Indiana.

Mr. BAYH. I yield 1 minute to the distinguished Senator from Montana.

The PRESIDING OFFICER. The Senator from Montana.

Mr. PAUL G. HATFIELD. Mr. President, as I said in my earlier statement urging the rejection of the Senator from Utah's (Mr. GARN) amendment, none of us has—nor can any of us have—an accurate notion as to whether the foray we are about to take into uncharted constitutional territory will be subject to judicial review. Will the line of cases ending with Coleman against Miller 40 years ago, on point with respect to the article V amending process, rule, or will more recent general pronouncements on the justiciability of "political questions," represented by Baker against Carr and Powell against McCormack, prevail? Both sides have made respectable arguments for either proposition.

Like my friend, the distinguished Senator from Arkansas (Mr. HODGES), I have satisfied myself that the lesson all the precedents teach us is that the decision to extend is ours, and ours alone. We must decide. If any aspect of our action today—presuming that the question on the resolution is answered affirmatively—will likely be the subject of judicial review for constitutionality, it will occur on the issue of reasonableness; that is, is the basis for our decision to extend the period for ratification rational, taking into account all relevant factors? I say this, because there was no clear majority of the Supreme Court on this very question in Coleman.

On that question, the opinion of Mr. Chief Justice Hughes in the Coleman case leaves us a valuable legacy of guidance. Citing with approval the Court's holding in Dillon against Gloss, that Congress had the power to fix a reasonable time for ratification, the Court said:

> Where are to be found the criteria for such a judicial determination (of reasonableness)? None are to be found in Constitution or statute. In their endeavor to answer this question petitioners' counsel have suggested that at least two years should be allowed; that six years would not seem to be unreasonable long; that seven years had been used by the Congress as a reasonable period; that one year, six months and thirteen days was the average time used in passing upon amendments which have been ratified since the first ten amendments; that three years, six months and twenty-five days has been the longest time used in ratifying. To this list of variables, counsel adds that "the nature and extent of publicity and the activity of the public and of the legislatures of the several States in relation to any particular proposal should be taken into consideration." *That statement is pertinent, but there are additional matters to be examined and weighed. When a proposed amendment springs from conception of economic needs, it would be necessary, in determining whether a reasonable time had elapsed since its submission, to consider the economic conditions prevailing in the country, whether these had so far changed since the submission as to make the proposal no longer responsive to the conception which inspired it or whether conditions were such as to intensify the feeling of need and the appropriateness of the proposed remedial action. In short, the question of a reasonable time in many cases would involve, as in this case it does involve, an appraisal of a great variety of relevant conditions, political, social and economic * * * [T]here conditions are appropriate for the consideration of the political departments of the Government. The questions they involve are essentially political and not justiciable. They can be decided by the Congress with the full knowledge and appreciation ascribed to the national legislature of the political, social and economic conditions which have prevailed during the period since the submission of the amendment.* 307 U.S. 433, 453–54 (emphasis supplied).

It would be well for us, then, to apply our "full knowledge and appreciation . . . of the political, social and economic conditions which have prevailed during the period since the submission of the amendment." At the outset, it has been made abundantly clear that, in fixing a reasonable time for extension initially in House Joint Resolution 208, this body quite properly made no effort to foretell those conditions; that is a burden which rests exclusively with the Congress which will review ratification certificates. Rather, the only observations which were offered at the time is that a 7-year ratification period was "customary" and "proper," because it carried the Court's imprimatur of "reasonableness in Dillon, and that the amendment should not be hanging over our head (sic) forever."

What have the prevailing conditions been in our land since the submission of the amendment? Have they so far changed since that time as to make the proposal no longer responsive to the conception which inspired it, or are conditions such as to intensify the feeling of need and the appropriateness of the proposed remedial action?

Is the equal rights amendment politically alive? Have the feelings of need and appropriateness intensified in the last 6½ years? I ask my colleagues to look up from this Chamber into its crowded galleries at the multicolored buttons and banners variously proclaim-

ing and denouncing its merits. The controversy already generated by this amendment shows no signs of immediate abatement.

Have conditions so changed in the realm of electoral politics as to pale the apparent need for the equal rights amendment? Look about again. The distinguished Senators from Minnesota (Mrs. HUMPHREY) and Alabama (Mrs. ALLEN) will be absent when this body is next convened, and the prospects for even an equal number of their gender in the 96th Congress are remote here. It has already been noted by the Senator from Massachusetts (Mr. KENNEDY) that women, now 53 percent of all registered voters, are woefully underrepresented at all levels of government.

Is it still a viable proposition that uniform economic and social parity for women cannot be achieved reasonably without a prohibition on sex-based discrimination integrated into the supreme law of the land? The distinguished floor manager of this resolution, the Senator from Indiana (Mr. BAYH), has carefully documented already the fact that women, a statistical majority in both the population and the workforce, still work in jobs for which they are demonstrably overqualified for lower wages and salaries than their male counterparts. This body has been embarrassingly reticent to take up the Lee Metcalf fair employment practices resolution, and the other body seems even more shy.

Leaving these observations aside, one need look no further than the recent progress of the law in eradicating discrimination based on sex. Over 100 years of litigation challenging sex discrimination as violative of the equal protection clause of the 14th amendment, outside the environs of Federal enforcing legislation, has been largely ineffective. Applying the "rational basis" test to various State statutes of a patently discriminatory nature, the Supreme Court, on several occasions through that period, upheld them as a reasonable means of effecting the States' purpose in protecting women so that they may carry out their marital and maternal functions. In 1873, the Court upheld Illinois' right to deny women a license to practice law, *Bradwell* v. *State*, 83 U.S. 130. Concurring in that decision, Justice Bradley stated:

> Man is, or should be, woman's protector and defender. The natural and proper timidity and delicacy which belongs to the female sex evidently unfits it for many of the occupations of civil life. The constitution of the family organization, which is founded in the divine ordinance as well as the nature of things, indicates the domestic atmosphere as that which properly belongs to the domain and functions of womanhood. The harmony, not to say identity, of interests and views which belong, or should belong to the family institution is repugnant to the idea of a woman adopting a distinct and independent career from that of her husband * **
>
> * * * The paramount destiny and mission of woman are to fulfill the noble and benign offices of wife and mother. This is the law of the Creator. 83 U.S. at 141.

In separate decisions, the Court upheld the right of Oregon and New York to preclude women from working in restaurants and similar establishments beyond daylight hours, for essentially the same reasons, *Muller* v. *Oregon*, 208 U.S. 412 (1908), and *Radice* v. *New York*, 264 U.S. 292 (1924). Just 30 years ago, the Court ruled that Michigan could prohibit women from tending bar unless they were the wives or daughters of male owners, *Goesaert* v. *Cleary*, 335 U.S. 464 (1948).

Progress in eliminating sexual discrimination after Federal civil rights enactments has been spotty, at best. Forty years after women's suffrage became the law of the land, the Supreme Court upheld the constitutionality of a Florida statute exempting women from jury service, *Hoyt* v. *Florida*, 368 U.S. 57 (1961), a ruling which survived until just 3 years ago, *Taylor* v. *Louisiana*, 419 U.S. 522 (1975). In 1963 and 1964, Congress passed the Equal Pay Act and title VII of the Civil Rights Act to eliminate wage discrimination based only on sex and forbidding private employers from discriminating on the basis of race, color, religion, sex, or national origin. Two cases decided early in this decade seemed to demonstrate a change in the Court's attitude toward sex discrimination and the strictures of the 14th amendment, *Reed* v. *Reed*, 404 U.S. 71 (1971), and *Frontiero* v. *Richardson*, 411 U.S. 677 (1973), to the point where the plurality opinion in Frontiero attempted to make sex a suspect classification, subject to strict judicial scrutiny, as it had done in cases of discrimination based on alienage, voting, national origin, and race, years before. The Court relied only on its decision in Reed, however, stating that it was reluctant to establish a stronger standard for review, since the equal rights amendment had been proposed, was still pending and, if ratified, would resolve the issue, 411 U.S. 677, 692 (Powell, J., concurring; emphasis supplied). Further retreat occurred the following year when the Court returned to the rational basis test to uphold a "for widows only" property tax exemption, *Kahn* v. *Shevin*, 416 351 (1974) and again in 1975, when a Federal statute guaranteeing female military officers 13 years of commissioned service before a mandatory discharge for want of promotion, males similarly situated being limited to 9 years, was held to be constitutional, *Schlesinger* v. *Ballard*, 419 U.S. 498 (1975). In its most recent sex discrimination ruling based solely on the equal protection clause, the Court sustained a California State employee disability plan which excluded pregnancy-related disabilities from compensable benefits, *Geldulding* v. *Aiello*, 417 U.S. 484 (1974).

Confusion and controversy resulted from the Court's decision in *General Electric Co.* v. *Gilbert*, 429 U.S. 125 (1976), wherein the majority reviewed previous 14th amendment sex-discrimination cases, specifically Geldulding, the language and its perception of the legislative intent of title VII, and the Equal Employment Opportunity Commission's implementing guidelines, and ruled that the petitioner's employee disability benefit plan which excluded benefits for absence due to pregnancy and childbirth, while permitting sterilization benefits, did not per se constitute a violation of title VII. Stating that the case involved not men versus women but pregnant women versus nonpregnant "persons," the Court reasoned that, since discrimination based on pregnancy is not one based on gender and since title VII applies only to discrimination based on gender, title VII does not apply to discrimination based on pregnancy. The clear implication is that the Court believes that sex discrimination under title VII can occur only when all persons disadvantaged by discriminatory treatment based on a "sex-unique characteristic," such as pregnancy, are of one sex and all advantaged persons are of the other. The fact that Congress had something else in mind is evidenced by the introduction of legislation in both Houses of this Congress to overrule Gilbert.

As one Commissioner has noted, the ramifications of Gilbert are frightening:

> Today, with a greater dependency on women as a means of financial support, the Gilbert decision places the families of such women in serious economic jeopardy should they become pregnant and have to leave work without disability compensation. Therefore, such a decision may serve to either discourage working women, who cannot afford the loss of income, from becoming pregnant or encourage them to resort to an early termination of their pregnancies.

Mr. President, I ask unanimous consent that a casenote from the John Marshall Journal of Practice and Procedure by Marcia Lynn Cohen entitled, "*General Electric Co.* v. *Gilbert*: The plight of the working woman," 11 John Marshall J. 215 (1977), be printed in full in the RECORD at this point as a part of my remarks.

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

GENERAL ELECTRIC COMPANY V. GILBERT: THE PLIGHT OF THE WORKING WOMAN

Historically, the legislative and judicial branches of the government have been faced with the problem of defining the role of women in society and determining whether certain practices by states and private employers constitute sex discrimination. In the late nineteenth and early twentieth centuries, sex discrimination cases arose under the equal protection clause of the fourteenth amendment.[1] These cases involved state legislation concerning the unequal treatment of men and women in their choices of profession,[2] employment[3] and hours.[4] In deciding these cases the Supreme Court applied the fourteenth amendment rational basis test and concluded that the state's purpose in protecting women so that they may carry out their maternal functions justified the legislation.[5]

In 1920 a significant change in favor of women's rights came about with the passage of the nineteenth amendment giving women the right to vote.[7] However, social attitudes toward women have been slow to change. As late as 1961 the Supreme Court was still using the protective rationale of the earlier twentieth century cases when it upheld a

Footnotes at end of article.

Florida statute exempting women from jury service.[8]

In 1963, Congress began taking positive steps to combat sex discrimination by passing the Equal Pay Act as part of the Fair Labor Standards statute.[9] This provision outlawed sex discrimination in the payment of wages to employees performing jobs requiring equal skill and responsibilities under similar conditions. In 1964, Congress passed Title VII of the Civil Rights Act which stated that a private employer could no longer discriminate on the basis of race, color, religion, sex or national origin,[10] unless such discrimination was based on a bona fide occupational qualification.[11]

Following the congressional acts of the sixties, the Supreme Court's decisions in *Reed v. Reed* [12] and *Frontiero v. Richardson* [13] demonstrated a change in the Court's attitude toward sex discrimination under the fourteenth amendment.[14] In *Reed*, the Court held that a classification based on sex must bear a "fair and *substantial* relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike." [15] The plurality opinion in *Frontiero* attempted to carry this a step further by finding sex to be a suspect classification subject to strict judical scrutiny [16] but failed to do so because the concurring opinion maintained that as long as this case could be decided on the basis of *Reed*, strict scrutiny was not necessary.[17] However, in one of the most recent fourteenth amendment cases concerning sex discrimination, *Geduldig v. Aiello*,[18] the Court seemed to be slowing its pace in eliminating unequal treatment between men and women.

In *Geduldig*, the Supreme Court held that a California state disability plan which excluded pregnancy-related disabilities did not constitute a violation of the equal protection clause of the fourteenth amendment. Following *Geduldig*, several lower courts reviewed private employment disability plans which excluded pregnancy under Title VII.[19] In contrast to *Geduldig*, these courts held that the disability plans constituted sex discrimination in violation of Title VII, distinguishing *Geduldig* on the ground that it was a fourteenth amendment case.[20] It was in view of this conflict that the case of *General Electric Co. v. Gilbert* [21] came before the Supreme Court.

FACTS AND FINDINGS OF THE LOWER COURTS

Seeking both declaratory relief and damages, Martha Gilbert and other female employees of defendant General Electric Company [22] brought a class action [23] arising out of defendant's refusal to provide them with disability benefits for absence due to pregnancy and childbirth.[24] The insurance plan under attack provided nonoccupational sickness and accident benefit payments for a wide range of disabilities; however, disabilities relating to pregnancy, miscarriage and childbirth were excluded.[25]

The district court held that the exclusion of pregnancy-related disabilities was "sex-discrimination" in violation of Title VII, and the relief prayed for was granted.[26] The Fourth Circuit Court of Appeals affirmed the district court holding.[27] On appeal, the Supreme Court granted certiorari [28] to resolve the question as to whether the exclusion of pregnancy-related disability benefits constituted sex discrimination in violation of Title VII.

GILBERT IN THE SUPREME COURT

In an opinion written by Justice Rehnquist, the Supreme Court reversed the holding of the lower courts and held that the exclusion of pregnancy-related disabilities from a disability plan is not sex discrimination and therefore not a violation of Title VII.[29] In reaching its holding, the Court was faced with determining what Congress intended the term "sex discrimination" to mean under Title VII. The Court began by considering Title VII on it face [30] and the legislative history surrounding its enactment.[31] Finding no definition of sex discrimination in either source, the Court looked to the guidelines promulgated by the Equal Employment Opportunity Commission [32] and the cases and concepts concerning sex discrimination under the fourteenth amendment. One of the cases under the fourteenth amendment that the Court considered was *Geduldig* v. *Aiello*.[33]

Geduldig, a group of women attacked a California statutory disability insurance plan. They contended that since the plan did not include coverage of pregnancy-related disabilities, it violated their rights under the equal protection clause of the fourteenth amendment. The Supreme Court took the view that such under-inclusiveness was not a denial of equal protection. The Court reached this conclusion by finding that the plan promoted legitimate state interests.[34] Furthermore, the Court concluded that the state's exclusion of pregnancy from its health plan did not amount to invidious discrimination under the equal protection clause of the fourteenth amendment.[35]

Analysis

The Supreme Court in *Gilbert* initially noted that *Geduldig* was relevant not only because it was a sex discrimination case, but also because of its similar factual situation.[36] In addition, the Court stated that in *Geduldig* it had held that there was no sex discrimination and that as a result it had been unnecessary to determine which fourteenth amendment standard of review to use. Therefore, although *Geduldig*, unlike *Gilbert*, was a fourteenth amendment case, the Court reasoned that *Geduldig* was directly on point since it is only a finding of sex-based discrimination which is necessary to prove a violation of Title VII.[37]

Sex discrimination and the concept of sex-unique characteristics

In reaching its holding, the Supreme Court in *Gilbert* relied particularly on "footnote 20" from *Geduldig*.[38] "Footnote 20" stated in part that, "[w]hile it is true that only women can become pregnant, it does not follow that every legislative classification concerning pregnancy is a sex-based classification like those considered in *Reed* and *Frontiero*." [39] Essentially, "footnote 20" distinguishes between the situation where men and women are treated differently because of sex alone, as occurred in *Reed* and *Frontiero*,[40] and the situation where a difference in treatment is based on a sex-unique [41] characteristic. The concept of sex-unique characteristic is defined as a distinction made affecting only men or only women because of some unique physical characteristic possessed only by one sex,[42] such as pregnancy in women or beard growth in men.[43] The distinction made in "footnote 20" is crucial to the decision in *Gilbert* and presents the problem confronted by the Court in determining whether differences based on the sex-unique characteristic of pregnancy constituted sex discrimination in violation of Title VII. Quoting from "footnote 20," the Court stated that the situation in *Gilbert* is not a case involving men versus women but pregnant women versus nonpregnant persons.[44] This implies that sex discrimination under Title VII can only occur when all disadvantaged persons are of one sex and all advantaged persons are of the other.[45]

Thus, the Court reasoned that since discrimination based on pregnancy is not one based on gender and since Title VII applies only to discrimination based on gender, then Title VII does not apply to discrimination based on pregnancy.[46] The Court therefore construed the congressional intent as to the meaning of sex discrimination under Title VII to exclude distinctions based upon the sex-unique characteristic of pregnancy.[47]

Discriminatory effect

The Court in *Gilbert* did not end its analysis by showing that there was no sex discrimination *per se* on the face of General Electric's plan. Instead, it looked to another portion of "footnote 20" which stated that discrimination may also be shown if the "distinctions involving pregnancy are mere pretexts designed to effect an invidious discrimination against members of one sex or the other." [48] However, since pregnancy is significantly different from other disabilities covered by General Electric's plan, the *Gilbert* Court found that the exclusion of pregnancy-related disability benefits was not a pretext for discriminating against women.[49]

In reemphasizing the fact that *Gilbert* was a Title VII action, the Court stated that a prima facie violation of the Title is established by proof that a facially neutral classification has a discriminatory effect on a particular group.[50] Even absent proof of intent to discriminate, the Court stated that a violation of Title VII is proven if the effect of such a classification is found to be discriminatory.[51] On this point the Court concluded that the burden of showing discriminatory effect had not been sustained.[52] The Court reasoned that in light of the fact that the same fiscal and actuarial benefits accrued to both men and women from General Electric's plan, that since both sexes were equally protected for the same risks and since the plan was not worth more to men than to women, no gender-based discriminatory effect had been shown, and therefore there was no violation of Title VII.[53]

From a different perspective, the dissent approached the question of discriminatory effect by categorizing General Electric's plan into three sets of effects.[54] First, the plan covered all disabilities mutually affecting men and women. Second, all disabilities that were male-specific or predominantly affected males were covered. Third, disabilities which were female-specific or which predominantly affected females were covered, except pregnancy. This dissent stated that the majority focused its analysis on the first category and therefore the finding of a lack of discriminatory effect was understandable. However, the dissent found that in light of the coverage of all male-specific disabilities, the exclusion of pregnancy showed a discriminatory effect on women.[55]

The Court summarized its findings by stating that sex discrimination had not been shown by the terms of General Electric's plan or by its effect.[56] It stated that had such discrimination as defined in *Geduldig* been established or had discriminatory effect been shown, a violation of Title VII would have existed.[57] However, the Court in *Gilbert* could not end its search for the meaning of sex discrimination under Title VII without considering the guidelines promulgated by the Equal Employment Opportunity Commission.

The role of the Equal Employment Opportunity Commission guidelines

The Equal Employment Opportunity Commission was the agency created under Title VII [58] for the general purpose of preventing employers from participating in any unlawful employment practices in violation of the Title.[59] The Commission was given the authority to issue procedural regulations and guidelines in order to carry out the provisions of Title VII.[60]

The Court looked specifically to the provisions of the *Guidelines on Discrimination Because of Sex* issued by the EEOC in April 1972, which stated that pregnancy was a temporary disability and should be treated as such under an employment disability

Footnotes at end of article.

plan.[61] The Court decided that although the guidelines were not to be given "great deference" [62] in determining legislative intent, they were entitled to at least some consideration.[63] The Court adopted the classical rule in *Skidmore* v. *Swift & Co.* [64] as the standard to employ in deciding how much consideration should be given to the EEOC guidelines. In *Skidmore*, the Court held that administrative rulings and interpretations were not controlling upon the courts, although they may be resorted to for guidance.[65] The weight to be given these agency pronouncements "will depend upon the thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade, if lacking power to control." [66] In applying the *Skidmore* standard, the Court noted in a 1966 opinion letter issued by the General Counsel of the EEOC which stated that an "employer who excludes from its long-term salary continuation program those disabilities which result from pregnancy and childbirth would not be in violation of Title VII." [67] The Court reasoned that since this letter was inconsistent with the 1972 guidelines, the guidelines should be accorded little weight in determining congressional intent as to the meaning of sex discrimination.[68]

The Court further noted that the guidelines should carry less weight because they were enacted almost eight years after Title VII.[69] However, in his dissent, Justice Brennan strongly attacked this contention by stating that the length of time before issuance shows that, at the very least, the 1972 guidelines represented "a particularly conscientious and reasonable product of EEOC deliberations." [70] In Justice Brennan's view the guidelines therefore should be given great deference.[71]

The Court also specifically looked to that portion of Title VII's legislative history which discussed the Equal Pay Act and found an indication of congressional intent contrary to that which was promulgated in the EEOC guidelines.[72] The Court relied on a Senate amendment to Title VII to the effect that it was not unlawful for an employer to differentiate upon the basis of sex in determining the amount of wages or compensation to be paid if it is authorized by the Equal Pay Act.[73] The Equal Pay Act has been interpreted by the Wage and Hour Administrator to mean that even if an employer makes unequal benefit fund contributions based on sex, for employees of opposite sexes, it does not violate the Act if the resulting benefits are equal for all employees.[74] The Court's finding of a consistency between the amendment and the interpretations of the Wage and Hour Administrator was construed as showing a clear legislative intent that not all unequal treatment between sexes is sex discrimination.[75] Since this was contrary to the EEOC guidelines, the Court decided that the guidelines should not be followed.[76]

The Court's conclusion that the EEOC guidelines were not indicative of congressional intent lends further support to its decision that Congress did not intend Title VII to include distinctions between men and women based upon the sex-unique characteristic of pregnancy. The *Gilbert* Court's holding that the exclusion of pregnancy-related disabilities from General Electric's disability insurance plan did not constitute sex discrimination in violation of Title VII presents interesting implications for the future of the working woman and Title VII.

THE IMPLICATIONS OF THE GILBERT DECISION

As a result of the Supreme Court decision in *Gilbert*, Congress and various other interested parties have taken positive steps to negate its effects. For instance, the EEOC decided to stand firm in its position that the denial of pregnancy-related disability payments from an insurance plan constitutes sex discrimination in violation of Title VII.[77] In like manner, the New York Court of Appeals held that the denial of such disability benefits was impermissible discrimination in violation of the New York Human Rights Law.[78]

On March 15, 1977, legislation was introduced in both houses of Congress which would amend Title VII to specifically prohibit discrimination based on pregnancy.[79] If the proposed amendment is passed, the *Gilbert* decision will lose its precedential value and the denial of pregnancy-related disability benefits will constitute a prima facie violation of Title VII.[80] If Congress chooses not to pass the amendment thereby leaving *Gilbert* in effect, it will remain lawful under Title VII for a private employer to discriminate on the basis of a sex-unique characteristic, specifically, pregnancy.[81] Furthermore, if the amendment to Title VII is not passed, the *Gilbert* decision may prove to have varied sociological implications for the working woman. Today, with a greater dependency on women as a means of financial support, the *Gilbert* decision places the families of such women in serious economic jeopardy should they become pregnant and have to leave work without disability compensation.[82] Therefore, such a decision may serve to either discourage working women, who cannot afford the loss of income, from becoming pregnant or encourage them to resort to an early termination of their pregnancies.[83]

FOOTNOTES

[1] U.S. CONST. amend. XIV § 1.
No State shall make or enforce any law which should abridge the privileges or immunities of citizens of the United States; nor shall any State derive any person of life, liberty or property, without due process of law; *nor deny to any person within its jurisdiction the equal protection of the laws.* (emphasis added).

[2] *See* Bradwell v. State, 83 U.S. (16 Wall.) 130 (1873) (upholding the right of the State of Illinois to deny a woman a license to practice law).

[3] *See* Goesaert v. Cleary, 355 U.S. 464 (1948) (upholding a Michigan statute prohibiting a woman from tending bar unless she was the wife or daughter of a male owner).

[4] *See* Radice v. New York, 264 U.S. 292 (1924) (upholding a New York statute which did not allow women to work in restaurants at night); Muller v. Oregon, 208 U.S. 412 (1908) (upholding an Oregon statute which did not allow women to work in certain establishments more than ten hours a day).

[5] *See* G. GUNTHER, CONSTITUTIONAL LAW at 657 (9th ed. 1976). The rational basis test, sometimes referred to as the minimal scrutiny test or permissive review, upholds classifications if the court can find a rational relationship between their existence and the legislative goal which the state is trying to achieve.

[6] *See* notes 2–4 *supra*.
The courts took the view that if they limited the woman's role outside the home, they were promoting not only her health and welfare, but also preserving the well-being of the race.

Justice Bradley, in his concurring opinion in Bradwell v. State, 83 U.S. (16 Wall.) 130 (1873), summed up the general attitude of the judiciary when he stated:

"Man is, or should be, woman's protector and defender. The natural and proper timidity and delicacy which belongs to the female sex evidently unfits it for many of the occupations of civil life. The constitution of the family organization, which is founded in the divine ordinance as well as in the nature of things, indicates the domestic sphere as that which properly belongs to the domain and functions of womanhood. The harmony, not to say identity, of interests and views which belong, or should belong, to the family institution is repugnant to the idea of a woman adopting a distinct and independent career from that of her husband. . . .

". . . The paramount destiny and mission of woman are to fulfill the noble and benign offices of wife and mother. This is the law of the Creator." Id. at 141.

[7] U.S. CONST. amend. XIX. "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 sex."

[8] Hoyt v. Florida, 368 U.S. 57 (1961). This case was finally overruled by Taylor v. Louisiana, 419 U.S. 522 (1975), where the Court held that barring women from jury service was an unconstitutional denial of the sixth amendment jury trial guarantee.

[9] U.S.C. § 206(d)(1) (1070) reads in pertinent part: No employer having employees subject to any provisions of this section shall discriminate, within any establishment in which such employees are employed, between employees on the basis of sex by paying wages to employees in such establishment at a rate less than the rate at which he pays employees of the opposite sex in such establishment for equal work on jobs the performance of which requires equal skill, effort and responsibility, and which are performed under similar working conditions, except where such payment is made pursuant to (i) a seniority system; (ii) a merit system; (iii) a system which measures earnings by quantity or quality of production; or (iv) a differential based on any other factor other than sex.

[10] 42 U.S.C. § 2000e–2 (1970 & Supp. V 1975) provides: (a) Employer practices. It shall be an unlawful employment practice for an employer—

(1) to fail or refuse to hire or to discharge an individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex or national origin; or

(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

[11] 42 U.S.C. § 2000e–2(e) (1970) provides: Notwithstanding any other provision of this subchapter . . . (1) it shall not be an unlawful employment practice for an employer to hire and employ employees . . . on the basis of his religion, sex or national origin in those certain instances where religion, sex, or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise.

[12] 404 U.S. 71 (1971).

[13] 411 U.S. 677 (1973).

[14] *But see* Kahn v. Shevin, 416 U.S. 351 (1974) where the Court upheld a "for widows only" property tax exemption using the rational basis test: Schlesinger v. Ballard, 419 U.S. 498 (1975) where the Court upheld a statute guaranteeing female officers 13 years of commissioned service before a mandatory discharge for want of promotion, while male officers were only allowed nine years.

[15] Reed v. Reed, 404 U.S. 71, 76 (1971) (emphasis added). In this case, the Court declared an Idaho probate statute unconstitutional under the equal protection clause of the fourteenth amendment because men were given preference over women when both were of the same entitlement class for appointment as administrator of a decedent's estate.

[16] 411 U.S. 677 (1973). In *Frontiero*, the Court struck down as unconstitutional a statute which provided that a serviceman may claim his wife as a dependent without regard as to whether she really was, whereas a servicewoman had to prove that her hus-

band was a dependent before she could claim him as one.

For a discussion of the standard of strict judicial scrutiny see G. GUNTHER, CONSTITUTIONAL LAW at 658–59 (9th ed. 1975). A stricter standard of review is used in instances where discrimination is based upon a suspect classification or concerns a fundamental right. If such a test is invoked by the Court, the state must show a "compelling state interest" for maintaining such classifications before they are upheld. This is oftentimes called strict judicial scrutiny or active review.

The Supreme Court has held that the following classifications are subject to strict judicial scrutiny: Graham v. Richardson, 403 U.S. 365 (1971) (alienage); Harper v. Virginia Bd. of Election, 383 U.S. 663 (1966) (voting); Oyama v. California, 332 U.S. 633 (1948) (national origin); Korematsu v. United States, 323 U.S. 214 (1944) (race).

[17] 411 U.S. 677, 692 (1973) (Powell, J., concurring). The concurring opinion further stated that it was reluctant at this time to categorize sex as a suspect classification, due to the dependency of the equal rights amendment, which would resolve this issue. "To act before its passage would be to perform a legislative duty, not appropriate for the Court." *Id.*

[18] 417 U.S. 484 (1974).

[19] *See*, e.g., Satty v. Nashville Gas Co., 552 F.2d 850 (6th Cir. 1975); Hutchison v. Lake Oswego School Dist. No. 7, 519 F.2d 961 (9th Cir. 1975); Gilbert v. General Elec. Co., 519 F.2d 661 (4th Cir. 1975); Communication Workers of America v. American Tel. & Tel. Co. 513 F.2d 1024 (2d Cir. 1975); Wetzel v. Liberty Mutual Ins. Co., 511 F.2d 199 (3d Cir. 1975); Sale v. Waverly-Shell Rock Bd. of Educ., 390 F. Supp. 784 (N.D. Iowa 1975); Vineyard v. Hollister Elementary School Dist., 64 F.R.D. 580 (N.D. Cal. 1974); Polston v. Metropolitan Life Ins. Co., 11 Fair Empl. Prac. Cas. 380 (W.D. Ky. 1975).

[20] *See* Comment, *Waiting for the Other Shoe—Wetzel and Gilbert in the Supreme Court*, 25 EMORY L.J. 125, 147–51 (1976).

[21] 429 U.S. 125 (1976).

[22] The individual plaintiffs were present or former employees of General Electric's Salem, Virginia plant who became pregnant during 1971 or 1972 and who presented claims for disability benefits which were denied.

Named as co-plaintiffs in this action were the International Union of Electrical Radio and Machine Workers, AFL–CIO–CLC, the bargaining representative for employees of General Electric at plants throughout the United States and Local 161, which represents employees at the Salem, Virginia plant.

[23] Gilbert v. General Elec. Co., 59 F.R.D. 267, 272 (E.D. Va. 1973), where the court held that the class met the requirements of FED. R. CIV. P. 23(a)(d)(2).

The named plaintiffs were designated as class representatives for the class composed of all females who were or had ever been employed on or after the date measured at ninety days prior to the earliest date of the filing of charges with the Equal Employment Opportunity Commission or who became employed during the pendency of the suit and also all females whose claims were filed before such date and were still pending on such date. This class was composed of approximately 100,000 women, employed nationwide by General Electric. *Id.*

The named plaintiffs were also designated as class representatives of the subclass seeking damages. It was composed of those female employees who were or had been employed by General Electric during the period stated above and who had suffered damages as a result of being unable to work due to childbirth on or after such date. The subclass numbered approximately 5,659 female employees. *Id.*

[24] These charges were first filed with the Equal Employment Opportunity Commission and were then processed by the Commission as required by statute. 42 U.S.C. § 2000e–5 (1970 & Supp. V 1975). The Commission found reasonable cause to believe that General Electric was engaged in acts of sex discrimination in violation of Title VII by excluding pregnancy-related disabilities from its insurance plan. Attempts at conciliation proved unsuccessful and the case was then filed in the District Court for the Eastern District of Virginia.

After several procedural questions concerning proper venue, (Gilbert v. General Elec. Co., 347 F. Supp. 1058 (E.D. Va 1972)); compulsory joinder, (Gilbert v. General Elec. Co., 59 F.R.D. 273 (E.D. Va. 1973)); counterclaims, (Gilbert v. General Elec. Co., 59 F.R.D. 267 (E.D. Va. 1973)); and class determination, (Gilbert v. General Elec. Co., 59 F.R.D. 267 (E.D. Va. 1973)) were decided, the district court proceeded to hear the case on the merits. Gilbert v. General Elec. Co., 375 F. Supp. 367 (E.D. Va. 1974).

[25] The General Electric Insurance Plan with Comprehensive Medical Expense Benefits, as amended January 26, 1970, provides nonoccupational sickness and accident benefit payments to all employees in an amount equal to 60% of an employee's straight time earnings. Payments were to begin on the eighth day of total disability and continue for a maximum of 26 weeks for any one continuous period of disability or successive periods due to the same or related causes. Benefit payment coverage would terminate on the date active work ceased because of disability or pregnancy.

The plan would pay disability benefits for male or female employees due to the following causes:

(a) sclerosis of the liver
(b) lung cancer
(c) emphysema
(d) injury incurred in auto accident
(e) injury incurred in sport activity of employee
(f) injury incurred in a fight
(g) following a program for the cure of alcoholism
(h) injury incurred in an attempted suicide
(i) drug addiction
(j) following a program for the cure of drug addiction
(k) sterilization
(l) elective surgical operations unrelated to pregnancy
(m) elective plastic surgery
(n) following a program of psychiatric treatment.

Gilbert v. General Elec. Co., 375 F. Supp. 367, 374 (E.D. Va. 1974).

In addition, General Electric provided income for present and former employees who for various other reasons are unable to work. For example, it maintained policies covering medical expenses for not only present employees and their dependents, but also pensioners and their dependents, benefits in case of layoffs, supplemental military pay benefits for employees serving in the Armed Services and attending training camps or participating in emergency duty and retirement income under a pension plan. Brief for Appellee at 95, Gilbert v. General Elec. Co., 519 F.2d 661 (4th Cir. 1975).

[26] Gilbert v. General Elec. Co., 375 F. Supp. 367 (E.D. Va. 1974). In reaching its decision, the court made the following specific findings:

(1) While pregnancy is perhaps most often voluntary, a substantial incidence of negligent or accidental conception also occurs.

(2) Pregnancy, *per se*, is not a disease.

(3) A pregnancy without complications is normally disabling for a period of six to eight weeks, which time includes the period from labor and delivery or slightly before, through several weeks of recuperation.

(4) Ten percent of pregnancies are terminated by miscarriage, which is disabling.

(5) Five percent of pregnancies are complicated by diseases which are found in nonpregnant persons but which may have been stimulated by pregnancy. Five percent of pregnancies are complicated by pregnancy-related diseases. These complications are diseases which may lead to disability. *Id.* at 377.

The court also found that the plan was objectionable because it excluded from coverage a disability unique to women while including disabilities which affect only men. *Id.* at 382.

The court further found that despite substantial testimony and statistics relating to the enormous increased cost of the plan if pregnancy were included, it was of too speculative a nature to be of probative value in determining actual future costs. *Id.* at 379.

In holding General Electric's actions to be deliberate and intentional, the court stated: There is no rational distinction to be drawn between pregnancy-related disabilities and a disability arising from any other cause. The defendant does not exclude from coverage any disability because it was voluntarily incurred other than disabilities arising from childbirth and other pregnancy-related conditions. That this is sex discrimination is self-evident. *Id.* at 385–86.

[27] Gilbert v. General Elec. Co., 519 F.2d 661 (4th Cir. 1975). The majority took note of the *Geduldig* case which had been decided a year earlier and found that it was not controlling, distinguishing it as a case treating sex discrimination under the fourteenth amendment and not as a case under Title VII. Therefore, since the case at bar was one of statutory interpretation and not constitutional analysis, the issues presented and the approach taken by the court in resolving the issues had to be different.

To satisfy constitutional Equal Protection standards, a discrimination need only be 'rationally supportable' . . . Title VII authorizes no such test . . . It represents a flat and absolute prohibition against all sex discrimination in conditions of employment. *Id.* at 667.

[28] 423 U.S. 822 (1975).

[29] 429 U.S. at 145–46.

[30] For the text of Title VII concerning unlawful employment practices, *see* note 10 *supra*.

[31] The inclusion of the word "sex" within Title VII of the Civil Rights Act occurred almost as if it were an afterthought, and discussion of the addition was very brief. Therefore, the legislative history provided the Court with little basis for determining congressional intent as to the meaning of sex discrimination. *See* 110 CONG. REC. 2577–84 (1964).

The amendment to add "sex" to the Civil Rights Act met with opposition from various representatives and women's rights groups. The thrust of their arguments centered around the point that sex discrimination involves problems different from those relating to racial or religious discrimination and the addition of sex to the Act would not be to the best advantage of women. *Id.* at 2577. It is interesting to note that only one of the 11 male members of the House who spoke in favor of the amendment voted for the Civil Rights Bill as amended. *See* 110 CONG. REC. 2577–84 (1964). *See generally* Miller, *Sex Discrimination and Title VII of the Civil Rights Act of 1964*, 51 MINN. L. REV. 877, 879-85 (1967); 110 CONG. REC. 2728, 13837 (1964).

[32] *See generally* notes 58–76 and accompanying text *infra*.

[33] 417 U.S. 484 (1974).

[34] *Id.* at 496. In *Geduldig*, the Court found that the following state interests justified

the plan: maintaining the self-supporting nature of the program; distributing the sources in such a way so that they are adequate for the disabilities covered; and maintaining the contribution level at a rate which would not unduly burden the employees, especially those in the low income bracket.

[35] *Id.* at 494.

[36] 429 U.S. at 133. However, in Rentzer v. California Unemployment Ins. Appeals Bd., 32 Cal. App. 3d 604, 108 Cal. Rptr. 336 (1973), the California Appellate Court construed California's plan to preclude only the payment of benefits for disability accompanying normal pregnancy. In this way, the plan was different from General Electric's, which precluded payments of normal pregnancies as well as pregnancies accompanied by complications.

[37] 429 U.S. at 136.

[38] "Footnote 20" states:

The dissenting opinion to the contrary this case is a far cry from cases like *Reed v. Reed* and *Frontiero v. Richardson*, involving discrimination based upon gender as such. The California insurance program does not exclude anyone from benefit eligibility because of gender but merely removes one physical condition—pregnancy—from the list of compensable disabilities. While it is true that only women can become pregnant, it does not follow that every legislative classification concerning pregnancy is a sex-biased classification like those considered in *Reed, supra*, and *Frontiero, supra*. Normal pregnancy is an objectively identifiable physical condition with unique characteristics. Absent a showing that distinctions involving pregnancy are mere pretexts designed to effect an invidious discrimination against the members of one sex or the other, lawmakers are constitutionally free to include or exclude pregnancy from the coverage of legislation such as this on any reasonable basis, just as with respect to any other physical condition.

The lack of identity between the excluded disability and gender as such under this insurance program becomes clear upon the most cursory analysis. The program divides potential recipients into two groups—pregnant women and nonpregnant persons. While the first group is exclusively female, the second includes members of both sexes. The fiscal and actuarial benefits of the program thus accrue to members of both sexes. 417 U.S. at 496–97 n. 20. This footnote has become controversial because commentators have disagreed as to whether it was just dictum or whether it was added only to combat a rigorous dissent. *See, e.g.*, note 19 *supra* (lower courts treating "footnote 20" as not controlling). *See generally* Larson, *Sex Discrimination as to Maternity Benefits*, 1975 DUKE L.J. 805, 809–14 (1975); Comment, *Geduldig v. Aiello: Pregnancy Classifications and the Definition of Sex Discrimination*, 75 COLUM. L. REV. 441, 443–48 (1975); Comment, *Waiting for the Other Shoe—Wetzel and Gilbert in the Supreme Court*, 25 EMORY L.J. 125, 143–46 (1976); Note, *Pregnancy and Sex-Based Discrimination in Employment: A Post-Aiello Analysis*, 44 CIN. L. REV. 57, 69–74 (1975); Note, *Title VII, Pregnancy and Disability Payments: Women and Children Last*, 44 GEO. WASH. L. REV. 381, 387–88 (1976).

[39] 417 U.S. at 496 n.20.

[40] *See* notes 15–16 and accompanying text *supra*. In these cases the sole distinguishing characteristic was a difference in sex.

[41] *See generally* articles cited in note 38 *supra*. This concept is sometimes referred to as "sex-linked" or "sex-plus." *See, e.g.*, cases cited in note 19 *supra* involving the sex-unique characteristic of pregnancy.

[42] Comment, *Waiting for the Other Shoe—Wetzel and Gilbert in the Supreme Court*, 25 EMORY L.J. 125, 139 (1976).

[43] Rafford v. Randle E. Ambulance Serv., 348 F. Supp. 316 (S.D. Fla. 1972) (where the court held that men are not victims of sex discrimination when forced to shave off their beards, a uniquely male characteristic, as a condition of employment).

[44] 429 U.S. at 135.

[45] *But see* Sprogis v. United Air Lines, Inc., 444 F.2d 1194, 1198 (7th Cir. 1971) where the court stated:

The effect of the statute [Title VII] is not to be diluted because discrimination adversely affects only a portion of the protected class. Discrimination is not to be tolerated under the guise of physical properties possessed by one sex. . . .

[46] *See* Larson, *Sex Discrimination as to Maternity Benefits*, 1975 Duke L.J. 805, 811 (1975).

[47] However, there are indications in the legislative history of Title VII to support the position that distinctions on the basis of pregnancy violate Title VII. *See* 110 CONG. REC. 2728, 13837 (1964), where an amendment was proposed in each house of Congress to insert "solely" before the categories of discrimination, so that in order to prove a violation of Title VII the alleged discrimination must have been the only reason. The purpose of the amendment was to make sure that nothing would be left uncertain for the Court to interpret. The amendment, however, was defeated. From this it can be inferred that Title VII's application was not to be limited to discrimination based on sex alone, but was to include the sex-unique situation.

[48] 429 U.S. at 134.

[49] *Id.* at 136.

[50] *Id.* at 137. For a discussion of discriminatory effect, see Washington v. Davis, 426 U.S. 229, 246–48 (1976); Griggs v. Duke Power Co., 401 U.S. 424, 431 (1971).

[51] 401 U.S. at 432.

[52] 429 U.S. at 137. However, Justice Brennan in his dissent noted that the majority could have found discriminatory intent by looking at General Electric's past history of sex discrimination and the fact that all other voluntary conditions except pregnancy were covered by the plan. *Id.* at 149–53.

[53] *Id.* at 138. Quoting from "footnote 20" the Court stated that "[t]here is no risk from which men are protected and women are not. Likewise, there is no risk from which women are protected and men are not."

[54] *Id.* at 155 (Brennan, J., dissenting).

[55] Cases have held that if an inference of discrimination is shown, the burden of proof shifts to the employer to show justification for his plan. *See* Boston Chapter NAACP, Inc. v. Beecher, 504 F.2d 1017, 1019–20 (1st Cir. 1974); United States v. United Bro. of Carpenters & Joiners, Local 169, 457 F.2d 210, 214 (7th Cir. 1972); United States v. Hayes Int'l Corp., 456 F.2d 112, 120 (5th Cir. 1972); United States v. Ironworkers Local 86, 443 F.2d 544, 551 (9th Cir. 1971). The majority did not find such an inference. However, it seems contrary to the general policy of Title VII not to conclude that at least an inference of discrimination was shown by the fact that all other disabilities were covered except pregnancy.

[56] 429 U.S. at 135.

[57] *Id.* at 137 n. 15.

[58] 42 U.S.C. § 2000e–4(a) (1970 & Supp. V 1975).

The Equal Employment Opportunity Commission is hereinafter referred to in the text and footnotes as the "EEOC."

[59] *Id.* § 2000e–5(a) (1970 & Supp. V 1975).

[60] 42 U.S.C. § 2000e–12(a) (1970) reads in pertinent part: "The Commission shall have the authority from time to time to issue, amend, or rescind suitable procedural regulations to carry out the provisions of this subchapter."

See General Elec. Co. v. Gilbert, 429 U.S. 125, 141 (1976), where the Court stated that Congress did not confer upon the EEOC the authority to promulgate rules or regulations.

[61] The relevant portion of the guideline reads as follows: Disabilities caused or contributed to by pregnancy, miscarriage, abortion, childbirth and recovery therefrom are, for all job-related purposes, temporary disabilities and should be treated as such under any health or temporary disability insurance or sick leave plan available in connection with employment. Written and unwritten employment policies and practices involving matters such as . . . benefits and privileges, reinstatement, and payment under any health or temporary disability insurance or sick leave plan formal or informal, shall be applied to disability due to pregnancy or childbirth on the same terms and conditions as they are applied to other temporary disabilities.

29 C.F.R. § 1604.10(b) (1972).

For discussion of the EEOC guidelines, see Comment, *Disability Benefits for Pregnant Employees Under Title VII of the Civil Rights Act of 1964*, 9 CREIGHTON L. REV. 360, 361–63 (1975); Comment, *Current Trends in Pregnancy Benefits—1972 EEOC Guidelines Interpreted*, 24 DE PAUL L. REV. 127 (1974); Comment, *Waiting for the Other Shoe—Wetzel and Gilbert in the Supreme Court*, 25 EMORY L.J. 125, 127–38 (1976).

[62] *But see* Griggs v. Duke Power Co., 401 U.S. 423, 434 (1971) and cases accompanying note 19 *supra*. Courts have given other agency guidelines great deference in determining congressional intent. *See* United States v. City of Chicago, 400 U.S. 8, 10 (1970) (Court held that a definition given to a term by the Interstate Commerce Commission should be given deference when interpreting the Interstate Commerce Act because the agency has greater oversight of the problem); Power Reactor Dev. Co. v. International Union of Electrical, Radio & Mach. Workers, AFL–CIO, 367 U.S. 396, 408 (1961) (Court held that regulations issued by the Atomic Energy Commission should be given that respect which is customarily given to a practical administrative construction of a disputed problem).

[63] 429 U.S. at 141.

[64] 323 U.S. 134 (1944).

[65] *Id.* at 140.

[66] *Id.*

[67] General Counsel Opinion Letter, EMPL. PRAC. GUIDE (CCH) ¶ 17,304.49 (Nov. 10, 1966).

See EEOC Decision No. 70–360, 1973 EMPL. PRAC. DEC. ¶ 6084 (Dec. 16, 1969) which affirmed the position of the 1966 opinion letter. However, in EEOC Decision No. 71–1474, 1973 EMPL. PRAC. DEC. ¶ 6221 (Mar. 19, 1971) the Commission changed its earlier position to that promulgated in the 1972 guidelines.

[68] There is further authority for the proposition that the views of an administrative agency will not be followed when their position flatly contradicts a previous pronouncement. *See, e.g.*, United Hous. Foundation, Inc. v. Forman, 421 U.S. 837, 858–59 (1975); F.T.C. v. Jantzen, Inc., 356 F.2d 253, 257n.4 (9th Cir. 1966).

[69] 429 U.S. at 142.

[70] *Id.* at 157 (Brennan, J., dissenting). In opposition to Justice Brennan's argument see Comment, *Current Trends in Pregnancy Benefits—1972 EEOC Guidelines Interpreted*, 24 DE PAUL L. REV. 127, 130 (1974), which discusses a deposition taken in the case of Newmon v. Delta Airlines, 374 F. Supp. 238 (N.D. Ga. 1973). Sonia Fuentes, Chief of the Legislative Council Division of the EEOC at the time the guidelines were written stated that before issuing the 1972 guidelines no medical or financial studies were conducted, and that she had no expertise in medicine, economics or labor relations. Fuentes also stated that of the five people who drafted the guidelines, two were law students.

[71] 429 U.S. at 157.

[72] *Id.* at 143. In Espinosa v. Farah Mfg. Co., 414 U.S. 86, 94 (1973) the Court stated that great deference may be given to EEOC guidelines unless they are "inconsistent with an

obvious congressional intent not to reach the employment practice in question" or there are "compelling indications that it is wrong."

[73] Senator Bennett's amendment became part of 42 U.S.C. § 2000e-2(h) (1970). The amendment stated:

". . . It shall not be an unlawful employment practice under this subchapter for any employer to differentiate upon the basis of sex in determining the amount of the wages or compensation paid or to be paid to employees of such employer if such differentiation is authorized by the provisions of section 206(d) of Title 29 [The Equal Pay Act]."

See 110 CONG. REC. 13647 (1964) which states that this amendment was necessary to make sure the provision of the Equal Pay Act would not be nullified if a conflict arose between it and Title VII.

[74] The Wage & Hour Administrator, having the authority to interpret the Equal Pay Act stated:

"If employer contributions to a plan providing insurance or similar benefits to employees are equal for both men and women, no wage differential prohibited by the equal pay provisions will result from such payments, even though the benefits which accrue to the employees in question are greater for one sex than for the other. The mere fact that the employer may make unequal contributions for employees of opposite sexes in such a situation will not, however, be considered to indicate that the employer's payments are in violation of section 6(d), if the resulting benefits are equal for such employees." 29 C.F.R. § 800.116(d) (1975).

[75] 429 U.S. at 145.

[76] However, Justice Brennan's dissent points out instances which show that the guidelines are consistent with congressional intent:

"[P]rior to 1972, Congress enacted just such a pregnancy inclusive rule to govern the distribution of benefits for 'sickness' under the Railroad Unemployment Insurance Act, 45 U.S.C. § 351(K)(2). Furthermore, shortly following the announcement of the EEOC's rule, Congress approved . . . an essentially identical promulgation by the Department of Health, Education and Welfare, under Title IX of the Education Amendments of 1972, 20 U.S.C. (1970 ed., Supp. II) § 1681(a). *See* 45 C.F.R. § 86.57(c) (1976). Moreover, federal workers subject to the jurisdiction of the Civil Service Commission now are eligible for maternity and pregnancy coverage under their sick leave program. *See* Federal Personnel Manual, c.630, subch. 13 § 13-2 (FPM Supp. 990-2, May 6, 1975." *Id.* at 158.

[77] EEOC COMPL. MAN. (CCH) ¶ 3200 (Dec. 30, 1976). However, at the present time, the EEOC has ceased processing allegations identical to those in *Gilbert*, in light of the decision rendered in that case. *Id.*

[78] Brooklyn Union Gas Co. v. New York State Human Rights Appeal Bd., 41 N.Y.2d 84, 359 N.E.2d 393 (1976). "The determination of the Supreme Court, while instructive, is not binding on our court. . . ." *Id.* at 87 n.1, 359 N.E.2d at 395 n.1.

[79] The proposed amendment reads as follows:

"The terms 'because of sex' or 'on the basis of sex' include, but are not limited to, because of or on the basis of pregnancy, childbirth or related medical conditions; and women affected by pregnancy, childbirth or related medical conditions shall be treated the same for all employment-related purposes, including receipt of benefits under fringe benefit programs, as other persons not so affected but similar in their ability or inability to work, and nothing in . . . this title shall be interpreted to permit otherwise." S. 995, 95th Cong., 1st Sess. (1977).

Extension lobbying by the Campaign to End Discrimination Against Pregnant Workers was responsible for the introduction of the amendment. Its passage is being supported by many organizations including major feminist groups, labor unions, the Leadership Conference on Civil Rights and the National Education Association. The *Spokeswomen*, April 15, 1977 at 1. At the time of this printing, the proposed amendment has been passed by the Senate. For a discussion of the amendment see 123 CONG. REC. 4142-45 (1977).

[80] It should be noted that notwithstanding the amendment, actions brought under the fourteenth amendment would continue to be controlled by the holding of *Geduldig v. Aiello*, 417 U.S. 484 (1974), and the denial of pregnancy-related benefits would continue to be constitutionally permissible.

[81] This decision seems to possess overtones of the earlier twentieth century cases where women were necessarily thought to be in need of protection. By allowing an employer to discriminate against women based on pregnancy, the practical implication may be to put women back into the home, where they were historically thought to belong.

[82] *See* 123 CONG. REC. 4143 (1977). Approximately 46% of all women over 16 years are in the labor force; 39 million are working or seeking work. Twenty-five million of these women are doing so because of the basic need to support their families.

[83] *Id.*

Mr. PAUL G. HATFIELD. Mr. President, looking at the question of dissipation of sex-based discrimination from another perspective, can it be said that the States themselves have made creditable progress in their legislative and judicial endeavors to the point where a Federal equal rights amendment, uniform in meaning and application, is no longer an urgent need? From where I stand, the view is no less discouraging.

Sixteen States have already adopted constitutional provisions substantially similar to the proposed amendment. Two States, Wyoming and Utah, adopted equal rights provisions incident to their recognition of universal suffrage in 1889 and 1895, respectively; Utah, while it was still a territory. Both provisions read as follows:

The rights of citizens of (this) State to vote and hold office shall not be denied or abridged on account of sex. Both male and female citizens of this State shall enjoy equally all civil, political and religious rights and privileges.

Other than holding that the right to property was one of the civil rights guaranteed without regard to sex, the Wyoming courts have never interpreted that State's provision definitively, nor have they even articulated a standard of review. In 1915, the Utah Supreme Court rejected a challenge to an ordinance that required men but not women to either work on county roads or, instead, pay an annual tax. The court stated that a separate classification for women has "always been made and enforced from time immemorial * * * [F]emales, in the nature of things, cannot respond to all the demands of the State." *Salt Lake City* v. *Wilson*, 46 Utah 60 (1915). Sixty years later, while conceding that a father's claim for custody of his children was entitled to the same consideration as the mother's, the court rejected it, stating that the law need not "blindly ignore obvious and essential biological differences." *Cox* v. *Cox*, 532 P.2d 994, 996 (1975).

In four more States, including my own State of Montana, no judicial review standard has yet been established. In Massachusetts and Hawaii, no challenges under recent equal rights provisions have yet been ruled upon at the appellate level. The New Mexico Supreme Court successfully avoided establishing a meaningful standard for review in 1974 when it ruled, in an appeal challenging the constitutionality of an alimony statute under which an award was made to the wife, that the award was proper since the trial court had treated both husband and wife as equals. *Schaab* v. *Schaab*, 87 N.M. 220 (1974). In five separate ERA-based challenges arising before I ascended the bench in Montana, the State Supreme Court has avoided ruling directly on each claim presented. The first two were dismissed on technical grounds, one was decided on other grounds, and the fourth was mooted by a supervening statute. In the final case, two discriminatory testamentary provisions were construed together to support the conclusion that, since the challenged statute limiting the wife's testamentary power is similar in effect to a comparable statute limiting the husband's power in dower, both men and women are treated equally. Estate of Kujath, 545 P.2d 662 (1976).

In the remaining States in which the language or legislative intent of the provisions themselves are stronger on the subject of gender-based discrimination or in which the courts have looked beyond the "rational basis" test, the standards of review vary widely. In Virginia, for example, while the legislative framers intended for any suspected case of sex discrimination to be strictly scrutinized, the Supreme Court has held that Virginia's ERA is "no broader than the equal protection clause of the 14th amendment to the Constitution of the United States" and prohibits only "invidious, arbitrary discrimination on the basis of sex." *Archer* v. *Mayes*, 213 Va. 633, 638 (1973). On that basis, the court found the statute exempting certain women from jury duty to be reasonable because "women are still regarded as the center of home and family life." 213 Va. at 638.

The high courts of Alaska, Colorado, Connecticut, Maryland, and Texas have indicated that strict scrutiny must be employed in deciding cases under their respective States' ERA's; none has yet been presented a case squarely requiring resolution under them. Only the Illinois Supreme Court has made definitive rulings, based on strict scrutiny reviews, on a variety of sex-based discrimination challenges, including the resolution of inconsistent results in that State's intermediate courts.

Pennsylvania and Washington, in interpreting their equal rights amendments, are the only two States which approach having absolute standards of review, where the courts operate in an area somewhere between requiring a closer fit between the assumptions on which statutory classifications are based and the gender-based classifications themselves and absolutely prohibiting sex as a category for legal classification.

It must be said that the courts in all 16 of these States cannot be said to be operating in purely arbitrary fashion. Because they are presented with differing constitutional provisions, colored by differing regional and local perspectives

on questions of perceived sex roles and differences across the entire spectrum of human relations, they are forced toward different conclusions. Construction and application of equal rights amendments present the same hard questions of case-by-case analysis and resolution. The point to be made is that, unless our society as a whole is to be condemned to piecemeal, inconsistent interpretations which will build upon one another until the discord is so great that Federal judicial intervention is necessary anyway, a Federal equal rights amendment would promote fairness and uniformity at the outset. I submit that the savings in social dislocation and the mere expense of judicial problem-solving, in the long run, would be substantial.

Mr. President, I ask unanimous consent that a comment from the California Law Review by Lujuana Wolfe Treadwell and Nancy Wallace Page entitled, Equal Rights Provisions: The Experience Under State Constitutions, 65 Calif. L. Rev. 1086 (1977), be printed in full in the RECORD at this point as a part of my remarks.

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

EQUAL RIGHTS PROVISIONS: THE EXPERIENCE UNDER STATE CONSTITUTIONS

(Much of the controversy over the proposed Equal Rights Amendment to the United States Constitution concerns how such a provision would be interpreted by federal courts. In the search for an answer to this question, the authors examine the results reached by state courts in the sixteen states that have already adopted provisions substantially the same as the proposed federal amendment. The authors concluded that, while the results have been far from uniform, the emerging trend is toward a level of analysis similar to the strict scrutiny used in race discrimination cases, but with some important differences.)

"We hold these truths to be self-evident: that all men and women are created equal"—Women's Rights Convention, Seneca Falls, New York, July 19, 1848.

So spoke the women of Seneca Falls; [1] the words were borrowed from Jefferson, but the idea that women were the equals of men was new to American thinking. The drive to achieve women's suffrage overshadowed any idea of adopting a national statement of sexual equality. When women's suffrage became a reality in 1920, however, the National Women's Party revived the idea of a formal statement of equality. In 1923, at the seventy-fifth anniversary celebration of the Seneca Falls meeting, it proposed an equal rights amendment to the Constitution. The amendment was introduced in Congress the same year [2] but made little progress. Although it was repeatedly reintroduced during the next few decades, the proposal never commanded much public attention. [3]

In the 1960's, renewed interest in the rights of women produced another attempt to secure a constitutional provision ending discrimination by reason of sex.[4] An Equal Rights Amendment [ERA] was adopted by both houses of Congress in 1971 and submitted to the states for ratification.[5] Of the thirty-eight states required to place it in the Constitution, thirty-five have thus far ratified.[6]

The ratification process has been accompanied by a spirited debate, always intense, and at times even bitter; but all sides agree that the crucial question is how the ERA, once adopted, will be interpreted by the Supreme Court.[7] Specifically, the question is whether, under an ERA, the Court will analyze claims of sex discrimination in the same way it now treats claims of racial discrimination. The Court itself has acknowledged the significance of this question.[8]

While this debate has continued, a parallel but less publicized development has been taking place in a number of jurisdictions. The constitutions of sixteen states now contain some form of guarantee against sex-based discrimination.[9] The decisions of courts in these states interpreting their constitutional guarantees may cast some light on the large question of the probable impact of the Federal ERA, should it become part of the Constitution. The impact will depend on how the Court construes the ERA.

State courts examining a statute or a practice challenged on the ground that it violates the state's equal rights amendment have proceeded in one of several ways. First, some courts have avoided construing their state's ERA altogether, either by deciding cases on some other basis or by deferring to the legislature. This approach is exemplified by decisions in Montana and New Mexico.[10]

A second approach that some courts practice is to apply the standard of review traditionally employed by the Supreme Court in equal protection cases under the fourteenth amendment where no suspect classification or fundamental interest is involved. Under this standard, a legislature is permitted wide latitude in treating certain groups of citizens differently from others: a classification will violate the equal protection clause only if it rests on grounds entirely irrelevant to the achievement of the legislative objective.[11] The only constitutional requirement is that there must be some conceivable rational relationship between the classification and the legislative goal.[12] When this standard has been used by courts, legislative classifications based on sex have seldom been disturbed.[13] This "rational basis" standard [14] has been used in most states that do not have ERA's [15] and in three states where an ERA has been adopted.[16]

A third standard of review used by some courts is strict scrutiny. This standard was developed in equal protection cases involving "suspect" categories such as race [17] and alienage [18] or involving such fundamental rights as the right to travel,[19] to vote,[20] or to criminal appeals.[21] Under this standard the challenged statutory classification will be upheld only if it is necessary to advance a compelling state interest and only then if there is no less burdensome alternative.[22] This is a powerful tool for securing the rights of groups that have been subjected to discrimination in the past. Absent an ERA in their state constitutions, however, only two states have identified sex as a suspect classification.[23] To date only one of the sixteen states that have adopted an ERA has applied a strict scrutiny standard, although a number of others have indicated that they would do so in a proper case.[24]

Fourth, the courts of two states have applied a standard of review more penetrating than strict scrutiny.[25] Although the standard has been used in only a few cases, it is conceivable that this standard will evolve into a prohibition of all sex-based discrimination that is not based on the unique physical characteristics of each sex.[26]

The Supreme Court [27] has, like many legislators [28] and commentators,[29] anticipated that under an ERA either strict scrutiny or an absolute standard of review will be applied to claims of sex discrimination.[30] In spite of such expectations, however, this has not happened in every state with an ERA. Some states have adopted only a rational basis standard of review, while other states, nominally adopting one standard of review, have in fact used a variety of standards, depending on the facts of each particular case.

This Comment will examine the experience of states with ERA's, and attempt to describe the factors that might bear on a state's choice of a standard of review, and explain why states with similar standards arrive at different conclusions when faced with similar facts.

I.—THE EXPERIENCE UNDER STATE EQUAL RIGHTS AMENDMENTS

A. States without an established standard of review

The courts of five states with equal rights provisions have not yet established a judicial standard for reviewing sex-based equal rights claims. Although Wyoming has the oldest equal rights provision, the provision has never been definitively interpreted.[31] In Massachusetts and Hawaii no challenges under recent equal rights provisions have yet reached the appellate level. In New Mexico and Montana, two other states with modern ERA's, the appellate courts have been able to resolve sex-based claims without construing the equal rights provision.

In New Mexico's only appellate-level ERA decision, *Schaab* v. *Schaab*,[32] the state supreme court gave effect to a challenged alimony statute, reasoning that it treated "husband and wife with exact equality." [33] The court considered the award of alimony to the wife proper because the trial court had treated both litigants as equals.[34] Since neither the statute nor the trial court had in this instance discriminated on the basis of sex, the court was not forced to determine which standard of review is required by New Mexico's ERA.

In Montana, no decision has been based expressly on that state's ERA, although five appellate cases have raised equal rights issues. The supreme court has on three occasions refused to consider the constitutionality of state statutes which allow wives but not husbands to receive alimony. The first two challenges were dismissed on technical grounds.[35] In the third case, the court found that payments made by the husband to his wife were not "alimony," and therefore did not fall under the challenged statutes.[36] In a fourth case the challenged sentencing statute had recently been revised in accordance with the ERA; the court therefore declared the issue moot.[37]

In the final case considered by the Montana court, the challenged statute limiting the wife's testamentary power was construed in conjunction with a comparable dower statute limiting the husband's testamentary power, with the result that the two sex-defined statutes, read together, treated men and women equally.[38] Thus, despite five challenges based upon the ERA, the Montana courts have not yet decided a case on the basis of that state's ERA. The experience of Montana and the other states with untested ERA's illustrates that enactment of an ERA does not necessarily lead to a swift pronouncement from the state's high court on the status of women's rights. Awaiting the proper case can be a tedious process. Legislative reform under an ERA may precede court action.[39]

B. States that follow a rational basis standard

A second group of states is applying a standard of review in sex discrimination cases very similar to that traditionally applied in equal protection cases. In Louisiana, Virginia, and Utah, state ERA's have been largely ineffectual in eliminating sex-based categories from statutes. Although the courts of these states employ a similar standard of review, the unique history of each ERA has caused them to reach different results. Thus, a comparison of the results in these states must take into account the legislative history of each state's provision.

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Utah granted suffrage to its women citizens when it was still a territory.[40] To ensure the continuation of this privilege. delegates to the state constitutional convention in 1895 included a clause guaranteeing civil and political rights without regard to sex.[41] But it is unlikely that the all male constitutional convention considered that this clause, despite its broad implications, might have significance in matters other than suffrage.

Over the years, the Utah courts have conformed to the expectations of the provision's drafters. In 1915, the Utah Supreme Court rejected a challenge to an ordinance that required men but not women to either work on county roads or else pay an annual tax.[42] The court stated that a separate classification for women has "always been made and enforced for time immemorial. . . . [F]emales, in the nature of things, cannot respond to all the demands of the state." [43]

Sixty years later, with a fidelity to precedent more impressive for its consistency than for its attention to intervening social changes, the Utah courts were still reviewing cases under the equal rights clause along much the same lines. In *Cox* v. *Cox*,[44] the court rejected a father's claim to custody of his minor children. While conceding that his claim was entitled to the same consideration as the mother's, the court emphasized that the law need not "blindly ignore obvious and essential biological differences." [45]

Because the Utah equal rights provision originated in an era when few people seriously considered women to be the legal or biological equals of men, it is not surprising that the provision has been ineffective in promoting women's equality.

Louisiana is unique in that the provisions of its 1974 constitution expressly dictate the standard of revew to be used in sex discrimination cases.[46] Article I, Section 3, of the new constitution defines two standards of permissible state discrimination. Laws discriminating against racial or religious groups are absolutely prohibited. Laws discriminating on the basis of other factors, including sex, are, however, prohibited only if they are arbitrary, capricious or unreasonable.[47] The adoption of two separate standards was deliberate.[48] The delegates to the constitutional convention explicitly intended that Louisiana courts should apply to sex-based discrimination that which in the delegates' view, was the traditional equal protection analysis developed by the United States Supreme Court.

The Louisiana courts have followed the mandate of the constitutional drafters, using the traditional societal roles of women to justify sexually discriminatory statutes.[49] They have not examined whether women generally have remained in their traditional roles or whether the traditional concepts apply to the parties before the court. For example, in *State v. Barton*,[50] defendant moved to quash a charge of criminal neglect of his wife on the ground that the statute, which applied only to husbands, violated the state ERA. The court rejected his argument, saying that distinctions based on sex were permissible so long as the classification is not unreasonable or arbitrary. Inasmuch as "it presently remains a fact of life that, between two spouses, the husband is invariably the means of support for the couple," [51] the legislative discrimination against men was reasonable and not in violation of the state constitution.

Traditional roles of women also have been used to justify sexually discriminatory statutes in Louisiana child custody cases. In *Broussard v. Broussard*,[52] a husband challenged the trial court's express preference for the mother in awarding custody. The appellate court found sufficient legal basis for a maternal preference in the "biological connexity" between mother and child and in the mother's traditional responsibility for the day to day care of minor children.[53]

As in Utah, Louisiana courts are without a legislative mandate to require justifications for sexually discriminatory statutes that would meet a strict scrutiny standard. Nevertheless, within the constitutional directive, the courts could require a closer match between the classification and the statutory purpose by examining whether the justifications offered in support of the sex-based classification can be supported by objective data or are merely myths.

Virginia stands out as a state in which a mandate for strict scrutiny in sex discrimination cases has been given to the courts, but the courts have failed to comply. The result is that judicial interpretation of the Virginia ERA has been similar to that of the Louisiana and Utah courts, despite the very different intentions of its drafters.

Virginia gained its equal rights provision in 1971 as part of a major revision of the state constitution. Article I, section 11, enumerated sex along with race, color, and national origin, as a category that was to be free from "any governmental discrimination." [54] The drafters of the equal rights clause, and the Virginia General Assembly in adopting it, expected that a strict standard of review would be applied by the courts.[55] The Virginia Supreme Court, however, did not conform to these expectations. Instead, the court stated that Virginia's equal rights provision was "no broader than the equal protection clause of the Fourteenth Amendment to the Constitution of the United States" and prohibited only "invidious, arbitrary discrimination upon the basis of sex." [56] The court found the statute exempting certain women from jury duty to be reasonable because "women are still regarded as the center of home and family life." [57] The court thus failed to show the same intolerance toward classifications based on sex as to those based on race or religion. Instead of requiring that the state show a compelling interest to justify the classification, the court relied on traditional views of the role of women in society and applied the least stringent standard of review available.

In general, the courts of Utah, Louisiana, and Virginia have deferred to legislative classifications based on sex. They refuse to examine the assumptions on which the classifications are based, finding them reasonable if they can be justified on any conceivable set of facts. These courts willingly adopt as the norm traditional roles for men and women without examining how well they reflect current societal patterns or the life style of the individual. In these states, the ERA's have been ineffectual in eliminating sex stereotypes embodied in the law. Even where the clear legislative intent is otherwise, as in Virginia, the courts have failed to reconsider their traditional views of women.

C. States that apply a standard of strict scrutiny

The high courts of Alaska, Colorado, Connecticut, Maryland, and Texas have indicated that strict scrutiny must be employed in deciding cases under their state's ERA,[58] although none has yet been presented a case requiring resolution under the ERA. Yet even these pronouncements leave some significant questions unanswered. Will all classifications based on sex be held discriminatory? If so, what will be required to justify such legislative classifications? Are certain types of cases more likely to persuade courts to validate distinctions based on sex? Will the courts accept notions of the "normal" or traditional role of women to justify distinctions, as states using the rational basis standard of review have done? Until the courts in these states squarely confront an ERA case, such questions will not be answered. The experience of courts in Illinois is, however, relevant to these questions.

The Illinois Supreme Court is the only state court to actually apply strict scrutiny in deciding a case under an ERA.[59] The court looked to the intent of the drafters who had placed the ERA in the new state constitution.[60] The supreme court quoted at length from the convention debates over the ERA in *People v. Ellis*,[61] a case concerning a statute under which female offenders were treated as juveniles up to age eighteen, but males only up to age seventeen. It found that proponents of the ERA wanted women to have the same "type of equality" as had "long been held to apply to blacks." [62] Consequently, the court held that article I, section 18, required that classifications based on sex be considered "suspect." To be held valid, such classifications "must withstand 'strict judicial scrutiny.' " [63] The high court subsequently reaffirmed this view in a similar statutory challenge.[64]

The intermediate appellate courts of Illinois have generally followed the lead of the supreme court in refusing to uphold any sex classification not required by a compelling state interest. They have rejected "maternal preference" as a basis for custody awards, even though the children whose custody was disputed were of "tender years." [65] Similarly, they have refused to prefer a mother over a father when the father claimed custody of an illegitimate child.[66]

In criminal cases, however, the appellate courts have been less consistent in their results. Statutes upheld in one judicial district [67] have been invalidated in another.[68] An example of this is the incest law. The law provides stiffer penalties for a father who commits incest with his daughter [69] than for a mother involved in incest with her son.[70] Most of the appellate districts have recognized that because the incest provisions involve discrimination by reason of sex,[71] *People v. Ellis* [72] requires strict judicial scrutiny of the classification. The courts disagree, however, on whether there is sufficient justification for the incest law's distinctions between men and women.[73]

Two courts have upheld the statute, but on different rationales. In *People v. York*,[74] the court held that stiffer penalties were imposed on fathers, not because they were male—sons and brothers who commit incestuous acts are subject to the lesser penalties—but because a father may more easily abuse his position in the family.[75] The *York* court thus sidestepped the issue of whether the state's interest in the distinction was compelling by finding that it was not, in fact, based on sex. The court in *People v. Williams* [76] did seek to justify the statutory classifications on the basis of a compelling state interest. The court stated that the vast majority of incest cases involve a father's abuse of a daughter,[77] and that this was a more serious social problem since social and psychological harm and unwanted pregnancy are more likely to accompany father-daughter incest.[78] It is unclear, though, to what extent these justifications actually distinguish the situations of sons and brothers or are the result of social stereotypes. Moreover, it is unclear on what basis such "state" interests may be categorized as "compelling."

In contrast, another Illinois appellate court has twice [79] rejected as not compelling the justifications for the statutory classification given in the comment [80] to the incest section of the Illinois Criminal Code. The three reasons there offered for the distinction between men and women—(1) to prevent abuse of family authority, (2) to avoid the risk of genetically defective offspring, and (3) to reflect cultural tradition—were examined in detail and rejected.[81]

The Illinois Supreme Court resolved the dispute between the appellate districts by upholding the distinctions in the statute between father-daughter incest and other forms of incest. It did not, however, settle the more

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interesting question of how the strict scrutiny standard of review should be applied to distinctions based on physical differences, holding instead that the state's interest in guarding daughters from the potential physical trauma of pregnancy justifies the classification, even under the rational relationship standard.[82]

The Illinois experience suggests that even where the state's highest court has announced the proper standard of review, uniform results are not automatic. The strict scrutiny test involves determining whether there is sexual discrimination and whether justification for the discrimination rests on a compelling state interest. There is still disagreement, though, over what constitutes sex discrimination and over what state interests are compelling.

D. States that approach an absolute standard

The courts of two states, Pennsylvania and Washington, have employed a standard of review requiring greater justification for discriminatory statutes than that required by strict scrutiny. Whether the standard of review employed by these courts permits any justification of sex-based discrimination cannot be determined until a broader range of cases has been heard. As in the other states examined, the threshold question has been whether the challenged statute discriminates on the basis of sex.[83] Here, however this determination has been dispositive because, once discrimination has been established, both states have thus far denied effect to the challenged statute.

Pennsylvania's courts have found that sex discrimination in family law and in criminal sentencing violates the state's ERA. In divorce actions, the courts have eliminated the presumption that the father has the principal burden of supporting minor children,[84] have invalidated a statute that permitted courts the discretion to require husbands but not wives to pay alimony pendente lite,[85] and have eliminated the common law rebuttable presumption that "where a husband obtains his wife's property without adequate consideration, . . . a trust is created in her favor."[86] The courts also have extended to wives the right to recover damages for loss of consortium [87] and have invalidated a statute that required the consent of mothers but not fathers for the adoption of illegitimate children.[88]

In the single criminal case decided by a Pennsylvania court under the ERA, that part of a challenged sentencing statute that prohibited courts from imposing minimum sentences on convicted women while requiring courts to impose minimum sentences on convicted men was invalidated.[89] The effect of the statute was that women were eligible for parole immediately after incarceration, but that men were ineligible until they had served a minimum sentence. As a result of this decision, courts must now give both men and women minimum sentences.

There has been less ERA litigation in Washington than in Pennsylvania. In *Singer v. Hara,*[90] a challenge to Washington's marriage laws by two homosexual men, a court of appeals failed to find discrimination, reasoning that since no one of either sex could marry someone of the same sex, men and women were treated equally. *Singer* demonstrates that when strongly held social values are threatened or high economic costs are at stake, courts will be able to avoid upsetting established practices even under the strictest construction of an ERA by refusing to define the challenged practice as discrimination based on sex.

The larger question of what the ERA demands when a statute does discriminate was addressed by a Washington court in *Darrin v. Gould.*[91] This case and a similar Pennsylvania case, *Commonwealth v. Pennsylvania Interscholastic Athletic Ass'n,*[92] are the two most far-reaching ERA decisions yet. In each case it was held that a state high school athletic association by-law prohibiting girls from participating in interscholastic sports because of their sex violates the ERA.[93]

In *Darrin,* the Washington Supreme Court declared unconstitutional under that State's ERA a bylaw of the Washington Interscholastic Association that prohibited girls from participating in interscholastic contact football.[94] First, the court held that the regulation did discriminate on the basis of sex, overturning the lower court's finding that " 'the classification . . . is not based on sex per se but upon the nature of the game of football. . . .' "

"[The lower court's finding] ignores . . . undisputed evidence that WIAA regulations prohibited girls from playing on boys' football teams . . . regardless of the girls' ability to play and regardless of whether the school had a girls' football team. The classification was clearly one based on sex—not one based on ability to play."[95]

The court then proceeded to reject the three main justifications for the bylaw offered by the defendant. First, the court found little merit in the argument that the majority of girls are not able to compete successfully with boys in contact football. The fact that some boys could not meet team requirements did not disqualify other boys from playing football.[96] Second, in response to the argument that girls would encounter greater risk of injury than boys, the court stated that serious injury to the procreative organs is not a substantial risk and that the risk of injury to the average boy is not a reason for denying boys the opportunity to play.[97] Third, the court considered the Association's argument that construing the ERA to permit girls to participate in contact sports would open all athletic teams to both sexes, thus disrupting girls' athletic programs. The court called this argument conjectural because the school in question had no girls' contact football team.[98] In rejecting these justifications, the court clearly indicated that once sex discrimination is found, no broad generalizations about the sexes will be persuasive.

Similarly, in *Pennsylvania Interscholastic Athletic Ass'n,* the court found that a similar challenged classification was discriminatory and summarily held that it violated the ERA on its face.[99] The justifications presented by the Association were that the average girl was more likely to be injured than the average boy participating in co-ed athletics and that fewer girls would have the opportunity to participate if they were forced to compete with boys for limited team positions. These arguments failed to impress the court.

The existence of certain characteristics to a greater degree in one sex does not justify classification by sex rather than by the particular characteristic. . . . If any individual girl is too weak, injury-prone, or unskilled, she may, of course, be excluded from competition on that basis but she cannot be excluded solely on the basis of her sex without regard to her relevant qualifications.[100]

The court concluded that none of the proposed justifications for the by-law, "even if proved, could sustain its legality."[101]

Whether the Pennsylvania and Washington courts are requiring only a closer fit between the assumptions on which statutory classifications are based and the sex-based classifications themselves, or are absolutely prohibiting sex as a legal category [102] is still open to speculation. The fact that both courts were willing to consider the justifications for the sex classification offered by the defendants indicates that neither court has gone so far as to create an absolute ban.[103] Apparently neither court has adopted a sex-blind standard analagous to the colorblind standard articulated by Justic Harlan in his dissenting opinion to *Plessy* v. *Ferguson.*[104] Under a sex-blind or absolute standard, a court could uphold as constitutional a sex-based statute, such as the Washington law prescribing that marriage be between persons of the opposite sex, only by defining the statute as not involving sex discrimination.[105] A court that is unable to construe the challenged statute as nondiscriminatory would be forced to invalidate it under an absolute standard. As the law now stands in Washington and Pennsylvania, if a case arises that presents persuasive justifications for different treatment of the sexes—for example, one based on widely held moral values, high economic costs, or the unique physical characteristics of the sexes—a court of either state could hold the statute valid under its ERA and its case law.

If the standard now being employed in Washington and Pennsylvania primarily requires a better fit between the sex-based classification and the reasons justifying it, then this standard might be described as creating a presumption of unconstitutionality. Where this presumption is employed, it cannot be rebutted by unsubstantiated generalizations about differences between the sexes or by proven differences between the sexes that do not hold true for all or a high percentage of the members in a given sex-category. This standard would require functional categories [106] before a distinction could be given effect.

II.—STATE ERA'S AND BEYOND

A. Factors producing inconsistent results

Courts from state to state have given very different meanings to equal rights provisions that appear quite similar on the surface. Various standards of judicial review are being employed. Where the standards are nominally the same, they may produce different results in similar cases. In states using a rational basis standard of review, the traditional, stereotyped social roles of the sexes constitute a rational basis sufficient to uphold a discriminatory statute.[107] In states where courts have adopted strict scrutiny, as they have in a plurality of enacting states, the sex discriminations most obviously based solely on social stereotypes are not surviving.[108] As the basis for the distinctions approaches the actual or presumed physical differences between men and women, however, these courts begin to waver in their commitment to equality between the sexes.[109] Finally, two states have taken the position that virtually no distinctions between the sexes are valid under an ERA.[110] But even this standard may prove to be less than absolutely prohibitive of the use of sexual clasifications.[111]

Certain variables may account for the differences between the states. First, the historical origin of an equal rights provision may influence a court's perception of its intended function. Two states, Utah and Wyoming, have had equal rights provisions since the 1890's. In both states these provisions were enacted to serve as a bulwark for the state's pioneering guarantees of women's suffrage, and not for any broader purpose.[112] It is not surprising, therefore, to find that their equal rights provisions are being interpreted more narrowly than recently adopted ERA's.[113] In addition Utah's interpretation of the rights guaranteed to women must be influenced to some extent by the traditional role assigned to women by the Mormon Church, the most powerful social and political force in the state. As a consequence of these two factors, the Utah Supreme Court will permit "old notions" about sex roles to justify different treatment of the sexes.[114]

Historical origins alone, however, do not in all cases explain a state court's adherence to a rational basis standard of review. Equal rights provisions were added to the Louisiana and Virginia constitutions during the height of the women's movement. But while the constitutional drafters in Louisiana wanted

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a traditional standard of review, and the drafters in Virginia wanted the courts to examine sex classifications carefully,[115] the courts of both states have readily accepted sex stereotypes as a justification for statutory differences. The conservative Southern culture and the region's high esteem for the traditional role of women must be advanced as a possible explanation for the courts' interpretation of their ERA's. Since stereotypes and "old notions" of sex roles provide the rational basis needed to uphold a statute, the ERA in these states has to a large extent been neutralized.

Where a strict scrutiny standard, or a standard which goes beyond strict scrutiny, has been adopted, the decisions produce a more complex pattern. Certain types of discriminatory statutes are easily found in violation of an ERA. Where rights or benefits are available to, or restrictions are imposed upon, one sex at a different age than the other, the classifications are not likely to be sustained;[116] the discrimination is obvious, while the state interest is slight or nonexistent. Consequently, courts feel especially competent to replace the legislative decision with their own.

Rigid views of proper paternal and maternal roles rarely persuade these courts, especially in the area of family law. Old rules denying to fathers custody of their children or denying alimony or attorney's fees to a needy ex-husband have failed to meet the constitutional test.[117] Similarly, statutes or practices based on the presumption that the male is every family's sole breadwinner are generally held invalid.[118]

Sex-based distinctions in criminal sex offense statutes are least likely to be found in violation of an ERA. With one exception,[119] no rape, statutory rape, incest, or similar statute has been invalidated, even though the courts may explicitly recognize the differential treatment of men and women under the statute.[120] Several factors may contribute to the courts' reluctance to invalidate these statutes. First, defendants in sex offense cases do not ordinarily provoke much sympathy. Under such circumstances, a court might very well hesitate to reverse a conviction on equal protection grounds. Second, if the rape or incest statute were invalidated, a void would be left in the criminal code until the legislature adopted new provisions. The prospect of "crimes" not chargeable under an existing statute would be unacceptable to the public as well as to the courts. The third, and most justifiable, reason why the courts let discriminatory sex offense statutes stand is that these classifications may be seen as based on actual physical differences between the sexes. Under many of the rape statutes, for example, the crime is expressly defined in terms of forced intercourse by a male with a female victim.[121] There is no converse physical act. Furthermore, forced intercourse with a female victim may result in an unwanted pregnancy. For most courts, this is sufficient reason to uphold the statutory discrimination.[122]

Other types of statutes involving physical differences between the sexes give courts great difficulty in determining the proper outcome under the state ERA. It is here that the judicial techniques developed in equal protection cases involving claims of racial discrimination seem most likely to prove inadequate, for while it is generally agreed that there are no functional differences between individuals of different races, it is clear that there are irreducible functional differences between men and women.

The first difficulty is determining whether or not the statutory distinction is based on a physical difference. The "biological connexity" between mother and infant may justify a maternal preference in one court's child custody case, while another court may perceive this to be a social stereotype. Different minimum marriage ages for men and women in one court may be viewed as based on different ages of biological maturation; another court may view them as arising from societal standards of appropriate and acceptable teenage behavior. Similarly, differences in size and strength may be seen as sexually determined physical characteristics that are valid for drawing distinctions based on sex, or they may be perceived as insufficiently related to sex and therefore impermissible.[123] Thus far the courts have little guidance in determining whether a statute is based on physical or societal sex differences under ERA's.

The second difficulty is determining whether acknowledged physical differences between the sexes in fact justify the statutory discrimination. Must every male or every female possess the presumed characteristic in question? Will evidence that a significant majority possesses it suffice? Even where sex-based classifications are founded upon generalizations that are true for all members of the sex, will any kind of disparate treatment be permissible? These are hard, questions both for courts and legal analysts, and no single explanation can account for the different results reached under the ERA's of the various states.

One final factor to note is that, although the idea of the ERA is closely associated in the public mind with the feminist movement, the large majority of appellate litigants claiming violations of their rights under a state ERA have, so far, been men.[124] It is easy to see why this is so. Many of the challenged statutes were so-called "protective" statutes enacted to provide financial support for women traditionally dependent on their husbands. Others reinforced commonly held assumptions: mothers are better caretakers of young children than fathers, the family authority figure is the father, girls mature earlier than boys, etc. To the extent that women were protected by these statutes, they have placed burdens on men, and so men have sought to overturn them. In addition, many of the statutes challenged in these cases were, in fact, discriminating against men. This is especially true of those statutes based on traditional social assumption, such as that men provide the family income while women are financially dependent. Moreover, judicial practices such as the preference for placing children in the custody of the mother are also overtly discriminatory.

At the same time, those statutes and practices which have hindered women's employment and educational progress to a large extent fall under the Federal Civil Rights Acts.[125] Suits based on educational or employment discrimination would not be brought in state courts, nor would the issue of a state ERA be raised. Thus we find many cases involving ex-husbands trying to avoid paying alimony or attorney's fees [126] or involving fathers seeking custody of their children,[127] but few cases involving women denied equal employment opportunities or other job-related benefits.[128]

B. Toward an ideal standard

The various standards of review used by the courts in states with ERA's inevitably raise one question: How can courts best implement the policy of treating individuals as equals regardless of their sex? They must do no less than treat sex as a suspect classification, requiring the state to make a substantial showing that a distinction based on sex is justified by an important state interest. They can do no more than absolutely prohibit the use of sex as a tool of legal classification. The best approach lies between these two.

Traditional strict scrutiny, a balancing process which weighs the goal of equal rights for women and men against other state policies and interests, is not the best method for achieving sexual equality because it is too flexible. Under such a test courts determine both the amount of weight given sexual equality and the degree and kind of proof necessary to show a substantial state interest in the classification. The values of the individual judge can too easily circumvent the policies behind the ERA. Until strict scrutiny is uniformly applied in its most rigorous form, the strict scrutiny standard will produce some disappointing results.

Arguments in favor of an absolute ban on sex-based discrimination have been presented by Brown, Emerson, Falk, and Freedman in their leading article on the federal ERA.[129] Their analysis focuses on four premises which, they argue, underlie the ERA and mandate its construction as an absolute prohibition. First, the administrative technique of grouping or averaging individuals into classes should not be acceptable where the factor of sex is concerned. Second, no exception to a policy of equal treatment should be allowed, since unequal treatment cannot be confined to a single area. "Equal rights for women . . . is a unity." [130] Third, they argue that there is no objective basis on which to justify differential treatment of men and women. "Not only is such a system inevitably repressive of one group, but it affords no standard of comparison between different groups." [131] Fourth, if the legislatures and courts could determine when differential treatment is justified, the status of women would remain unchanged, since these institutions "maintain the existing system of discrimination . . . ." [132]

An absolute prohibition of sex-based classifications would create some problems of its own; consequently, it is not clear that this standard would be most desirable to equal rights proponents. First, it would undoubtedly eliminate affirmative action; [133] second, it fails to recognize biological and other differences between the sexes which make certain limited differences in legal treatment acceptable; [134] and third, it allows courts to treat issues of sexual classification summarily and thus ignore present underlying social and economic realities,[135] such as the existence of different employment and educational opportunities for men and women, differing wage rates for men and women, and different parental role conditioning of men and women. Some of these problems might be dealt with through carefully prescribed exceptions to the prohibition, but the question of who would define such exceptions is troublesome, as is the inflexibility of such a legal construct.

Because courts acting under an ERA are not limited to the standards of review developed under the Equal Protection Clause, they can develop new standards designed to achieve the policy of the ERA, equality for women and men. To define a new test is beyond the scope of this Comment, but it is suggested that the ideal standard would lie between strict scrutiny and an absolute ban. Such a test could establish a strong presumption that any sex-based classification was unconstitutional. In order to sustain the sex-based classification, the state would have to show that no other basis of classification would achieve the purpose behind the statutory distinction. Such a standard would require a closer match between the sex classification and the purpose of the distinction than strict scrutiny now requires.

The method used by the Supreme Court of Washington in *Darrin*[136] could be interpreted as such a new standard. The Court carefully examined the challenged regulation to determine its purpose. It then analyzed each of the several purposes for the regulation argued by the athletic association. The analysis consisted of first determining the par-

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ticular characteristics important to the classification's purpose, such as strength and proneness to injury, and then looking at both the excluded and included classes to see whether or not the divider—sex—matched the characteristics. The court found that the match was far from perfect. There are strong females and weak females, and there are strong males and weak males. The court found that because a sex-based regulation was not necessary to and did not achieve any of the stated goals, it was unconstitutional. Such a standard of review would focus attention on the purpose of the statute and on the reasoning of the legislature in creating the classification. An effective ERA should encourage this type of thorough judicial inquiry.

CONCLUSION

The case law under state equal rights provisions reveals that decisions emerge from many sources, including, but not limited to standard of review applied. Other factors clearly influence decisions, but the standard of review adopted provides the framework within which the courts must resolve ERA claims now and in the future. The experience in the states reveals that passage of an Equal Rights Amendment forces all but the most stubborn of courts to apply a standard of strict scrutiny in reviewing sexually discriminatory statutes and actions.

The concept of sexual equality in America, proclaimed at Seneca Falls 129 years ago, has now become a strong force in American politics and law. The federal Equal Rights Amendment has been passed by Congress and needs the votes of only three more states to become a part of the Constitution. Sixteen states have enacted their own Equal Rights Amendments and are adjusting their legal systems to the mandate for sexual equality. Legislatures in many states, both those with and those without ERA's are revising state statutes to make them sex-neutral. The concept of sexual equality is now unquestionably a part of our law.

FOOTNOTES

[1] E. FLEXNER, A CENTURY OF STRUGGLE 75 (1959).

[2] "Men and women shall have equal rights throughout the United States and every place subject to its jurisdiction.

"Congress shall have power to enforce this article by appropriate legislation." H.R.J. Res. 75, 68th Cong., 1st Sess. (1923); S.J. Res. 21, 68th Cong., 1st Sess. (1923).

[3] E. JANEWAY, WOMEN: THEIR CHANGING ROLES 128 (1973); I. MURPHY, PUBLIC POLICY ON THE STATUS OF WOMEN 17 (1973); W. O'NEILL, EVERYONE WAS BRAVE 17 (1969).

[4] *Introduction to* THE EQUAL RIGHTS AMENDMENT PROJECT, THE EQUAL RIGHTS AMENDMENT: A BIBLIOGRAPHIC STUDY at xv (1976).

[5] *Id.* at xvi. Proposed Amendment XXVII reads as follows:

Section 1. Equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex.

Section 2. The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.

Section 3. This amendment shall take effect two years after the date of ratification.

H.R.J. Res. 208, 92d Cong., 1st Sess. (1971); S.J. Res. 8, 92d Cong., 1st Sess. (1971).

[6] As of June 1977, the following states had not ratified the ERA: Alabama, Arizona, Arkansas, Florida, Georgia, Illinois, Louisiana, Mississippi, Missouri, Nevada, North Carolina, Oklahoma, South Carolina, Utah, and Virginia. Three states, Nebraska, Tennessee, and Idaho, have voted to rescind their ratification, but it is not yet clear whether a state may rescind its ratification of a Constitutional amendment.

[7] Legal commentators have also examined this problem. *See, e.g.*, Brown, Emerson, Falk & Freedman, *The Equal Rights Amendment: A Constitutional Basis for Equal Rights for Women*, 80 Yale L.J. 871 (1971) [hereinafter cited as Brown, Emerson, Falk & Freedman]; Freund, *The Equal Rights Amendment is Not the Way*, 6 Harv. C.R.-C.L. L. Rev. 234 (1971).

[8] Frontiero v. Richardson, 411 U.S. 677 (1973). Powell, J., joined by Blackmun, J., and Burger, C. J., said in his concurring opinion that ratification of the ERA would resolve "the precise question" of whether sex, like race, should be identified as a suspect category. *Id.* at 692. If it were so identified, a court would closely scrutinize allegedly discriminatory statutes.

[9] The states are: Alaska, Colorado, Connecticut, Hawaii, Illinois, Louisiana, Maryland, Massachusetts, Montana, New Mexico, Pennsylvania, Texas, Utah, Virginia, Washington and Wyoming. The specific constitutional provision of each appears *infra* in the Appendix.

The Utah and Wyoming provisions appeared in those states' original constitutions. The provisions in Illinois, Louisiana, Maryland, and Montana were added when these states adopted new constitutions. Virginia gained its provision when its old constitution was revised. Thus, not all of the provisions are amendments. Nevertheless, the label "equal rights amendment" or "ERA" will be used throughout this Comment.

[10] See text accompanying notes 33–39 *infra*.

[11] McGowan v. Maryland, 366 U.S. 420, 425–26 (1961); Royster Guano Co. v. Virginia, 253 U.S. 412, 415 (1920).

[12] The state need not justify the relationship. The Court will not find a relationship arbitrary as long as it can conceive of reasons to justify it. Railway Express Agency v. New York City, 336 U.S. 106 (1949). Goesaert v. Cleary, 335 U.S. 464 (1948), is an example of this standard applied to an instance of alleged sex discrimination. *Goesaert* was overruled by Craig v. Boren, 97 S. Ct. 451 (1976).

[13] *E.g.*, Murphy v. Murphy, 232 Ga. 352, 206 S.E.2d 458 (1974), *cert. denied*, 421 U.S. 929 (1975) (provision allowing alimony to wives only is not violative of 14th amendment); Warshafsky v. Journal Co., 63 Wis. 2d 130, 216 N.W.2d 197 (1974) (statute letting boys deliver papers at age 12, but girls not until 18 does not violate 14th amendment); Wark v. State, 266 A.2d 62 (Me. 1970) (longer sentences for escaped male prisoners do not violate 14th amendment); Allred v. Heaton, 336 S.W.2d 251 (Tex. App. 1960) (not unconstitutional to deny woman admission to all-male state college).

[14] Because of the requirement of a "rational relationship," this term has often been used by courts to refer to this standard of review. *E.g.*, Jefferson v. Hackney, 406 U.S. 535, 546, 549 (1972); Dandridge v. Williams, 397 U.S. 471, 487 (1970); McGowan v. Maryland, 366 U.S. 420, 426 (1961); Williamson v. Lee Optical Co., 348 U.S. 483, 489 (1955).

[15] *See, e.g.*, cases cited at note 13, *supra*.

[16] The states are Louisiana, Utah, and Virginia. See text accompanying notes 41–57 *infra*.

[17] *E.g.*, Loving v. Virginia, 388 U.S. 1 (1967).

[18] *E.g.*, Hernandez v. Texas, 347 U.S. 475 (1954).

[19] *E.g.*, Shapiro v. Thompson, 394 U.S. 618 (1969).

[20] *E.g.*, Harper v. Virginia Bd. of Elections, 383 U.S. 663 (1966).

[21] *E.g.*, Griffin v. Illinois, 351 U.S. 12 (1956).

[22] McLaughlin v. Florida, 379 U.S. 184, 192 (1964).

[23] Sail'er Inn, Inc. v. Kirby, 5 Cal. 3d 1, 18–20; 485 P.2d 529, 539–40; 95 Cal. Rptr. 329, 339–40 (1971); Hanson v. Hutt, 83 Wash. 2d 195, 517 P.2d 599 (1973).

[24] See text accompanying note 58 *infra*.

[25] The states are Pennsylvania and Washington. See text accompanying notes 83–106 *infra*.

[26] *See* Brown, Emerson, Falk & Freedman, *supra* note 7, at 893–96.

[27] Frontiero v. Richardson, 411 U.S. 677, 692 (1973) (Powell, J., concurring).

[28] People v. Ellis, 57 Ill. 2d 127, 129, 311 N.E.2d 98, 100 (1974); JOINT PRIVILEGES AND ELECTIONS COMMITTEES OF THE GENERAL ASSEMBLY, COMMONWEALTH OF VIRGINIA, RATIFICATION OF THE EQUAL RIGHTS AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES OF AMERICA 19 (1974); Uda, *Equality for Men and Women, Three Approaches: Frontiero, the Equal Rights Amendment and the Montana Equal Dignities Provision*, 35 MONT. L. REV. 325, 334 (1974).

[29] *E.g.*, Brown, Emerson, Falk & Freedman, supra note 7; Freund, *supra* note 7.

[30] *See* Gunther, *The Supreme Court, 1971 Term—Foreword: In Search of Evolving Doctrine on a Changing Court: A Model for a Newer Equal Protection*, 86 HARV. L. REV. 1, 19 (1972), where the author speculated that a new standard of equal protection review might be developing in the Supreme Court, one more vigorous in its scrutiny than the old rational relationship formula, but less demanding than "strict scrutiny." It focuses on the means used by a legislature to reach its objective, instead of evaluating the objective itself. Reed v. Reed, 404 U.S. 71 (1971), is one of the cases from which Gunther developed the idea of a new middle-level of scrutiny. At issue in *Reed* was an Idaho statute requiring the selection of a male as administrator of an estate where a male and a female were otherwise equally qualified to serve. The Court found the state's objective—to reduce the workload of probate courts—so insufficient as to amount to the kind of arbitrary legislative choice forbidden by the 14th amendment. In Craig v. Boren, 97 S. Ct. 451 (1976) the Court continued this type of analysis. Citing *Reed*, it stated that "classifications by gender must serve important governmental objectives and must be substantially related to achievement of those objectives." None of the cases yet decided under state ERA's, however, has used this middle-level standard.

[31] As a territory, Wyoming was a pioneer in allowing women the right to vote. When its constitution was drafted in 1889, the delegates to the constitutional convention feared that a clause doing no more than granting women suffrage would fail to achieve its purpose. JOURNAL OF WYOMING CONSTITUTIONAL CONVENTION 348–49 (1889). The drafters added two clauses as a safeguard. First an equality clause was added: "Both male and female citizens of this state shall equally enjoy all civil, political and religious rights and principles." WYO. CONST., art. 6, § 1. Second, a legal rights clause was drafted that listed sex, together with race and color, as classes whose political rights could not be abridged. WYO. CONST., art. 1, § 3. Only one sex discrimination case has been decided directly on the basis of the equality clause. In Ward Terry & Co. v. Hensen, 75 Wyo. 444, 297 P.2d 213 (1956), the court held that the right to property was one of the civil rights guaranteed without regard to sex, but did not articulate its standard of review.

[32] 87 N.M. 220, 531 P.2d 954 (1974).

[33] *Id.* at 223, 531 P.2d at 957.

[34] This reasoning reoccurs in ERA cases. Some courts, while acting under provisions requiring sexual equality, in fact assess the women's economic status by standards different from those used to assess the man's economic status. This double standard within a sex-neutral legal system is most pronounced in child custody cases, where parental qualities and behavior are often evaluated on the basis of stereotyped views of what constitutes a "good mother" or "good father" rather than by looking for the qualities of a "good parent," a sex-neutral concept. *See* Anagnostopoulos v. Anagnostopoulos, 22 Ill. App. 3d 479, 317 N.E.2d 681 (1974); Marcus v. Marcus, 24 Ill. App. 3d 401, 320 N.E.2d 581 (1974).

[35] Clontz v. Clontz, 166 Mont. 206, 531 P.2d 1003 (1975); Grant v. Grant, 166 Mont. 229, 531 P.2d 1007 (1975). The court refused to entertain the husband's constitutional claims because of their failure to notify the state attorney general that a constitutional issue was to be raised, as required by the Montana rules of appellate procedure.

[36] Englund v. Englund, 547 P.2d 841, 842 (Mont. 1976).

[37] State v. Craig, 545 P.2d 649 (Mont. 1976). State v. Craig0

[38] Estate of Kujath, 545 P.2d 662 (Mont. 1976).

[39] For example, Washington has amended 120 sections of its code to comply with that state's ERA. *See* Dybwad, *Implementing Washington's ERA: Problems With Wholesale Legislative Reform*, 49 WASH. L. REV. 571 (1974). In most ERA states the legislatures continue to bring the statutory law into accord with the constitutional mandate. In Texas, however, legislative reform in the area of family law was apparently done without consideration of that state's equal rights amendment. Sampson, *The Texas Equal Rights Amendment and the Family Code: Litigation Ahead*, 5 TEX. TECH. L. REV. 631 (1974).

[40] UTAH CONST. art IV, § 1. The text of this provision appears in the Appendix. While there is some disagreement as to whether art. IV, § 1, should be considered equivalent to an equal rights amendment, the Utah Attorney General's office considers it "a broad grant of equal rights to women and certainly is not limited to just suffrage rights." Letter from E. R. Callister, Jr., Assistant Attorney General, State of Utah to Brenda Hancock, Coordinator of Utah Governor's Commission on the Status of Women (Aug. 30, 1976); letter from Brenda Hancock to Nancy Page (Jan. 21, 1977).

[41] OFFICIAL REPORT OF THE PROCEEDINGS AND DEBATES OF THE CONSTITUTIONAL CONVENTION FOR THE STATE OF UTAH, 407–08, 421–28, 464, 492 (1895).

[42] Salt Lake City v. Wilson, 46 Utah 60, 148 P. 1104 (1915).

[43] *Id.* at 68–69, 148 P. at 1107.

[44] 532 P.2d 994 (Utah 1975).

[45] *Id* at 996. Most recently in Stanton v. Stanton, 30 Utah 2d 315, 517 P.2d 1010 (1974), *rev'd* 421 U.S. 7 (1975), the Utah court found reasonable a statute setting the age of majority for males at twenty-one and for females at eighteen on the basis of the "numerous interesting differences" between the sexes. After reversal by the United States Supreme Court, the Utah court on remand continued to insist that "[t]o judicially hold that males and females attain their maturity at the same age is to be blind to the biological facts of life." Stanton v. Stanton, 552 P.2d 112, 114 (Utah 1976). The Supreme Court again reversed. 97 S. Ct. 717 (1977).

[46] The Louisiana Constitution of 1921 had no equal protection clause.

[47] LA. CONST. art. 1, § 3. This provision, the text of which appears in the Appendix, guaranteed equal protection of the state laws to Louisianans for the first time.

[48] Hargrave, *The Declaration of Right of the Louisiana Constitution of 1974*, 35 LA. L. REV. 1, 8 (1974); Jenkins, *The Declaration of Rights*, 21 LOY. L. REV. 9, 18 (1975).

[49] In this regard the Louisiana courts have been less insistent upon sexual equality than has the United States Supreme Court. *See* Califano v. Goldfarb, 97 S. Ct. 1021 (1977); Craig v. Boren. 97 Ct. 451 (1976); Reed v. Reed, 404 U.S. 71 (1971).

[50] 315 So. 2d (La. 1975).

[51] *Id.* at 291. The dissenting opinion of Justice Barham recognized that male support of the family was not universal. On this basis, he would have found no rational basis for the statute unless criminal liability was also imposed on those wives who left their husbands destitute. *Id.* at 292–93.

[52] 320 So. 2d 236 (La. App. 1975).

[53] *Id.* at 238.

[54] The pertinent part of art. I, § 11 is reprinted in the Appendix.

[55] JOINT PRIVILEGES AND ELECTIONS COMMITTEE OF THE GENERAL ASSEMBLY, COMMONWEALTH OF VIRGINIA, *supra* note 28, at 19.

[56] Archer v. Mayes, 213 Va. 633, 638, 194 S.E.2d 707, 711 (1973). The challenged statute exempted women but not men from jury duty if they were responsible for the care of a young child or a disabled person. The question has since been mooted by a revision of the statute exempting any "person" with the requisite responsibilities. VA. CODE §§ 8–208.6(26), 8–208.10 (Supp. 1973).

[57] 213 Va. at 638, 194 S.E.2d at 710.

[58] Wright v. Action Vending Co., 544 P.2d 82 (Alas. 1975) (wife's claim for loss of consortium denied because state's workmen's compensation statute provides exclusive remedy); People v. Green, 183 Colo. 25, 514 P.2d 769 (1973) (rape statute not void under ERA because its distinctions between the sexes not based on sex but on elements of the crime); Page v. Welfare Comm'r, 170 Conn. 258, 305 A.2d 1118 (1975) (regulation that children of working wife not be counted as her dependents in computing her liability for support of indigent parent could not survive any equal protection attack); Maryland State Rd. of Barber Examiners v. Kuhn, 270 Md. 496, 312 A.2d 216 (1973) (statute forbidding cosmetologists to cut male hair bears no rational relation to any legitimate state purpose); Mercer v. Bd. of Trustees, North Forest I.S.D., 538 S.W. 2d 201 (Tex. App. 1976) (regulation of male student's hair length by school does not violate ERA because schools may establish rules for children in formative years.

[59] People v. Ellis, 57 Ill. 2d 127, 311 N.E. 2d 98 (1974).

[60] Ill. Const., art I, § 18. The text of this provision appears in the Appendix.

[61] 57 Ill. 2d, 127, 130–31, 311 N.E. 2d 98, 100 (1974).

[62] Id.

[63] Id. at 132–33, 311 N.E. 2d at 101. The court found that the challenged age distinction did not meet the test of a "compelling state interest". Prior to adoption of the ERA, Illinois courts had employed the rational basis test to sex-based statutory challenges. See People v. Pardo, 47 Ill. 2d 420, 424, 265 N.E. 2d 656, 658 (1970), appeal dismissed sub nom. Pardo v. Illinois, 402 U.S. 992 (1971).

[64] In Phelps v. Bing, 58 Ill. 2d 32, 316 N.E. 2d 775 (1974) the court examined a challenged statute that permitted females to marry at 18 without parental consent, at 16 with consent, and at 15 with court order. Males were required to be 21, 18, and 16, respectively. The court invalidated the statute because it could find no compelling state interest to justify the distinctions between boys and girls.

[65] Randolph v. Dean, 27 Ill. App. 3d 913, 327 N.E. 2d 473 (1975); Anagnostopoulos v. Anagnostopoulos, 22 Ill. App. 3d 479, 317 N.E. 2d 681 (1974); Marcus v. Marcus, 24 Ill. App. 3d 401, 320 N.E. 2d 581 (1974).

[66] People ex rel. Irby v. Dubois, 41 Ill. App. 3d 609, 354 N.E. 2d 562 (1976).

[67] People v. Williams, 32 Ill. App. 3d 547, 336 N.E. 2d 26 (1975); People v. York, 29 Ill. App. 3d 113, 329 N.E. 2d 845 (1975).

[68] People v. Yocum, 31 Ill. App. 3d 586, 335 N.E. 2d 183 (1975); People v. Boyer, 24 Ill. App. 3d 671, 321 N.E. 2d 312 (1974), rev'd, 63 Ill. 2d 433, 349 N.E. 2d 50 (1976). On the reversal of Boyer, see text accompanying note 82, infra.

[69] ILL. ANN. STAT. ch. 38, § 11–10 (Smith-Hurd 1972 Supp.). Penalties under this section range from 2-20 years.

[70] ILL ANN. STAT. ch. 38, § 11-11 (Smith-Hurd 1964). This section, which also covers brother-sister incest, provides for penalties of from 1-10 years.

[71] People v. Williams, 32 Ill. App. 3d 547, 336 N.E.2d 26 (1975); People v. York, 29 Ill. App. 3d 113, 329 N.E.2d 845 (1975).

[72] 57 Ill. 2d 127, 311 N.E.2d 98 (1974).

[73] *Compare* People v. Williams, 32 Ill. App. 3d 547, 336 N.E.2d 26 (1975) *and* People v. York, 29 Ill. App. 3d 113, 329 N.E.2d 845 (1975) *with* People v. Yocum, 31 Ill. App. 3d 586, 335 N.E.2d 183 (1975) *and* People v. Boyer, 24 Ill. App. 3d 761, 321 N.E.2d 312 (1974), *rev'd*, 63 Ill. 2d 433, 349 N.E.2d 50 (1976).

[74] 29 Ill. App. 3d 113, 329 N.E.2d 845 (1975).

[75] *Id.* at 115, 329 N.E. 2d at 846.

[76] 32 Ill. App. 3d 547, 336 N.E.2d 26 (1975).

[77] Ten out of the 11 appealed cases in Illinois arising from criminal incest convictions involved father-daughter incest. Comment on ILL. ANN. STAT. ch. 38, § 11-11, Committee Comments to the Criminal Code of 1961 (Smith-Hurd 1964).

[78] 32 Ill. App. 3d at 551, 336 N.E.2d at 30.

[79] People v. Yocum, 31 Ill. App. 3d 586, 335 N.E.2d 183 (1975); People v. Boyer, 24 Ill. App. 3d 671, 321 N.E.2d 312 (1974), *rev'd* 63 Ill. 2d 433, 349 N.E.2d 50 (1976).

[80] Comment on ILL. ANN STAT. ch. 38, § 11–11, Committee Comments to the Criminal Code of 1961 (Smith-Hurd 1964).

[81] People v. Yocum, 31 Ill. App. 3d 586, 335 N.E.2d 183 (1975). The court also pointed out that risk of genetic damage was not present at all in incest between fathers and adoptive or step-daughters, yet this is included as a reason for the heavier penalty. *Id*, at 589, 335 N.E.2d at 185.

[82] People v. Boyer, 63 Ill. 2d 433, 434, 349 N.E.2d 50, 51 (1976).

[83] The resolution of this question is not always self-evident. In fact, some controversial cases have been dealt with summarily by a determination that disparate treatment of the sexes did not involve discrimination. Most notable in this regard is General Electric Co. v. Gilbert, 97 S. Ct. 401 (1976), in which the Supreme Court found that the challenged insurance plan did not involve sex discrimination in not including coverage for pregnancy. The court reasoned "[t]here is no risk from which men are protected and women are not. Likewise, there is no risk from which women are protected and men are not." *Id.* at 409. The Court could instead have viewed the disparate treatment as discriminatory by finding that men were insured against all medical risks and women were not. Thus, resolution of this threshold question will in fact determine the outcome in many cases.

[84] Conway v. Dana, 456 Pa. 536, 318 A.2d 324 (1974).

[85] Henderson v. Henderson, 458 Pa. 67, 327 A.2d 60 (1974).

[86] Butler v. Butler, 464 Pa. 522, 347 A.2d 477 (1975).

[87] Hopkins v. Blanco, 457 Pa. 90, 320 A.2d 139 (1974).

[88] Adoption of Walker, 360 A.2d 603 (Pa. 1976).

[89] Commonwealth v. Butler, 458 Pa. 289, 328 A.2d 851 (1974).

[90] 11 Wash. App. 247, 522 P.2d 1187 (1974).

[91] 85 Wash. 2d 859, 540 P.2d 882 (1975).

[92] 18 Pa. Commw. Ct. 45, 334 A.2d 839 (1975).

[93] In *Pennsylvania Interscholastic Athletic Ass'n*, the court found that state funding of high school athletic programs constituted the requisite state action. 18 Pa. Commw. Ct. 45, 49, 334 A.2d 839, 842 (1975).

[94] The court selected its standard of review on the basis of its belief that the voters ratifying the ERA must have intended that the state courts be more rigorous in dealing with sex-based classifications than they had been under the strict scrutiny standard used prior to the ERA's ratification. 85 Wash. 2d 859, 871, 540 P.2d 882, 889 (1975). *See* Han-

son v. Hutt, 83 Wash. 2d 195, 512 P.2d 599 (1973); WASH. CONST. art. I, § 12.

[95] 85 Wash. 2d at 875, 540 P.2d at 891.

[96] *Id.* at 876, 540 P.2d at 892.

[97] *Id.*

[98] *Id.* at 877, 540 P. 2d at 892. Because the court did not reject the underlying premise, future cases may raise the issue of separate but equal treatment of the sexes. The United States Supreme Court recently considered this issue when it affirmed by an equally divided court, Justice Rehnquist taking no part in the decision, a Third Circuit case holding that school district regulations establishing gender-based classifications for admission to college-preparatory high schools do not violate the equal protection clause of the Constitution where two single-sex schools offer equal educational opportunities and where attendance at either the girls' or boys' school is voluntary. Vorcheimer v. School District of Philadelphia, 45 U.S.L.W. 4378 (U.S. April 12, 1977), *aff'g* 532 F. 2d 880 (3d Cir. 1976). Although this case arose in Pennsylvania and its ERA was pleaded, the district court refused to exercise pendant jurisdiction to ocnsider it, stating that Pennsylvania case law was inadequately developed in the area of education. 400 F. Supp. 326, 323–33 (E.D. Pa. 1975).

[99] Commonwealth v. Pennsylvania Interscholastic Athletic Ass'n, 18 Pa. Commw. Ct. 45, 50, 334 A. 2d 839, 842–3 (1975).

[100] *Id.* at 50, 334 A. 2d at 843.

[101] *Id.* at 48, 334 A. 2d at 841.

[102] In *Welfare of Hauser*, the court stated in dicta that *Darrin* construes the ERA to create "an absolute prohibition against discrimination *based on* sex." 15 Wash. App. 231, 239, 548, P.2d 333, 337 (1976) (emphasis in original). The possibility of this interpretation has provoked critical comment. *E.g.*, 14 DUQ. L. REV. 101, 106 (1975); Note, *Commonwealth v. Pennsylvania Interscholastic Athletic Association: A Stride Toward Equality of the Sexes or a Misstep?*, 37 U. PITT. L. REV. 234, 240 (1975).

[103] Instead of creating an absolute ban on sex-based distinctions, the cases may support two other conclusions: (1) that the justifications offered were unpersuasive, or (2) that the state's policy of sex neutrality as articulated by the ERA outweighs the justifications presented. The impact of *PIAA* and *Darrin* remains ambiguous. Furthermore, the *Darrin* decision emphasizes that the evidence presented by the Association was unsatisfactory *as evidence:* it was conjectural, "scintilla evidence . . . insufficient to support a finding." 85 Wash. 2d 859, 874, 540 P.2d 882, 892 (1975). This could be read to imply that a justification supported by substantial evidence might overcome the presumption of unconstitutionality created by the initial finding of sex discrimination.

[104] 163 U.S. 537, 559 (1896).

[105] Singer v. Hara, 11 Wash. App. 247, 522 P.2d 1187 (1974).

[106] Whereas sex-based categories are usually a shorthand way of classifying an objective factor: strength, breadwinner, authority figure, etc., functional categories would describe these factors directly in order to define the class affected by the statute.

[107] See text accompany notes 44–52, *supra.*

[108] *E.g.*, Page v. Welfare Comm'r, 170 Conn. 258, 365 A.2d 1118 (1975); People *ex rel.* Irby v. Dubois, 41 Ill. App. 3d 609, 354 N.E.2d 562 (1976).

[109] People v. Green, 183 Colo. 25, 514 P.2d 769 (1973); Finley v. State, 527 S.W.2d 553 (Tex. Crim. App. 1975).

[110] Commonwealth v. Pennsylvania Interscholastic Athletic Ass'n, 18 Pa. Commw. Ct. 45, 334 A.2d 839 (1975). Darrin v. Gould, 85 Wash. 2d 859, 540 P.2d 882 (1975).

[111] *See* Singer v. Hara, 11 Wash. App. 247, 522 P.2d 1187 (1975); text accompanying note 89, *supra.*

[112] See note 35 *supra*, and text accompanying notes 40–41 *supra.*

[113] There has been no recent litigation involving Wyoming's ERA. A case arising the the future could cause the state's high court to update its interpretation. See note 31 *supra.*

[114] *E.g.*, Stanton v. Stanton, 30 Utah 2d 315, 517 P. 2d 1010 (1974), *rev'd*, 421 U.S. 7 (1975), *enforced*, 552 P. 2d 112 (Utah 1976), *rev'd*, 97 S. Ct. 717 (1977).

[115] *See* notes 48 and 55 *supra.*

[116] *See* People v. Ellis, 57 Ill. 2d 127, 311 N.E. 2d 98 (1974); Phelps v. Bing, 58 Ill. 2d 32, 316 N.E. 2d 775 (1974); Texas Woman's University of Chayklintaste, 521 S.W. 2d 949 (Tex. Civ. App.) *rev'd on other grounds*, 530 S.W. 2d 927 (Tex. 1975) (requirement that women students under 23 must live in officially provided on-campus housing, while male students were not provided with similar housing, nor similarly restricted, was found to violate the Texas ERA by discriminating against both groups).

[117] Anagnostopoulos v. Anagnostopoulos, 22 Ill. App. 9d 479, 482, 317 N.E. 2d 681, 683–84 (1974); Marcus v. Marcus, 24 Ill. App. 3d 401, 407, 320 N.E. 2d 581, 585 (1974); Minner v. Minner, 19 Md. App. 154, 310 A. 2d 208 (1973); Lipshy v. Lipshy, 525 S.W. 2d 222 (Tex. App. 1975).

[118] *But see* People v. Elliott, 186 Colo, 65, 525 P. 2d 457 (1974) (court suggests that liability for felony non-support will be extended to wives in a proper case); Friedman v. Friedman, 521 S.W. 2d 111 (Tex App. 1975) (both parents must support their children, but services as well as money count towards meeting the support obligation). *See also* Butler v. Butler, 347 A. 2d 477 (Pa. 1975); Sampson, *supra* note 39, at 636–37.

[119] People v. Boyer, 24 Ill. App. 3d 671, 321 N.E.2d 97 (1974), *rev'd*, 63 Ill. 2d 433, 349 N.E.2d 50 (1976). See text accompanying notes 69–82 *supra.*

[120] People v. Salinas, 551 P.2d 703 (Colo. 1976); People v. Medrano, 24 Ill. App. 3d 429, 321 N.E.2d 97 (1974).

[121] *E.g.*, COLO. REV. STAT. § 40–22–25(1)(a) (1963); TEX. PENAL CODE § 21.02(a) (Vernon 1974).

[122] *E.g.*, People v. Medrano, 24 Ill. App. 3d 429, 321 N.E.2d 97 (1974); Finley v. State, 527 S.W.2d (Tex. Crim. App. 1975). This justification has also been used to uphold discriminatory incest statutes. *E.g.*, People v. Williams, 32 Ill. App. 3d 547, 336 N.E.2d 26 (1975).

[123] Commonwealth v. Pennsylvania Interscholastic Athletic Ass'n, 18 Pa. Commw. Ct. 45, 334 A.2d 839 (1975); Darrin v. Gould, 85 Wash. 2d 859, 540 P.2d 882 (1975). While variations in size and strength exist within each sex and therefore cannot be used to justify sexually discriminatory treatment certain physical characteristics exist exclusively within one sex. Physical characteristics such as the ability to become pregnant and the ability to impregnate are the clearest examples of such physical differences. The United States Supreme Court has, however, rejected the argument that discrimination based on pregnancy violates the Constitution. The Court held that such discrimination is also between pregnant and non-pregnant women and thus not discrimination based on sex. Geduldig v. Aiello, 417 U.S. 484 (1974); Gilbert v. General Electric, 97 S. Ct. 40 (1976).

[124] In Colorado, for example, four out of the five ERA cases thus far have had male plaintiffs. People v. Salinas, 551 P.2d 703 (Colo. 1976); People v. Barger, 550 P.2d 1281 (Colo. 1976); People v. Elliott, 186 Colo. 65 525 P.2d 457 (1974); People v. Green, 183 Colo. 25, 514 P.2d 769 (1973). In Sylvara v. Industrial Comm'n, 550 P.2d 869 (Colo. 1976) a female plaintiff raised the constitutional issue. Similarly, of four Maryland ERA cases, three were brought by a man. Brooks v. State, 24 Md. App. 334, 330 A.2d 670 (1975); Colburn v. Colburn, 20 Md. App. 346, 316 A.2d 283 (1974) and Minner v. Minner, 19 Md. App. 154, 310 A.2d 208 (1973). In the fourth case, cosmetologists of both sexes were seeking to cut male hair. Maryland State Bd. of Barber Examiners v. Kuhn, 270 Md. 496, 312 A.2d 216 (1973).

[125] 42 U.S.C. § 2000e–2 (1971), Civil Rights Act of 1964 § 703, as amended by Educational Amendments Act of 1972 § 901, 20 U.S.C. § 1681 et seq. (1976).

[126] Lane v. Lane, 35 Ill. App. 3d 276, 340 N.E.2d 705 (1975); Minner v. Minner, 19 Md. App. 154, 310 A.2d 208 (1973); Cooper v. Cooper, 513 S.W.2d 229 (Tex. App. 1974).

[127] King v. Vancil, 34 Ill. App. 3d 831, 341 N.E.2d 65 (1975); Marcus v. Marcus, 24 Ill. App. 3d 401, 320 N.E.2d 581 (1974).

[128] E.g., Sylvara v. Industrial Comm'n, 550 P.2d 869 (Colo. 1976). Plaintiff challenged a state rule denying unemployment insurance benefits until 13 weeks after termination of pregnancy as violating the 14th amendment equal protection clause and Colorado's EPA. The court found the rule unconstitutional under the 14th amendment and did not reach the ERA issue.

[129] Brown, Emerson, Falk & Freedman, *supra* note 7, at 890.

[130] *Id.* at 891–92.

[131] *Id.* at 892.

[132] *Id.*

[133] *See* Bakke v. Regents of Univ. of Cal., 18 Cal. 3d 34, 553 P.2d 1152, 131 Cal. Rptr. 680 (1976), *cert. granted*, 45 U.S.L.W. 3555 (U.S. Feb. 22, 1977).

[134] Brown, Emerson, Falk & Freedman, *supra* note 7, at 893–900.

[135] *See e.g.*, Butler v. Butler, 347 A.2d 477 (Pa. 1975).

[136] 85 Wash. 2d 859, 540 P.2d 882 (1975); see text accompanying notes 94–98, *supra.*

Mr. PAUL G. HATFIELD. Mr. President, there is a second aspect to our policy role here which must be discussed. It can be said that law is the elevation of custom or belief to the solemn dignity of common obligation.

In volume 2 of his commentaries, Blackstone asked:

Is not the culture of morals, and of social duty, an object worthy of the attention of every wise legislature?

The elevation of custom or belief to law, unfortunately, can as likely be the product of prejudice or expediency as the culture of morals or social duty. Such is the English common law legacy of presumed male superiority in the possession and inheritance of real property, known to suffering law students as the rule of primogeniture. The rule was born into the English common law after the Battle of Hastings in 1066 and successively enforced by William's Norman and Saxon successors until its effective repeal by the lands acts of 1926 and 1933. Its common law meaning and application were described by the Supreme Court in *Bates* v. *Brown*, 5 Wall. 710, 715–16 (1866):

The male issue is admitted before the female. When there are two or more males, the eldest only shall inherit, but females altogether.

In collateral inheritances, the male stock is preferred to the female. Kindred of the blood of the male ancestor, however, remote, are admitted before those of the blood of the female, however near, unless where the lands have, in fact, descented from the female.

These principles sprang from the martial

genius of the feudal system. When that system lost its vigor, and in effect, passed away, they were sustained and cherished by the spirit which controlled the civil polity of the kingdom.

The dominant principles in the British constitution have always been monarchical and aristocratic. These canons tend to prevent the diffusion of landed property, and to promote its accumulation in the hands of the few. They thus conserve the splendor of the nobility and the influence of the leading families, and rank and wealth are the bulwarks of the throne. The monarch and the aristocracy give to each other reciprocal support. Power is ever eager to enlarge and perpetuate itself, and the privileged classes cling to these rules of descent with a tenacity characteristic of their importance—as means to the end they are intended to help to subserve.

Reaction to this sacred autocratic objective among the pre-Revolutionary colonials was as diverse as they themselves were. New York accepted and applied primogeniture as did Maryland, Virginia, and the Carolinas, where plantation economies built upon the concentrated possession of land and slaves thrived. Curiously, the Massachusetts colony rejected this feudal incident but replaced it with an identical male-domination inheritance statute inspired by the influence of the Mosaic code upon the Calvinists. It derived from John Cotton's draft taken directly from the Bible:

V. Inheritances are to descent naturally to the next of kinne, according to the law of nature delivered by God. Numb. 27, 7, 10, 11.

VI. If a man have more sonnes than one, then a double portion to be assigned and bequeathed to the oldest sonne, according to the law of God, unless his own demerit doe deprive him of his birthright. The like for personall estates. Deut. 21, 17; Chro. 5, 1.

Pennsylvania followed suit.

The Declaration of Independence ensconced the right of all men to hold and enjoy property as tertiary only to life and liberty. Again, the Court in Bates:

With the close of the Revolution came a new state of things. There was no monarch, and no privileged class. The equality of the legal rights of every citizen was a maxim universally recognized and acted upon as fundamental. The spirit from which it proceeded has founded and shaped our institutions, State and National, and has impressed itself upon the entire jurisprudence of the country.

So, the beliefs of the Age of Enlightenment, elevated into law, overthrew the incidents of feudalism in the matter of exclusive male entitlement to property; the Roman code swept away the Hebrew and Anglo-Saxon influences. But did they eradicate the larger custom? Thomas Jefferson, who attacked primogeniture in 1776, went to his death doubting the full equality of the African race. The equal protection clause of the 14th amendment did not begin to mean equal educational opportunity for all until 86 years after it was ratified. Full economic opportunity for women today is so in doubt as to make this amendment necessary.

Let us finish the job of equality. Let us, by giving added life to this debate and this amendment, award ourselves the opportunity to elevate what we believe to what we must do.

Mr. President, this amendment is, in my opinion, the most appropriate method of assuring that the blessings of liberty are not denied to any American solely on the basis of sex. Besides its significance as the supreme law of the land and its role as the social contract between the governors—the people—and their executors in the Federal-State partnership, the Constitution is, most importantly, the symbolic embodiment of the hopes and aspirations of all people seeking to be free.

To make the technical argument that a constitutional amendment is not legally necessary to effect eventual full equality of the sexes is to deny this larger role. The same arguments were applied to the 13th and 14th amendments; if so noble a man as Lincoln had not the vision to realize this fact, our Nation's long and painful climb out of the darkness of slavery might not yet be accomplished. As it was, it was the prevalence of excessively narrow legal minds and those clever enough to exploit this tendency which impeded its progress. In conscience, who can deny the same fulfillment of equality before the law accorded to a minority of our population to that segment which is now the majority?

To imply that the Constitution is so self-executing that ERA's adoption will automatically bring a torrent of horrible and unforeseeable consequences not only misunderstands its integrity, it also betrays a fundamental lack of faith in our established methods of making, executing and interpreting laws to give it meaning. The specter of unisex restrooms totally ignores the right of privacy already found to be guaranteed by the first and fourth amendments. The thought of mothers torn from their children by universal military conscription must mean that those who believe it also believe that, as a people, we are incapable of choosing between rationality and foolishness. If that is true, how have we survived under an ever-enlarging Bill of Rights? The plain truth is that we have found more freedom in the Constitution than its framers expected—that was their hope; historically, we have been humanly reluctant but ultimately unafraid to extend it.

The genius of the document is that it recognizes that only fundamental truths may be stated in absolute terms, that, in itself, truth is invariable but its application in an imperfect world is not. Thus, it is wrong for government to act to abridge freedom of speech but, as Oliver Wendell Holmes made clear, it is not only necessary but socially desirable to prevent a false cry of "Fire!" in a crowded theater. By the same token, it is wrong for government to deny to women the same rights as are given to men but, in the definition and execution of those rights, it is absurd to suppose that laws written by people must be totally blind to human realities to comply with that truth.

It is continually said that the turns which the Watergate affair finally took affirmed the basic principle that we are governed by laws, not people. That is true. What is not often said is that it was people guided by an unfailing faith in the law and themselves which made the law work. I have faith in our ability to recognize what is right, to say so and to govern ourselves accordingly. To collectively fear the law is to fear ourselves.

I thank the Senator.

Mr. BAYH. Mr. President, I yield 30 seconds to the Senator from Wyoming.

Mr. WALLOP. Mr. President, when the Senate votes this morning on the ERA extension resolution, House Joint Resolution 638, I will, after much reflection, vote against it. My vote is not a vote against equal rights for women and men in this country, something I firmly believe in. It is, instead, a vote for the integrity of our Constitution and the amendment process which is being stretched to its outermost boundaries, if not beyond, by the proposed extension.

I cannot overemphasize my personal commitment to the fundamental proposition that all people—women and men alike—should be treated equally in the eyes of our laws. As a Senator from the "Equality State," I have long believed in, and have abided by, the Wyoming constitution which extends the protections of the law equally to "all members of the human race." These are the words of article I, section 6. The Wyoming constitution also provides in article 6, section 1 that:

Both male and female citizens of this state shall equally enjoy all civil, political and religious rights and privileges.

Just as my own State would not tolerate discrimination against men or women on the basis of sex, neither should the laws and Constitution of our land.

Yet, how are we to protect all American citizens against invidious discrimination based on sex? The 92d Congress offered one answer to this question when it proposed the equal rights amendment. That Congress followed the letter, spirit and Supreme Court interpretations of article V of the Constitution.

Mr. President, unlike the 92d Congress, the 95th Congress will, if the Senate approves House Joint Resolution 638, be venturing into uncharted constitutional waters. The proposed extension of the ratification period for the equal rights amendment has no clear basis in the Constitution. It is without legal, constitutional, or congressional precedent. How ironic, indeed, that an extension is not expressly authorized by the very Constitution it would, effectively, amend.

I am afraid that the instrument of our democracy will suffer from this distortion of the amendment process. Men and women around the country have already begun to protest the unfairness of an extension period without allowing the States to rescind prior ratifications. Will not a vast number of Americans lose confidence in our Constitution if we pass an extension which protects and encourages one side of the debate while denying the other side an equal and effective voice in the amendment process? Mr. President, I am afraid that the extension, which is intended to ensure equality and justice

for all, will work an injustice upon the Constitution and therefore on the people of the United States.

Mr. President, I submit that Congress is obliged by article V of the Constitution to do by constitutional amendment what it now seeks to do by this novel constitutional aberration called "extension." Are we not, in reality, submitting the equal rights amendment anew to the States for ratification within 39 months which, by the terms of article V, requires the approval of two-thirds of both Houses and which would, quite significantly, allow all States to take a fresh and contemporar look at this vital issue of equal rights?

It may well be the conviction of this Congress that the need for an amendment promoting and protecting the equal rights of women and men is as compelling today as it was in 1972 when it was submitted to the States. Nonetheless, there is no doubt in my mind that the proper mode for ratification is not by way of an extension which raises serious constitutional questions. Rather, if 38 States have not ratified the equal rights amendment by March 22, 1979, it will then be up to the Congress to reconsider the merits of the proposed equal rights amendment, to redraft an equal rights amendment to comport with basic notions of fundamental fairness and equality and to start the ratification process running from square one by submitting an equal rights amendment to the States for ratification. Only under those circumstances will all Americans feel that they have been given a fair chance to be heard on this critical issue and only in that way will the integrity of our Constitution be preserved.

Mr. BAYH. Mr. President, I yield 5 minutes to the Senator from Hawaii.

Mr. MATSUNAGA. Mr. President, "Hawaii No Kaoi." In Hawaiian that means "Hawaii is Number One," in the move for women, I am proud to be able to say that Hawaii is indeed No. 1, for the Hawaii State Legislature was the first to ratify the Congress-passed equal rights amendment to the Federal Constitution, acting within 2 hours after Congress had approved the proposal in 1972. Moreover, in November 1972, the people of Hawaii voted by an overwhelming majority to add a similar equal rights amendment to their own State constitution.

As one of Hawaii's two House Members at that time, I joined the highly respected Congresswoman from Michigan, Martha Griffiths, in leading the fight to pass the 1972 resolution, and I joined other equal rights proponents in urging the people of my State to adopt a State ERA. With the same personal convictions, and in the full knowledge that I am representing the views of a majority of my constituents, I rise today in support of the proposed extension of the ratification deadline to June 30, 1982.

Frankly, I had hoped that 37 other States would act favorably on the ERA with a dispatch equal to Hawaii's—or at least within the procedural time limit proposed by Congress. Along with many other staunch supporters of the ERA, I was reluctant to consider the possibility that Congress might be asked to extend the time limit, and, as a lawyer, I envisioned a number of constitutional and legal questions which might arise if we did. During the last several months, however, I have had an opportunity to review the arguments of constitutional scholars and plain citizens on both sides of the issue, and I have concluded that the American people and their elected representatives at the State level deserve more time to study this important social question, and that Congress, under the Constitution, can give them that time.

EXTENSION

The original equal rights amendment, introduced in Congress 55 years ago, had no time limit. Indeed the idea that Congress should impose a deadline for ratification of any constitutional amendment is a relatively recent innovation. Twenty-six amendments to the U.S. Constitution have been ratified and in only eight cases did Congress impose a ratification time limit. When the Constitution itself was submitted to the States for ratification, New York State balked at ratifying without an assurance that all of the proposed amendments would be ratified promptly. One of the framers of the Constitution, James Madison, in reply to this question, stated unequivocably that the Constitution must be ratified in toto and forever. Said Madison: "A reservation of a right to withdraw if amendments be not decided on * * * within a certain time" is a "conditions ratification" not contemplated by the Constitution. Twelve amendments were proposed and, within 3 years, the first 10 (the Bill of Rights) were ratified by 11 of the original 14 States. It is interesting to note that the remaining three of the original States—Massachusetts, Georgia, and Connecticut—ratified the Bill of Rights in 1939.

A time limit for ratification of a proposed constitutional amendment was first proposed by Congress in 1917 in connection with the 18th amendment (prohibition). There is no evidence that the choice of a 7-year time limit was anything but an arbitrary choice by the Congress. However, the setting of any kind of a time limitation was such a radical departure from the previous practice that it was challenged in court. In the case of Dillon against Gloss, in 1921, the U.S. Supreme Court ruled that Congress has the power to set time limits for the ratification of constitutional amendments to assure that ratification is "contemporaneous." The Court ruled that Congress has such authority under its constitutional power to propose the mode by which amendments shall be ratified, in short, that a time limit could be part of the procedural machinery established by the Congress for the ratification of an amendment. The Court further ruled that such time limits should be "reasonable," clearly not intending that heated public debate on a question of great social importance should be stifled.

The authority of Congress to establish a time frame for the ratification of a constitutional amendment was further clarified in the case of Coleman against Miller (1939) which arose over the ratification of a proposed amendment which would give Congresss the power to prohibit child labor. The amendment was submitted to the States for ratification in 1924 without a time limit and has yet to be ratified. The practice of hiring children to work in coal mines and factories, once acceptable in this country, has long since been prohibited by progressive State laws. In the mid-1930's, however, some 10 years after the amendment was proposed, several State legislatures ratified it. Coleman against Miller raised the question of whether such ratifications were "contemporaneous" and had been accomplished within a "reasonable" period of time. In its decision, the Court again upheld the authority of the Congress to establish the procedure by which amendments should be ratified, adding that such decisions were political and not within the jurisdiction of a court.

Opponents of the proposed extension of the deadline for ratification of the equal rights amendments have argued that Congress would be "tampering with the sacred U.S. Constitution" if the limit is extended. However, this review of our Nation's history reveals that the 7-year time limit is neither in the Constitution nor is it "sacred." Congress has the power to set a reasonable time limit for ratification of a proposed constitutional amendment and if, after reviewing the political situation, Congress decides that 7 years is not long enough, then Congress has the power to extend the time limit. The power to decide whether ratification is "contemporaneous" and whether the time limit is "reasonable" belongs to Congress and Congress alone.

RESCISSION

Mr. President, I have also been told by opponents of House Joint Resolution 638 that if Congress extends the time limit for ratification of the ERA, it should also permit States to rescind their prior ratification of the amendment. Some argue that under the circumstances, rescission would be a right required by the Constitution and others have told me that "fairness" demands that States be permitted to rescind. Again, however, a review of the facts reveals that the Constitution is silent and that existing precedents uphold the view that rescission should not be permitted.

Congress has considered the question of rescission before, in the case of the 14th amendment, for example. In that case, two State legislatures passed resolutions rescinding their previous ratification of the proposed amendment. Before certifying the amendment for inclusion in the Constitution, the State Department referred the rescission question to Congress. A concurrent resolution, expressing the sense of Congress that the amendment had been ratified was passed and the amendment became part of the Constitution.

Similar questions arose during the ratification of the 15th amendment (voting rights for former slaves) and the 19th amendment (voting rights for women) and in both cases, no validity was attached to the rescission efforts. In addition, previous Congresses have failed to act on proposed constitutional amendments which would permit rescission, apparently recognizing not only the fact that the existing Constitution does not recognize rescissions, but also the prob-

lems which might arise in the ratification of future amendments if State legislatures were permitted to rescind or "erase" the actions of prior legislatures.

In all prior cases, the question of rescission was not considered until the proposed amendment had apparently been ratified, and Congress never recognized any right to rescind prior ratification of an amendment. The Congress always upheld the view expressed by James Madision, that ratification was forever. If fairness is involved in this question, it compels us to treat the equal rights amendment in the same manner and to refuse to recognize any rescission effort by the States.

TWO-THIRDS VOTE

A third question which arises in connection with the extension of the time limit for ratification of the ERA is whether or not a two-thirds vote is required to pass the extension resolution. The Constitution clearly requires that the texts of proposed amendments be adopted by a two-thirds vote of the Congress. However, article V of the Constitution gives Congress the power to propose a mode of ratification without specifying how it should be done. The Supreme Court has upheld the power of Congress to establish a ratification procedure, but declined to say how it should be done, leaving that so-called "political" question up to the Congress.

In the case of the equal rights amendment, the 7-year time limit is not part of the proposed amendment's text. As we have seen, no time limit at all was attached to the ERA resolution until the eve of its passage by Congress. Some opponents of the extention resolution have pointed out that several State legislatures ratified the proposing resolution as well as the text of the amendment, that this constitutes a conditional ratification, and that such legislatures should have the right to rescind ratification if the required three-fourths of the States do not ratify the ERA within 7 years. There appears to be no basis for such a belief on the part of the State legislatures or on the part of the Congress for, as we have seen, conditional ratifications and rescission have never been recognized in the entire 200-year history of the United States. It seems clear that Congress has the right to set the mode of ratification and to amend it, if that seems wise, by simple majority vote, so long as any proposed time limit is "reasonable" and permits "contemporaneous" ratification.

IS THE ERA STILL NEEDED?

Mr. President, no one can deny that ratification of the ERA is still a "contemporaneous" question. The debate on the merits of the ERA has become increasingly heated in the last few years. Opponents of the amendment argue that "no one knows."

Mr. President, there is a saying in Hawaii "Hawaii no kaoi." In Hawaiian it means Hawaii is number one, and in the area of civil rights I honestly can say Hawaii is number one, and in the area of the equal rights amendment Hawaii was the first to ratify the amendment, and moreover in 1972 Hawaii amended its own constitution to provide ERA.

What will happen if it is ratified, predicting that women will lose rights they have long enjoyed. The question of extending the time limit for ratification of the ERA has caused a great deal of anguish, not only among opponents of the amendment but also among some of its staunchest defenders, including several women's organizations and "liberal" newspapers. They argue that women have made many gains in the last few years under laws passed by Congress and the State legislatures and that the ERA may no longer be needed.

To those women who are afraid of losing certain rights which they now enjoy, let me say that no special right or privilege is safe as long as our Constitution does not even guarantee equal rights to women under the law. As recently as 1970, the courts in one State ruled that a wife was "at most a superior servant to her husband . . . only chattel, with no personality, no property, and no legally recognized feelings or rights." (*Clouston v. Remlinger*, Ohio, 1970). Even more recently than that, the courts of Louisiana finally struck down the longstanding "head and master law," under which married women were for many years denied the right to manage and dispose of their own property. Both the Napoleonic Code, on which the Louisiana law was based, and English common law, on which much of our laws are based, hold that "by marriage, the husband and wife are one person in law . . . the very being and existence of the woman is suspended during the marriage." No existing law guarantees a homemaker the right to support in accordance with her needs and her contributions to the family's welfare. It is only when she leaves the home and seeks separate maintenance, alimony, or child support that the courts recognize her as a person in her own right. Even then, less than one-half of the divorced mothers in this country manage to collect court-ordered child support on a regular basis.

Not only have the courts held that married women are "chattel"—which is defined as "property, such as a slave or bondsman"—but the courts have held on several occasions that men and women are not entitled to equal protection under the Constitution. The noted women's rights activist, Susan B. Anthony, was convicted of a Federal offense after she voted in the Presidential election of 1872 and the court found her not entitled to "equal protection" under the 14th amendment. A separate constitutional amendment was required to give women the right to vote. As late as June 1978, in the case of Bakke against University of California Board of Regents, the Supreme Court warned that the 14th amendment could not be interpreted to apply to gender-based discrimination. The likelihood of more suits is very great, for the U.S. Justice Department, in a survey conducted last year, found 800 Federal laws which discriminate against women, not counting Federal administrative regulations or State laws. Moreover, despite the enactment of the Equal Pay Act of 1963, studies continue to show that a working woman who is a college graduate is likely to earn less than a male high school dropout. Women who choose to pursue careers have to work doubly hard to reach the top ranks—and still get paid less than men who do the same type of work.

Ratification of the ERA will not deprive women of privileges which they now enjoy; it will give them legal standing in their own right, and it will guarantee to women the same constitutional rights which men enjoy.

Yes, Mr. President, there is no question in this Senator's mind that the ERA is very much needed even in this day and age. Time for its full consideration and ratification by the States is fast running out. If we truly believe that our own daughters should be guaranteed the same rights and privileges guaranteed to our sons under that greatest human documents of all times, the Constitution of the United States, then we must this day vote "aye" to the adoption of House Joint Resolution 638.

I thank the Senator.

Mr. BAYH. Mr. President, I yield 30 seconds to the Senator from California (Mr. HAYAKAWA) for a unanimous-consent request.

The PRESIDING OFFICER. The Senator from California.

Mr. HAYAKAWA. Mr. President, I fully agree with my distinguished colleague from Hawaii about the rights of women. I have been an advocate of women's rights since I married a Lucy Stoner myself. For the first 9 years of our marriage she went by her maiden name.

I do have reservations, however, about the extension. And I have a statement here I would like to make.

I have followed the debates over the equal rights amendment with more than casual interest. I was an early reader of Virginia Woolf's feminist essay of 1929, "A Room of One's Own." In the 1930's I applauded the poetry of Dorothy Parker and Edna St. Vincent Millay—especially those poems which expressed the right of a woman to her own emotions, undominated by male expectations of how women ought to feel. I have always believed in the right of women to their own identity.

I had no problem with the fact that my wife, for the first 9 years of our marriage, went by her maiden name. We have been married 41 years and have 3 grownup children. She has always maintained her independent interests and continues with her career to this day. I am fully for equal rights.

But I must admit that I am not fully persuaded by the campaigners for the equal rights amendment. Every day judicial decrees and administrative decisions in government and business advance the cause of women. Women have entered the police force in large numbers across the country. Women in the military are given the same basic training as men; preparation for actual combat duty seems only a step away. In the U.S. Senate, administrative and legislative assistants, who a generation ago were likely to be middle-aged men, are now more than likely to be women, including young women in their twenties, some of whom will be Senators themselves a couple of decades from now.

Best of all, women are entering colleges of engineering and getting good jobs on graduation. The entire spirit of the times favors the continuing advance of women. But the ERA campaigners maintain a paranoid tone, as if women were making no progress at all and were still locked in the Middle Ages.

Apart from the wisdom or unwisdom of the equal rights amendment, we are also faced with the question of an extension of time for its ratification. The pro-ERA people who are urging this extension seem to be oblivious to the fact that it will also be advantageous to the anti-ERA forces. With four States having rescinded their ratification (whether or not that recission is legally recognized), it is clear that the anti-ERA movement has a momentum of its own, as does the ERA movement itself.

All 26 amendments that are now part of the Constitution have been ratified within 4 years of their proposal. The past six amendments have all contained a 7-year deadline for ratification. I fail to see any special circumstances in this instance that would justify making so great a change in our traditional practices in amending the Constitution and thereby establishing a precedent, the consequences of which have not been publicly debated.

Finally, I believe the pro-ERA people are making a profound public relations error in pushing for this extension of time. They are saying in effect, "It's the ninth inning and we are three runs behind; we insist that the game go into extra innings." In thus arguing for a change in the rules because they are losing, they are compromising the moral basis of their position. As one of my friends (male) says, "The girls just don't want to play fair." And as another of my friends (female) replied, "Women are like that when they don't get their way." It is a terrible mistake for the women's movement thus to reinforce the stereotype of women as irrational beings—a belief that has stood in the way of women's rights at least since the days of Aristotle.

If the extension of time for the ratification of ERA comes to a vote in the Senate, I shall vote "no." I do not believe that the process of amending the Constitution should be altered so casually, and in response to a single issue.

The ERA campaign has done much to sensitize us all to the inequalities that still confront women, especially as regards property rights. If the deadline passes with the amendment not yet ratified, I hope its proponents will accept the defeat gracefully and come back with a better campaign. The next time around, the equal rights campaign should be unencumbered with such subordinate (and far more debatable) issues as abortion rights and lesbian rights, and unclouded by debates over the legitimacy of the extension of time for ratification.

No one disputes the right of women to their personhood. All sorts of things happening around us indicate that an equal rights amendment, stripped of nonessentials and presented on its own merits, is somethig the public is just about ready to accept. Its proponents should be working now on a less diffuse, more accurately targeted, and better argued campaign. I wish them success.

Mr. BAYH. Mr. President, I am about to close this debate, and I do not intend to repeat all of the substantive issues which have been succinctly and vividly portrayed as being the reason behind the need to extend the equal rights amendment, except to point out those areas of discrimination.

I think the RECORD has been made exceptionally well, but we have been told here again this morning we are talking about a procedural question as to the adoption of the amendment, and the process must be fair. So, in closing, perhaps it would be wise to remind ourselves what the past procedure has been.

It has been clear from every court decision on this subject and by every action of the Congress of the United States that Congress has the authority to determine what a reasonable time is under the circumstances to consider a constitutional amendment. Eight times Congress has said 7 years is a reasonable time. Eighteen times Congress has said there should be no time limit whatsoever.

This morning we are asking the Senate to join the House in telling the country that 10 years is a reasonable time limit. But what about past procedures? I remind my colleagues that this is no ordinary constitutional amendment. We are talking about equality of opportunity and equal justice for over half of the people of this country, over 100 million American citizens.

Let us look at history. We fought a Revolutionary War, no time limit; we passed a Bill of Rights, no time limit; we fought a War Between the States, no time limit; we passed the 14th and 15th amendments, no time limit; we passed an amendment giving the women of America the right to vote, no time limit.

I suggest that the precedent, the procedures, that have been followed by this country are that we have not put a time limit on the pursuit of equality and opportunity whenever a sizable number of Americans were denied these basic and fundamental American rights, and we are not going to start now by putting a time limit on the pursuit of equality and justice for the women and men of America.

The VICE PRESIDENT. One minute remains.

Mr. BAYH. Mr. President, I ask unanimous consent that certain wires, letters, and correspondence supporting the equal rights amendment be printed in the RECORD along with my closing remarks which should be inserted at this point.

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

NOTRE DAME LAW SCHOOL,
South Bend, Ind., October 3, 1978.

Senator BIRCH BAYH,

Please urge upon the Senate that discussions of rescission of ratification are inappropriate in consideration of legislation to extend the ratification deadline on the Equal Rights Amendment. Any discussion of rescission in connection with the extension issue is premature, improper and would set a precedent inconsistent with constitutional law.

THOMAS L. SHAFFER,
Professor of Law.
EDWARD MCGLYNN GAFFNEY, JR.,
Associate Professor of Law.

WASHINGTON, D.C., *October 3, 1978.*

Hon. JAMES O. EASTLAND,
Senate Office Building,
Washington, D.C.

Please oppose all rescission amendments to ERA extension.

BARBARA NICHOLS,
President, American Nurses Assn.

WASHINGTON, D.C., *September 28, 1978.*

Hon. BIRCH BAYH,
Senate Office Bldg.,
Washington, D.C.

DEAR SENATOR: The International Brotherhood of Teamsters supports the legislation now pending before the Senate, to extend the deadline for ratification of the Equal Rights Amendment.

The people of thirty-five states have voted to amend the Constitution to provide women equal rights under the law. Given the vital importance of the amendment and out of fairness to those who have already voiced their support, a time extension would appear most reasonable.

Approximately twenty-five percent of our over two million members are women, who are entitled to the same rights and protections under the law now enjoyed by men.

Therefore, we would strongly urge that on Tuesday, October 3, you vote to end debate on the extension, and once cloture is invoked, vote to extend the deadline on ERA and against any amendments which would allow for rescission of ratification by the State legislatures.

Thank you for your consideration in this matter.

Sincerely,

FRANK E. FITZSIMMONS,
General President, International Brotherhood of Teamsters.

NATIONAL LEAGUE OF CITIES,
Washington, D.C., October 3, 1978.

DEAR SENATOR: The National League of Cities strongly supports the proposed extension of the deadline for State ratification of the Equal Rights Amendment.

We believe the arguments made against the extension are without foundation in our constitutional history. If, as is conceded, Congress has plenary power to determine the time period for ratification of a constitutional amendment, there is little doubt that the Congress can extend that time period if it determines that additional time is required for the public to debate the proposed amendment fully.

The National League of Cities believes that equal rights for women is a fundamental right and must be made part of the Nation's basic law. We urge you to support the extension of the ratification deadline.

Sincerely,

ALAN BEALS,
Executive Director.

UNITED CHURCH OF CHRIST,
New York, N.Y., September 26, 1978.

DEAR SENATOR: I am writing at the request of the United Church of Christ Advisory Commission on Women to urge you once again to support the passage of the ERA extension resolution, S.R. 134, in this session of the Senate. I also encourage you to work against any amendment allowing rescission to be attached to this resolution, since rescission is a separate matter for consideration by a future Congress after the Equal Rights Amendment has been ratified.

I thank you for your serious consideration

of this issue of justice which is of great concern to the 1.8 million members of the United Church of Christ and to all Americans.

Sincerely,

AVERY D. POST,
President.

SISTERS OF CHARITY OF THE BLESSED VIRGIN MARY,
Dubuque, Iowa, September 18, 1978.

SENATOR BIRCH BAYH,
U.S. Senate,
Washington, D.C.

DEAR SENATOR BAYH: At this time we feel it is important that the Sisters of Charity of the Blessed Virgin Mary, a Congregation of 1,550 members, serving people in thirty-one states of our United States of America, express to you our support of the extension of time for ERA, H.J. 638. We believe that more time is needed for a reasonable discussion of this issue.

We urge you to vote for H.J. Res. 638 without crippling amendments, including those which make it possible for states to rescind their ratification of the ERA (i.e., go back on their commitment to equality). We also urge you to vote for cloture on the first cloture vote in case of filibuster.

We would like to stress the point that ERA has no connection with abortion, and that all polls show that 58–60 percent of the Catholic people nationally support ERA.

As members of the Office of Ministry representing the Sisters of Charity of the Blessed Virgin Mary, we support ERA as an issue of Social Justice.

Sincerely,

Sr. THERESE FRELO, BVM,
Office of Ministry, Coordinator.
Sr. THERESE CALUORI, BVM,
Office of Ministry, Associate Coordinator.
Sr. MARGARET M. FLYNN, BVM,
Office of Ministry, Secretary.

AMERICAN LIBRARY ASSOCIATION,
Washington, D.C., September 25, 1978.

DEAR SENATOR: On behalf of the American Library Association, a nonprofit educational association of some 35,000 members, I am writing to urge you to vote in support of H.J. Res. 638, the resolution to extend the deadline for ratification of the Equal Rights Amendment.

Although women constitute over 80 percent of the library profession, statistics compiled in a number of surveys of library personnel indicate consistently that compensation for women is lower than for men and that women are significantly under-represented in management roles. Equal employment and opportunity in the profession require support of equal rights for women. Accordingly the Association has taken action to eliminate discrimination on the basis of sex, in the form of internal policies and programs, over the past several years. Nonetheless, in recognition of the fact that efforts in support of equal rights for women must be on a national scale to be truly effective, and in recognition of the fact that the pursuit of equal rights can have no deadlines, we call upon you for support in allowing the legislators of the fifty states time to arrive at a just decision.

Sincerely,

EILEEN D. COOKE,
Director, ALA Washington Office.

PORT ARTHUR, TEXAS,
September 27, 1978.

Senator BIRCH BAYH,
Pro ERA Leader, U.S. Senate, Capitol,
Washington, D.C.

DEAR SIR: I haven't had time to do much research on the alleged necessity for amending the U.S. Constitution by adopting the women's equal rights amendment. I just a few minutes ago finished looking through the Federalist Papers (no mention of women), selected writings of James Madison (no mention of women), a book "The Basic Ideas of Alexander Hamilton" (no mention of women, except letters to his wife), and a book by former Chief Justice Earl Warren with this statement, "As the delegates of the Constitutional Convention trudged out of Independence Hall on September 17, 1787, an anxious woman in the crowd waiting at the entrance inquired of Benjamin Franklin, "Well, Doctor, what have we got, a republic or a monarchy?"

"A republic," Franklin replied, "if you can keep it."

(On the CBS Evening News, just now I saw a red-headed woman reporter in a major league baseball locker-room full of lightly dressed baseball players, and Walter Cronkite came on and said, "And that's the way it is September 27, 1978.")

I went to a baseball game the other day, in the Domed Stadium in Houston. Before the game, everyone rose to their feet and gave the Pledge of Allegiance to the Flag:

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

No doubt, women have been, and to a large extent still are, taken for granted, and have very little power to protect their rights. And this condition will continue, for all citizens, not just women, until the United States Government carries out its constitutional duty to "establish justice" for all citizens of the United States.

A good start can be made by making all qualified lawyers in the United States public employees, and paying them a salary like other public employees.

I am also for the adoption of the Equal Rights Amendment.

Sincerely,

HUGH WILSON.

DOCTORS FOR THE EQUAL RIGHTS AMENDMENT,
Dallas, Texas.

DEAR SENATOR BAYH: Doctors for E.R.A. urge you to vote *no* to any attempt to amend S.J. Res. 134 to allow states to rescind ratification of the Equal Rights Amendment.

Not enough attention has been paid to the fair and legal option of REPEAL as the Constitutional alternative to rescission. Failure of an amendment for lack of a ¾ majority is not the same as a consensus against it. The Constitution provides that an undesirable amendment can be eliminated by a clear ¾ majority opposed to it; what could be more fair than to require that we proceed in the same way to get rid of an amendment as to instate it? Last year fourteen states defeated proposals to rescind, and there is now consensus among a clear majority of states in favor of the E.R.A. The tragedy for our nation is that the frightening possibility that the will of a majority of states is likely to be thwarted.

We are alarmed at the irresponsible movement to allow rescission. Extension of the deadline for an amendment is a new and untested idea, but rescission is an old idea which has failed to meet the constitutionality challenge many times. James Madison was the first to argue against rescission; he astutely perceived that it is human nature to avoid taking a firm stand if at all possible, and it was the founding forefathers' intention to guard the Constitution and the amending process against the all too common failing of being wishy-washy. After Madison, the case against rescission was reaffirmed by four lines of legislative and judicial decisions:

1) Article V of the Constitution recognizes only the affirmative act of ratification. The founding fathers did not include rescission in Article V.

2) Congress declared that the 14th and 15th Amendments ratified, despite resolutions by several states to rescind their previous ratifications.

3) Congress has twice, in 1924 and 1973, considered amending Article V to allow rescission, thereby recognizing that Congress is powerless to validate rescissions.

4) The Supreme Court has upheld the refusal of Congress to recognize rescissions in *Hawke* v. *Smith* (1920), *Lesser* v. *Garnett* (1922), *Dillon* v. *Gloss* (1927), and *Coleman* v. *Miller* (1939).

REPEAL has been tried and successfully tested in the case of Amendment 18. Please bring this to the attention of your colleagues who may ask you to vote for rescission. Doctors for E.R.A. will withdraw our support from the bill for extension, should rescission be attached.

Sincerely,

L. RUTH GUY, Ph. D.,
SUZANNE AHN, M.D.

AMERICAN PSYCHOLOGICAL ASSOCIATION,
Washington, D.C., September 30, 1978.

MEMBER,
U.S. Senate,
Washington, D.C.

DEAR SENATOR: The Equal Rights Amendment (ERA) has been an important social justice issue for psychologists. In addition, women's disadvantaged status is destructive to the mental health and well-being of both sexes. Mental health professionals have an ethical mandate to support the ERA and to refute the myths about its negative impact.

We would like to draw your attention to the April 1978 report of the Subpanel on the Mental Health of Women of the President's Commission on Mental Health. That report documents the social, economic and psychological consequences of women's inequality. After considering the statistics on rape, incest, domestic violence, depression and alcohol and drug abuse, the Subpanel endorsed the ERA as a strategy for the primary prevention of mental health problems of women.

The data from public opinion polls show that the majority of persons support the ERA. We would also like to draw your attention to the number and diversity of the professional organizations that concur in the Subpanel's view of the need for the ERA. These groups represent the mainstream of our society. Many consider the ERA as so important that they will not schedule meetings in the states that have not ratified the ERA. Please understand that if ERA's deadline were to expire, the members of such organizations could not, in good conscience, attend meetings in states that had been successful in blocking constitutional equality for women. Denying the extension could be unfair and harmful to unratified states that will have an opportunity to pass the ERA when the extension is granted.

The link between women's disadvantaged status and mental health has only recently received attention by the President's Commission. Mental health professionals need time to communicate the facts to the public so that all persons can better understand the benefits of equal rights for the mental health and well-being of both sexes. H.J. Res. 638 can provide that needed time.

The members of the Board of Social and Ethical Responsibility of the American Psychological Association urge you to do all you can to insure passage of the extension of the deadline for the ERA.

Sincerely,

Carolyn B. Block, Ph. D., Chair, APA Board of Social and Ethical Responsibility, for Psychology; Sidney W. Bijou, Ph. D.; Stuart Cook, Ph. D.; Leslie H. Hicks, Ph. D.; Patricia A. Hollander, J. D.; Irwin Hyman, Ed. D.; Judy F. Rosenblith, Ph. D.; Seymour Sarason, Ph. D.; Derald W. Sue, Ph. D.; Dalmas Taylor, Ph. D.

U.S. STUDENT ASSOCIATION,
Washington, D.C., October 3, 1978.

To: U.S. Senators
From: Joel Packer, Legislative Director; Dianne Piché, Women's Program Coordinator.
Re H.J. Res. 638 (Extension of the deadline for ratification of the Equal Rights Amendment)

The United States Student Association (USSA), which represents three million college and university students, urges you to vote in favor of H.J. Res. 638, which extends the deadline for ERA ratification by three years and three months. We also strongly urge you to vote against the Garn (R–Utah) amendment, which permits states to rescind their previous ratification. Lastly, we urge you to vote against any other weakening amendments, such as those that will be offered by Sen. Scott (R–VA).

The seven-year time limit now in the resolving clause of the ERA is an arbitrary limit that is not part of the Constitution. Of the 26 amendments now in the Constitution, eighteen were submitted to the states without any ratification period. The seven-year limit was first attached to the 18th Amendment (regarding Prohibition) as a compromise and was selected without any real rationale. Since then, every amendment, except the 19th Amendment, has had the seven-year limitation attached as "custom."

The Supreme Court has ruled that Congress has the power to fix a definite time period in which states must act upon ratification (*Dillon* v. *Gloss*, 246 U.S. 368 (1927)). The Court has also stated that Congress, without any review by the courts, may decide what is a reasonable length of time for ratification (*Coleman* v. *Miller*, 307 U.S. 433 (1939)). It is clear that it is within the Constitutional powers of Congress, as enumerated in Article V of the Constitution, to determine whether states have had ample and reasonable time to consider ratification of proposed amendments, and to extend such time if it so desires. As the Justice Department has stated, "The sole issues before Congress with respect to extension are, therefore, whether the political, economic and social issues which gave rise to the proposed amendment remain vital and whether the states have had adequate time to debate the proposed amendment.

The issues which prompted Congress to pass the proposed amendment in 1972 are even more vital and pertinent today. Many recent Supreme Court decisions, such as the 1977 Vorsheimer ruling which permitted the exclusion of a student from a Philadelphia public technological school because of her sex, and the Gilbert ruling in which the Court stated that Title VII of the Civil Rights Act does not prevent employers from discriminating against women by denying disability benefits for pregnancy, point to the need for the ERA. In addition, a recent review of the U.S. Code revealed over 800 sex-biased laws. The cumulative effect of such laws assign women, solely on the basis of sex, inferior and subordinate roles in society.

The Equal Rights Amendment, as well as the extension, enjoy wide support from the public. The most recent Harris poll (conducted from June 27 to July 1, 1978) found 57 per cent of the public favoring extension of the time limit. This same poll found 55 per cent of Americans support the ERA, an increase over earlier polls. As you are all aware, 100,000 individuals representing some 300 different organizations rallied on July 9 in Washington in support of ERA and extension. 35 states, which comprise over 70 per cent of the population, have already voted to ratify the ERA.

In key unratified states, the issue of equal rights has become subservient to the March 22, 1979 deadline. Small numbers of opponents of the ERA have resorted to delay tactics to prevent the amendment from being considered by the full legislature. The passage of the extension will remove this time pressure and allow the legislators to fully and fairly debate and act upon the ERA.

We believe rescission is unconstitutional and should not be included in H.J. Res. 638. There have been three previous cases in which Congress has ruled rescission; they were the ratification of the 14th, 15th, and 19th Amendments. In each case when states attempted to rescind their ratification, Congress has refused to recognize the validity of the rescission, even when its determination was decisive on the issue of whether sufficient numbers of states had ratified the pending amendment. In addition, judicial precedent proves that rescission is unconstitutional. Even if one thinks rescission is constitutional, adoption of the Garn amendment would have no binding force. The only Congress which could validate a state's rescission would be the Congress in session at the time 38 states have ratified the ERA. The 95th Congress cannot vote to bind the actions of a future Congress.

While there are certainly many legal issues involved in H.J. Res. 638, it is basically a moral question. The ERA will make women's rights permanent and beyond the reach of politics. Equal opportunity and equal treatment under the law are incomplete and inconsistent. There are too many cracks in the various laws, regulations, and court rulings through which women's rights can and do slip. Our student members believe women's rights must be written into the Constitution and once again urge you to vote in favor of H.J. Res. 638 and against rescission.

[From the Los Angeles Times, Sept. 29, 1978]

ERA: NO DODGING

Senate Majority Leader Robert C. Byrd (D-W.Va.) has maneuvered the measure extending the deadline for ratifying the Equal Rights Amendment onto the Senate calendar. Next Tuesday the measure will face a key procedural test vote. Without this proposed extension, ERA backers would have only six months to win ratification in three more states for a national policy stating that women shall not have their rights abridged just because they are women.

We have in the past addressed why ERA is still needed legally, and why Congress would be perfectly justified in extending the ratification deadline. Now we want to speak to a question that seems genuinely to trouble legislators: If they extend the ratification deadline with the aim of convincing some states to change their minds to vote "yes," shouldn't they allow states that have already voted "yes" to change their minds and vote "no"? Four state legislatures—in Idaho, Nebraska, Tennessee and Kentucky—have already done so, although the Kentucky move was vetoed.

Article V of the Constitution deals with the amendment process. It specifically gives states the power to ratify—that is, agree—but does not mention rescission—rejecting that ratification once given. That may seem unfair. But a look at constitutional history shows that the only way to remedy that situation if it is a problem—and we aren't convinced that it is—is by amending Article V. The Justice Department made that very point in testimony last fall by Asst. Atty. Gen. John M. Harmon before the House subcommittee on civil and constitutional rights.

Rescission is not a new issue. James Madison wrote Alexander Hamilton during the debates over ratifying the Constitution itself that "the Constitution requires an adoption in toto and forever." Madison was discussing whether New York could conditionally ratify the Constitution, but, through the years, his principle has been tested and upheld as it applies to rescission.

For example, after the Civil War, Ohio and New Jersey attempted to withdraw their ratification of the 14th Amendment. Yet the list certifying states that had ratified the amendment included Ohio and New Jersey. Congress approved the list, and that was that.

In 1920, Tennessee attempted to rescind its ratification of the 19th Amendment five days after the process had been deemed final. That move likewise was disallowed.

Following that—in 1924—a New York Senator and a Tennessee congressman introduced an amendment to Article V of the Constitution to give states the right to change their votes—either way—until an amendment became effective. The proposal apparently never came to a vote.

The courts entered the picture in 1937 in considering whether a child-labor amendment submitted to the states in 1924 could still be considered open for ratification. Kansas had changed from a "no" to a "yes" note, and several outvoted legislators challenged that procedure. In Coleman v. Miller, the Kansas Supreme Court held that "it is generally agreed by lawyers, statesmen and publicists who have debated this question that a state legislature which has rejected an amendment proposed by Congress may later reconsider its action and give its approval, but that a ratification once given cannot be withdrawn." The U.S. Supreme Court upheld that decision.

Opponents of ERA charge that those favoring extension are trying to change the rules in the middle of the game by lengthening the time for ratification. While we do not consider equal rights for women a game, we think this constitutional-law outline shows that it is the opponents who want to change the rules by tacking a highly debatable procedural change—rescission—onto a long-overdue, thoroughly aired ERA.

Rescission authority must be dealt with separately. The urgency now is for ERA backers to win clear commitments from senators to limit debate on the issue, and then to vote for the extension itself. They cannot be allowed to dodge the question.

[From The Washington Post, Oct. 6, 1978]

THE ERA EXTENSION

It is almost a foregone conclusion that Congress will approve today a 39-month extension of the period during which states can ratify the Equal Rights Amendment. The House passed the necessary resolution in August, and the votes by which amendments to the resolution have been defeated in the Senate suggest that the Senate will pass it easily today. Although we have expressed reservations in the past about the wisdom of this extension, we join now with those who are urging the Senate to approve it overwhelmingly.

Our reservations about the ERA extension never included the basic argument made against it on Capitol Hill—that Congress lacks power to extend. The constitution gives Congress the principal role in the amending process, and it can do almost anything it wants in terms of time limits and tabulating state ratifications. Our concerns were with the fairness and the wisdom—in terms of precedents as well as politics—of changing a time limit once Congress had established it. We believed such a change might diminish support for the ERA as well as destroy the useful idea that amendments should represent the prevailing national consensus during a predetermined period of time.

Proponents of the extension have made a strong case that the ERA ought to be regarded differently from most other constitutional amendments. Unlike most of the others proposed in the last century, which dealt with the structure or powers of government, ERA is directed at a social, economic and moral issue; the status of women in society. Unlike the others, it has been subjected to an unprecedented outpouring of deceitful or untrue propaganda. And, most important, unlike the others, the ERA has never been given fair consideration in several state legislatures where internal

politics or procedural games have taken precedence over honest consideration.

A majority of the members of Congress—and the president—have been persuaded by these arguments that the unfairness already done to the ERA by its opponents more than offsets the potential unfairness of a ratification extension. Insofar as that is a judgment on the tactics employed in the past by some of those opposed to the ERA, we agree; they have not been willing to let the ERA stand or fall on its own merits.

A year ago, when this extension was proposed, it seemed possible that it would not be needed. There was hope then that in certain state legislatures—most notably Illinois, Florida and Virginia—the issue would be handled fairly this year. But it was not. This, more than anything else, negates any concerns that an extension is either unfair or politically unwise.

Because of what has happened in the legislatures, it is not unreasonable for Congress to decide that proponents of the ERA should have an additional 39 months to persuade a handful of states that it should be ratified. The time period is short—less than half of what was sought a year ago—and the issue is very much alive. More than two-thirds of the states have already said they want this amendment in the Constitution. The extension is, in reality, a concession by Congress that it misjudged six years ago the time needed for a controversial amendment to receive fair consideration in 50 legislatures.

We would rest easier with this extension if Congress had adopted the view that during those 39 months states could also rescind their prior ratifications. That would have reduced the drawbacks of the precedent that is being created. But that view has been rejected on both sides of Capitol Hill. One can hope, at least, that the value of this extension as a precedent will be discounted in the future because of the peculiar nature of the factors that made it necessary now.

Mr. BAYH. Mr. President, at historic occasions such as these, it is difficult to put into words the deep affection and respect that I have for the women and men of my staff and other Senators' staffs who have made the succesful passage of the equal rights amendment extension resolution possible. We all acknowledge that we Members of the Senate—both women and men—are the only people who can make our votes count. However, we also gratefully acknowledge that we cannot do this alone. Without the daily briefings, prodding, and determined efforts of our staffs we would not be able capably to fulfill our constitutional duties to the Senate, our constituents and our country. I would like to take a brief moment to honor these women and men, affectionately referred to as the "Hill Staffers" for they are in every sense the strength behind each of us. I believe this personal recognition is most appropriate in view of their many contributions to the progress which we achieved in the Senate body today. This was a unique opportunity and they achieved a sterling performance.

Before I continue with congratulations and thanks to our Senate staffers, I believe that it is most appropriate for me to pause and hail my counterpart on the House side, DON EDWARDS, the Chairman of the Subcommittee on Civil and Constitutional Rights, and all his sister and brother colleagues for their part in this successful achievement.

Mr. President, I would like to give my personal thanks to Barbara Dixon, my legislative assistant who managed this effort with great dedication, determination, and diligence. Thanks "Barb," Tom Connaughton, my legislative director, without whose assistance I would be at a loss. And Barbara Douglas, Ann Sherman, and Ann Church. Lastly, I thank my press assistant, Carol Sanger, whose constructive efforts have benefited me immensely in the ERA extension resolution passage.

Mr. President, as chairman of the Senate Committee on the Judiciary, Subcommittee on the Constitution, I also thank my subcommittee staff who time and time again never dropped the mantle. Let me take this opportunity to single out several subcommittee staff members who I have the distinct privilege of working with in the ERA extension resolution passage. Mary Kaaren Jolly, staff director of the subcommittee, lent her expertise in constructing the constitutional arguments involved in this issue, which became a "new frontier" in our constitutional amendment process. Thanks, Mary. Nels Ackerson, chief counsel and executive director of the subcommittee, was instrumental in unfolding the intricacies of several constitutional policies which were distinctive issues in the Senate debates. Thanks, Nels. Finally, my heartfelt thanks pour out to Linda Rogers-Kingsbury and Chris Johnson. It is difficult to mention each and every staff member who assisted me in preparing for these Senate debates. But, I rise and toast all the staff on the Subcommittee on the Constitution and my own personal staff.

Mr. President, I do not take lightly my role in the Senate with respect to my duties on the Subcommittee on the Constitution. I realize that we all must never forget "it is the Constitution" we are amending. Let me close with a quotation from Thomas Jefferson, who, I believe stated it most eloquently. I can think of no more appropriate constitutional scholar than one of its principal architects to call upon during this bicentennial era:

The voice of the majority decides, for the res majoris partis is the law of all council, elections, etc., where not otherwise provided.

We have voted today by a margin of 60 to 36 to reflect the will of the majority of the people of this great Nation that there shall be no time limit on equality. But we in the Senate did not act alone—we acted with the many hands and minds of concerned Americans and most particularly our own staffs.

ERA: THANKS AND APPRECIATION

Mr. President, it is only befitting that I should recognize a number of our colleagues who I am deeply and sincerely grateful to for their consideration, courtesy and thought in assisting me with the equal rights amendment extension resolution. I could begin by listing all the Members of this great body and their respective staffs. However, I would like to pay special tribute to the following Senators and their named staffers, without whose long and diligent hours of work, this effort would not have been possible. From the bottom of my heart, I thank my good friends and colleagues and these "Hill staffers.":

Senator RIEGLE (Stephanie Smith and Carolyn Short);

Senator KENNEDY (Bob McNamara and Susan Willis);

Senator JAVITS (Alan Fox and Sylvia Lieberman);

Senator BROOKE (Ralph Neas);

Senator HATFIELD (Oregon) (Jennifer Oldfield);

Senator LEAHY (Susan Brannigan);

Senator MATSUNAGA (Elma Henderson);

Senator CRANSTON (Roy Greenaway and Fran Butler);

Senator METZENBAUM (Ricky Tigert);

Senator SARBANES (Judith Davidson);

Senator HUMPHREY (Maureen Norton);

Senator MOYNIHAN (George Kuhn);

Senator DURKIN (Jane Yanulis);

Senator PROXMIRE (Ron Tammen);

Senator CHAFEE (Nancy Barrows);

Senator HATFIELD (Montana) (Tim Hart and Tom Boland);

Senator CLARK (Karen Stuck); and

Senator ABOUREZK (Gwen Steingraber).

Mr. President, it is with further gratitude that I acknowledge our majority leader, Senator ROBERT BYRD, who had the pleasant duty of seeing that this resolution was brought before the Senate for consideration this week. As you all know, it would be impossible for me to adequately express the full measure of my appreciation for his efforts throughout these past few days.

It is with great pride that I salute these Senators and their staffs along with all the other Senators of this body who are cosponsors of S.J. Res. 134.

Mr. CHURCH. Mr. President, I wish that I could vote in favor of this time extension for the ERA proposal. As an original sponsor of the measure, I want to see it succeed.

But the end, however meritorious, does not justify the means. In this case, the cause is right, but the method is wrong.

By the action we are about to take, Congress will declare that if a State legislature, having rejected the ERA, reconsiders and approves it, the approval will count. On the other hand, if a State legislature, having approved the ERA, reconsiders and rejects it, the rejection will be disregarded. In other words, only affirmative action will be recognized. A State may change its mind one way but not the other, even though the proposal is not binding—and cannot be considered as the law—until three-quarters of the States have decided in its favor. Only then is it made part of the Constitution. Until then, States should remain free to change their position, one way or the other.

Idaho is a case in point. Our legislature first approved the ERA proposal, but later reconsidered and voted to rescind its earlier action. Even though I disagree with the decision of the Idaho legislature in rejecting the ERA, I cannot quarrel with its right to make that decision. Nor can I cast my vote in favor of a proce-

dure which would disregard the action taken by the legislature of my own State.

When it comes to amending the Constitution of the United States, the highest law of the land, it is quite wrong to adopt a procedure which fails to confer equal rights to both sides. This procedure is so unreasonable and unfair I cannot, in good conscience, endorse or support it.

In the end, I believe it will backfire and endanger, if not defeat, the cause itself.

● Mr. DOLE. Mr. President, as a supporter of the equal rights amendment the Senator from Kansas shares the disappointment of other supporters at our apparent defeat in the State legislatures. Nonetheless, I am unwilling to vote for this resolution.

House Joint Resolution 638 amounts to impermissible tampering with amendatory rules that have long been considered fair and equitable. Prior to this, I doubt that many citizens or Senators would have thought that an amendment, good or bad, could be kept alive by extending its deadline. Likewise, I doubt that many would have argued that it made much difference whether the time limit was set forth in the body of the amendment itself, or in some other part of the resolution.

Certainly it makes sense to put the deadline in the proposing language to keep the clutter out of our Constitution. Before this extension effort, few of us would have seen any significance in the location of the deadline.

AN ERA SUPPORTER

For my own part, I have supported ERA for so long that it feels rather unusual to be standing opposite so many ERA proponents. But the ERA and the ERA extension are different questions. Just as I have strongly supported ERA on principle, I feel compelled to oppose the extension on principle.

ALREADY CONVINCED ON THE MERITS

The Senator from Kansas has heard and read some outstanding statements on behalf of the equal rights amendment during the course of this week. Indeed, I can associate myself with most of what has been said about the merits of ERA. I found those arguments persuasive, but unnecessary in my case because I am already persuaded on the merits of ERA. Rather, it is the extension that bothers this Senator.

The health of a democracy demands an occasional willingness to forgo the desire to win—where winning conflicts with procedural fair play.

YES TO THE DISTRICT—NO TO THE EXTENSION

A roughly similar analogy can be drawn to my vote on D.C. representation. Since the new D.C. Senate seats would probably be controlled by Democrats during the near future, I had to suppress my natural desire for Republican victories in the Senate in favor of the greater good—in this case the right to representation for the District of Columbia. Forsaking a partisan desire to win in favor of fairness for the District—this Senator said yes to voting representation for the District.

And I must say no to the extension—for the same reason. As an ERA supporter I would like to win—but my sense of fairness and my desire to defend sound constitutional procedure demands a "no" vote on the extension.

Such votes are never easy. Invariably many who normally stand with you on substance, do not understand your concern about procedure, precedent, and fairness.

But U.S. Senators, charged as we are with defending the Constitution, must be the guardians of procedural fairness if our democracy is to continue and flourish. Granting this extension would be a result-oriented procedural decision fraught with danger. I must oppose precedents today that may return to haunt us in the future.

I recognize that this is an extremely important constitutional amendment. If the significance of an issue could justify this 11th hour manipulation of the rules—then ERA would be at the top of the list of candidates for such treatment. In my view, the unfairness is not justified even in this case.

Certainly, a number of my problems with the unfairness of this extension would have been obviated had we passed the Garn rescission amendment on Wednesday. In fact, I would have voted for the extension had rescission passed. Unfortunately, it failed and none of the unfairness of House Joint Resolution 638 has been eliminated. In effect we are changing the rules without expressly allowing State legislatures to change their minds. Therefore, I cannot support this resolution.

Perhaps, this experience has taught us that such deadlines should always be expressed in the text of the constitutional amendment. If this is the only effect of today's vote, and if Congress wishes to limit its extension powers, the net effect for the future may be the mandatory cluttering up of our Constitution. I hope that is the only effect of today's vote. But an argument may be made at some point in the future that there is really no difference between placing the time limitation in the constitutional amendment and placing it in the language of the resolution. Apparently most Members of this Senate disagree and feel that the location of the deadline is very significant. But proponents of some future extension—where the deadline was expressed in the text—may argue that: First, extensions are allowed and, second, a minor thing like location of the deadline should not stop their extremely valuable, highly meritorious amendment. If that extension is as heavily lobbied as this one was, I am unwilling to predict the outcome with any certainty.

The dangers of extension require this Senator to continue his support of the original 7-year deadline. When we originally considered ERA we thought that would be sufficient. Unfortunately, our optimism was unfounded. But having written the rules, we should not now seek to change them simply because we are entering the final stretch without a victory.●

● Mr. WILLIAMS. Mr. President, as one of the sponsors of the Senate resolution to extend the time for ratifying the equal rights amendment, I strongly support the resolution now before us, House Joint Resolution 638.

I commend my good friend and colleague, Senator BAYH, for his dedication to the cause of equal rights and for his perseverance in bringing this resolution before us. The distinguished majority leader, Senator BYRD, also deserves a great deal of credit for securing a time agreement that has allowed full debate of the issues, while assuring a final vote on the resolution in this session of Congress.

When Congress overwhelmingly passed the equal rights amendment in 1972, it attached a preamble to the amendment indicating that ratification should be achieved within 7 years. Now 6½ years later, 35 of the requisite 38 States have ratified. These States represent nearly three-fourths of the population of the United States. If we let this opportunity to extend the ratification period pass, we will be ignoring the wishes of the people of those States, as well as the people in unratified States who want ERA to become part of the Constitution. Time and time again, public opinion polls have shown strong support for ERA among the men and women of this country. But a few legislators in a few States have succeeded in thwarting the will of the great majority of the American people.

ERA is as much a current issue today as it was in 1972. It remains one of the most vital issues of justice and human rights confronting our Nation. It is an issue that will not go away.

The U.S. Constitution gives the Congress the power to designate the "mode of ratification" of constitutional amendments. The Supreme Court has determined that in carrying out this power, the Congress may, as a procedural matter, set a reasonable time for ratification, as "the public interests and changing conditions may require." In passing various amendments, the Congress has, at different times, chosen to set no time limit, to include a time limit in the text of the amendment, or, in the case of the ERA, to separate the time limit from the amendment itself. The latter option leaves the Congress free to modify the time limit without changing the text of the amendment. The extension of time provided in House Joint Resolution 638 is clearly the prerogative of Congress.

Furthermore, since the extension will not modify the test of the ERA, a two-thirds vote on the extension resolution is unnecessary. Article V of the Constitution very specifically spells out the cases in which a supermajority of Congress or the States is required in the consideration of constitutional amendments. No supermajority of Congress is required to determine the mode of ratification or details of the ratification process. I am pleased that both the Senate and House have agreed that a simple majority is all that is required to pass House Joint Resolution 638.

Many have raised the question of whether States which have ratified the ERA should be allowed to rescind that ratification. The Supreme Court has ruled that the Congress sitting at the time that three-fourths of the States

have ratified has the power to determine whether a State's ratification (or rescission) is valid. Using this power, the Congress has denied the right of rescission in the cases of the 14th, 15th, and 19th amendments. Those actions do not, however, bind future Congresses in their determination of the validity of rescissions. And there is a serious constitutional question as to whether this Congress, in passing a rescission amendment to House Joint Resolution 638, could bind a future Congress. The resolution before us now, and the ERA itself, are neutral on the question of rescission. An amendment to the resolution specifically sanctioning rescission would be misleading and contrary to congressional precedent. For this reason, I voted against the rescission amendments that were proposed, and believe that the Senate made the right decision in rejecting them.

Moreover, we are all aware that if the Senate passed any amendment to House Joint Resolution 638, it would be highly unlikely that a compromise resolution could be agreed to with the House prior to the scheduled congressional adjournment. I believe it is incumbent upon us to pass House Joint Resolution 638 unamended in order to give the States additional time to decide this critical question. Will we assure equal justice for men and women under the law, or will we continue to allow our laws to discriminate solely on the basis of sex? The choice is before us now as it was 6½ years ago. I urge my colleagues to support House Joint Resolution 638.●

● Mr. STEVENSON. Mr. President, the resolution to extend the time for ratification of the amendment raises an issue distinct from that of equal rights, but just as important. It is an issue of procedural due process.

During the debate I argued that an amendment to the Constitution aimed at securing fairness should itself be secured by means that are fair and that fairness and commonsense required the ratification process to produce a reasonably contemporaneous expression of public opinion. The Constitution, it would seem, requires no less.

A judgment on rescission can only be made by the Congress sitting at the time the 38th State ratifies, or ultimately by the Supreme Court, and in no event by this Congress. Accordingly, I offered an amendment which stated the neutrality of the Congress on the question of rescission. The Senate rejected that course and subsequently rejected an amendment purporting to approve rescission. Thus, the signal we have sent to the States is premature and misleading. It implies that Congress has decided rescissions will not be respected. This is not the case, and the States should not be misled.

The Supreme Court will determine if the Congress has any voice at all upon this subject. The available authority suggests that Congress does have a voice—but only after the requisite number of States ratify. Only then, after all, is the Congress in a position to consider the length of time elapsed between Congressional approval and ratification by the 38th State and the number of rescissions. It is conceivable that if and when the last State ratifies, as long as a decade after congressional approval, many States will have attempted to rescind their ratification. And it is not likely that the Founders intended us to disregard the opinion of the Nation in order to respect the opinion of one State.

In the unusual circumstances of this case, I believe the Congress should evaluate efforts to rescind in reaching a determination as to whether ratification represents a reasonably contemporaneous expression of the will of the people.

Although I am troubled by the judgments the Congress has made, I nevertheless intend to vote for this unprecedented extension of time. The decisions Congress made with regard to rescission are not binding. And the issue now is whether the equal rights amendment should remain available to the States for further consideration. While I have often expressed my view that the rights embodied in this amendment are already embodied in the Constitution, I do think that its adoption is important. The equal rights of women should be given explicit recognition in the Constitution and all the moral authority of that instrument.

The implementation of those rights may be facilitated by their explicit recognition. And I fear that defeat of an explicit commitment to the equal rights of all, regardless of their sex, would set back the long, hard effort begun with our Founders to declare all people free. The struggle for equal rights will never end. And I will never be party to its delay or defeat. I only wish, Mr. President, that we had signaled to the American people that equal rights would be secured by equal methods.●

● Mr. ANDERSON. Mr. President, none of us could have predicted in 1972 when the equal rights amendment passed this body that we would be here today to discuss a longer ratification period. No one thought more than 7 years would be needed. When I signed Minnesota's ratification of the ERA in 1973 as Governor, I believed that the amendment would be ratified well within the 7-year period.

Little did any of us know, then, of the political obstacles the ERA would face. Who among us could have predicted that the ERA would be treated as a political football in some State legislatures, with deciding votes cast for reasons having nothing whatever to do with the amendment itself? Indeed, who could have predicted the extent to which the issue would be confused by opponents.

The ERA is a simple statement of legal equality. This national commitment to constitutional equality is vitally needed.

The Constitution does not adequately protect women from discrimination today. In 1975, the earnings of working women were just 57 percent of men's earnings. Discriminatory laws still exist at the Federal, State and local levels. Clearly, the need for the ERA, which will invalidate all laws which treat men and women differently, is with us today as strong as ever.

The Supreme Court has ruled that Congress has the responsibility to determine a "reasonable" time for ratification of a constitutional amendment under the provisions of article V of the Constitution. In Coleman against Miller, decided in 1939, the Court ruled that in deciding what is a reasonable time, Congress must make an appraisal of "a great variety of relevant conditions, political, social, and economic."

Mr. President, I believe that the most important "relevant condition" for us to consider today is the widespread public support for the ERA. A majority of Americans, including those in unratified States, continue to support the ERA. The States which have ratified represent almost three-quarters of the population. The American people want to see equal justice for both sexes. By extending the deadline for ratification of the ERA, Congress can insure that sufficient time be available for passage.

Mr. President, I am not pleased that House Joint Resolution 638 has become a necessity. However, there is no question in my mind that this resolution is entirely fair and constitutional. House Joint Resolution 638 has my full support, and I urge my colleagues to support it today.●

● Mr. CULVER. Mr. President, today we have the opportunity to extend the deadline for ratification of the equal rights amendment, and it is imperative that the U.S. Senate approve this extension. With only three States needed for ratification, the time period will expire on March 22, 1979, before several State legislatures have had the opportunity to vote on the ERA. I have reviewed the procedural and constitutional questions of extending the ratification period very carefully, and I am confident that this is a proper step.

It is clear that women have been denied full economic and social equality throughout our Nation's history. Ratification of the ERA will help to end this discrimination. In 1972, Congress overwhelmingly passed the equal rights amendment to the Constitution because we recognized the need for clear constitutional language ending sexual discrimination. This is a basic principle of a country dedicated to justice and equality for all persons.

Though progress has been made to help assure full equality to all individuals, there is no doubt that much remains to be done. The gap between the earning power of men and women is widening rather than lessening. In 1971, for example, women earned 63 cents for every dollar men earned, but by 1975, that figure was 57 cents. Women continue to occupy fewer prestige employment positions.

Women college professors earn, on the average, $3,000 less than male college professors with comparable qualifications. In addition, there is a quota set for the number of women who may serve in the military, and those women are required to have a higher educational level than men in order to be admitted, resulting in denial of education, insurance, job training, and veteran and retirement benefits, including preference for civil service positions, to women. A 1977 review of the United States Code revealed over 800 sex-biased laws—laws that do

not protect women, but in many instances subordinate them.

Mr. President, Iowa was the fourth State to ratify the equal rights amendment, on March 24, 1972, just 2 days after it was passed by the U.S. Senate. Six years later, during the 1978 session of Iowa's 67th General Assembly, an equal rights amendment to the Iowa Bill of Rights received its initial approval by wide margins. This emphasizes the need for continuation of public discussion on this vital issue.

This is not an issue that will go away. By approving House Joint Resolution 638, and extending the ratification period to June 30, 1982, we reiterate our commitment to full equality to every American citizen. I urge my colleagues to support this resolution.●

● Mr. HEINZ. Mr. President, I rise in support of this necessary action.

I have long been a supporter of the ERA. One of the issues now being discussed is whether the Congress can or should extend this period. I believe that Congress does have the authority to do this, and the Supreme Court similarly viewed this question as being within the legitimate powers of Congress in its ruling in *Dillion* v. *Gloss*, 256 U.S. 368 (1921). In that decision the Court stated:

Of the power of the Congress, keeping within reasonable limits, to fix a definite period for the ratification we entertain no doubt. As a rule the Constitution speaks in general terms, leaving Congress to deal with subsidiary matters of detail as the public interests and changing conditions may require; and Article V is no exception to the rule. Whether a definite period for ratification shall be fixed so that all may know what it is and speculation on what is a reasonable time may be avoided, is, in our opinion, a matter of detail which Congress may determine as an incident of its power to designate the mode of ratification. It is not questioned that seven years, the period fixed in this instance, was reasonable, if power existed to fix a definite time; nor could it well be questioned considering the periods within which prior amendments were ratified.

The equal rights amendment which is the subject of our debate here today is not, as many would suppose, a mammoth document unleashing a host of horrors upon the Nation. The equal rights amendment consists of three simple sections:

Section 1.—Equality or rights under the law shall not be denied or abridged by the United States or by any state on account of sex.

Section 2.—The Congress shall have the power to enforce by appropriate legislation, the provisions of this article.

Section 3.—This amendment shall take effect two years after the date of ratification.

That is it. That is the entire equal rights amendment that is causing such a furor. I believe it is an honest attempt to secure justice and fairness to all, and I support it.

Many have claimed there is no need for an equal rights amendment. Even our former colleague, Senator Sam J. Ervin, Jr., suggested as much in his recent 18-page statement in opposition to the ERA. Responding to Senator Ervin, a homemaker from Doylestown, Pa., had this to say:

"Our country has come a long way in the half century of my lifetime, as evidenced by the legislation, executive order and federal departmental regulations you refer to in broad outline. But the cobwebs of sex discrimination cannot be swept clean by piece meal attack on each area where they manifest and reveal themselves. There are times when a great wrong becomes so obvious that slow pecking at it becomes an insult to those who are wronged. Some seek to right such wrongs by violence—as did our own founding fathers in 1776. Women have chosen to use the democratic process (from which they are largely excluded) and by that process will continue to work for ratification of the Equal Rights Amendment.

You would have us pursue the way of tediously continuing to legislate each discrimination that remains. How could an ordinary person like myself become aware of all the laws and regulations under which his/her equal rights are guaranteed? If, at some point, I felt myself to be specifically in need of that knowledge, it would become necessary to engage legal counsel at considerable cost. The ERA is so simple and so easily comprehended, that I could feel quite secure and knowledgeable about my protection under the Law of the Land as regards to sex discrimination. Your way is a lawyer's paradise.

Supposition that "virtually all the states have repealed their firmer laws discriminating against women in major respects" is as naive as your satisfaction "that the legislatures of the several states were such insignificant laws may still remain will forthwith repeal them if they are called to their attention". The process by which "calling to attention" is done, is not as simple as you make it sound. It often means expensive legal suits, appeals and more appeals as my survey of cases has revealed, not to mention the complexity of the legislative process."

In my own State of Pennsylvania, which passed a State equal rights amendment in 1972, there is an effort to bring the State laws into conformity with the ERA. Spearheaded by Helen Wise, a courageous legislator in Harrisburg, a package of 26 conforming measures were introduced this year, 18 of which have already been adopted, to address such problems as:

The law which allows for registration of naturalized citizens through the husband only. It has been amended to change "husband" to "spouse."

Department of Public Welfare Act providing for programs of assistance to "mothers." Since there are no programs currently sponsored by the Department of Public Welfare for mothers only, the terminology is amended to read "parents."

Inheritance and Estate Tax Act granting a deduction in the transfer of a decedent's property where there is a husband surviving, even though he is able to pay the tax. The applicable section has been amended to use the words "surviving spouse" and thus make the benefit available where the wife survives the husband as well.

Clearly there is a need for the ERA in our Nation today. To deny this need will not make the problems go away. It is time for this Nation to stand out as a beacon of light to those whose human policies we hope to improve, and to say to the world: "There are no second class citizens in our country, and all persons are equal under our law."●

Mr. ROBERT C. BYRD. Mr. President, I ask for the yeas and nays.

The VICE PRESIDENT. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

EXTENDING THE DEADLINE FOR RATIFICATION OF ERA

The VICE PRESIDENT. Under the previous order, the hour of 10 o'clock having arrived, the Senate will now proceed to vote on House Joint Resolution 638, which the clerk will report.

The second assistant legislative clerk read as follows:

A joint resolution (H.J. Res. 638) extending the deadline for ratification of the equal rights amendment.

Mr. ROBERT C. BYRD. Mr. President, I ask that the Chair maintain order throughout the rollcall, and the clerk repeat the names and the responses as Senators vote.

The VICE PRESIDENT. The Senate will be in order. The yeas and nays have been ordered, and the clerk will call the roll.

Mr. ROBERT C. BYRD. Mr. President, may we have order in the Senate?

The VICE PRESIDENT. The Senate will be in order.

The clerk will resume the calling of the roll.

The call of the roll was resumed and concluded.

Mr. CRANSTON. I announce that the Senator from Alabama (Mrs. ALLEN), the Senator from Mississippi (Mr. EASTLAND) and the Senator from Colorado (Mr. HASKELL) are necessarily absent.

Mr. STEVENS. I announce that the Senator from Texas (Mr. TOWER) is necessarily absent.

I further announce that, if present and voting, the Senator from Texas (Mr. TOWER) would vote "nay."

The VICE PRESIDENT. Have all Senators voted?

The result was announced—yeas 60, nays 36, as follows:

[Rollcall Vote No. 450 Leg.]

YEAS—60

Abourezk	Hatfield, Paul G.	Packwood
Anderson	Hathaway	Pearson
Bayh	Heinz	Pell
Bentsen	Hodges	Percy
Biden	Humphrey	Proxmire
Brooke	Inouye	Randolph
Burdick	Jackson	Ribicoff
Byrd, Robert C.	Javits	Riegle
Case	Johnston	Sarbanes
Chafee	Kennedy	Schmitt
Clark	Leahy	Sparkman
Cranston	Magnuson	Stafford
Culver	Mathias	Stevens
DeConcini	Matsunaga	Stevenson
Durkin	McGovern	Stone
Eagleton	McIntyre	Weicker
Glenn	Melcher	Williams
Gravel	Metzenbaum	Young
Griffin	Moynihan	
Hart	Muskie	
Hatfield, Mark O.	Nelson	

NAYS—36

Baker	Curtis	Hayakawa
Bartlett	Danforth	Helms
Bellmon	Dole	Hollings
Bumpers	Domenici	Huddleston
Byrd, Harry F., Jr.	Ford	Laxalt
Cannon	Garn	Long
Chiles	Goldwater	Lugar
Church	Hansen	McClure
	Hatch	Morgan

Nunn	Scott	Wallop
Roth	Stennis	Zorinsky
Sasser	Talmadge	
Schweiker	Thurmond	

NOT VOTING—4

Allen	Haskell	Tower
Eastland		

So the joint resolution (H.J. Res. 638) was passed.

[Applause in the galleries.]

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the House joint resolution was agreed to.

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

The VICE PRESIDENT. The galleries are admonished to refrain from any exhibition of approval or disapproval.

The question is on agreeing to the motion to lay on the table.

The motion to lay on the table was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum.

The VICE PRESIDENT. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. PAUL G. HATFIELD). Without objection, it is so ordered.

Mr. ROBERT C. BYRD. May we have order in the Senate, Mr. President?

The PRESIDING OFFICER. The Senate will be in order.

REVENUE ACT OF 1978

The PRESIDING OFFICER. Under the previous order the Senate will now resume consideration of H.R. 13511, which the clerk will state by title.

The second assistant legislative clerk read as follows:

Calendar 1187, H.R. 13511, a bill to amend the Internal Revenue Code of 1954 to reduce income taxes, and for other purposes.

The Senate continued with the consideration of the bill.

The PRESIDING OFFICER. The pending question is on the amendment by the Senator from Delaware (Mr. ROTH) on which there shall be 1 hour of debate to be equally divided and controlled by the Senator from Louisiana (Mr. LONG) and the Senator from Delaware (Mr. ROTH).

Who yields time?

Mr. CURTIS. Mr. President, I ask unanimous consent that we may have a quorum call charged to neither side.

Mr. ROBERT C. BYRD. Mr. President, I shall have to object. I am perfectly agreeable to having a quorum call charged equally to both sides. We have just had a quorum call in order to clear out the Chamber and the galleries. If it is charged equally——

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

The Clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

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

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

Who yields time? If neither side yields time, time runs equally.

Mr. LONG. Mr. President, with the understanding that time will be charged against both sides, I ask unanimous consent that we may have a quorum call.

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

The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

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

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

Who yields time?

Mr. ROTH addressed the Chair.

The PRESIDING OFFICER. The Senator from Delaware.

AMENDMENT NO. 3881

Mr. ROTH. Mr. President, I yield myself 10 minutes.

Mr. President. I believe that what we do today on the vote coming up on the Roth-Kemp across-the-board tax cut is the most important decision that this Senate will take on this legislation.

I believe it is of first importance that the Senate give a signal to the private sector that we are going to move in a new direction, that we are going to give the private sector an opportunity to show what it can do.

I would point out that there seems to be general consensus that our economy is not moving well.

Two weeks ago, the Wharton School of Finance, for example, pointed out that the economy will probably go into a slump by the end of next year unless further tax cuts are enacted.

I would point out that the Budget Committee, on page 28 of their concurrent resolution for 1979, makes much the same conclusion. They say on page 28:

The committee recognizes that significant fiscal policy changes—tax reduction or expenditure increases beyond those reflected in the Committee's FY 1979 decisions—will almost surely be required to maintain economic growth through FY 1983.

I believe that there is a consensus here, just as there was when President Kennedy sent his message to the Congress: The time has come not to substantially increase Government spending, but instead to relieve the tax drag on the private sector.

I think it is important to recognize that the Roth-Kemp tax cut is no greater than that anticipated through 1983, and the same budget document that I just referred to.

But I think it is important that Congress take the initiative here for two reasons.

One, the point I already have made, that we give a signal that this country is moving into a new direction; that we want to relieve the tax drag; that we want to promote savings in the private sector, on the part of all working people. We want to promote investment. We want to create capital formation. We want to create permanent, meaningful jobs in the private sector for the poor and the unemployed.

It is important to recognize that this is the one step we can take, the one signal we can give, that has a long-term implication for this country, that we are trying to make a basic change, and not continue this pattern of tinkering with taxes, making no substantial change, and discontinuing this route of stagnation with unemployment.

The one point I want to reemphasize today is the fact that if this Congress does not make a change in the tax measure before us, working America faces a substantial tax increase. Any family of four which has an income of $10,000 or higher will be facing substantial increases because of inflation and the social security tax increases of 1978 and 1979.

I point out once again what is happening in middle America. A man or woman in a family of four who makes $20,000 is now paying taxes of $3,251. By 1983, if we do not provide some permanent tax relief, that person will have a tax increase to nearly $6,000 because of the increase in social security taxes, because of the impact of inflation. To maintain the same purchasing power, so far as income is concerned, that $20,000 will have to increase to $28,000.

There are many people in the private sector who are not fortunate enough to get cost-of-living increases; but even if they are, they still will face downward mobility because of the substantial tax bite, the larger tax bite, that will be taken out. As I pointed out, it will grow from $3,251—these are average figures—to $5,688.

All the Senate Finance Committee tax cut bill tries to do is to offset 1 year of inflation and social security taxes, 1979. It does nothing for 1978. It is questionable that it even will offset 1979. It does nothing for 1980, 1981, 1982, and 1983.

It is no wonder that the Wharton School of Finance and others are saying that tax cuts will be essential if we are going to get this country moving again.

Mr. President, there has been a great deal of talk about our proposal having inflationary impact. Let us look at the facts.

No. 1, the Budget Committee, in its report, points out that if equivalent tax cuts or spending are not enacted in the future, we will have trouble keeping the economy moving upward. For that reason, they take the position that substantially new tax cuts will be necessary in the future or, in the alternative, increase in spending. So there is general agreement that what we are proposing is not larger than what this economy requires.

I point out that the size of the Roth-Kemp tax cuts is no larger than the additional taxes the Federal Government will be taking from the working people of America. By 1983, additional social security taxes, inflation taxes, will roughly equal $283 billion. Roth-Kemp would only return to the private sector roughly $256 billion.

One can quibble about figures, but what we are pointing out is that, basically, the Roth-Kemp proposal, the

across-the-board tax cut, only offsets the tax increases that are now in place because of social security increases and the effect of inflation on the working family.

I also point out that, instead of having a policy of pessimism, negativism, a continuance of what we have done in the past, which has not worked, what we are proposing is a program of growth. Many economists point out that Roth-Kemp would result in substantial increased savings.

The PRESIDING OFFICER. The time of the Senator has expired. Who yields time?

Mr. BAKER. Mr. President, what is the parliamentary situation with respect to control of time?

The PRESIDING OFFICER. The time is under the control of the Senator from Delaware and the Senator from Louisiana.

Who yields time?

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

The PRESIDING OFFICER. The Senator has 14 minutes remaining.

Mr. ROTH. I yield myself 3 additional minutes.

Mr. President, I point out that the increase in savings that would result from Roth-Kemp, as an anti-inflation measure, would enable the Government to borrow without going into competition for funds needed in the private sector, which is a strong change from the effect of recent tax cuts. By promoting savings on the part of the American people and by promoting capital formation, it will bring about, in turn, growth without inflation in the economy.

One of the most significant changes that would come about through this legislation would be the creation of jobs in the private sector. Economists have estimated that in 5 years it would create as many as 4 million or 5 million new jobs—1 million jobs in the current year; and Roth-Kemp means that those on the low end of the economic scale will have the opportunity to move into the mainstream, to have taxpaying jobs. That takes these people off welfare, relieves the burdens on the Federal budget, and gets the country moving in the direction we want.

Unfortunately, it has not been the policy of the economists in Government to consider the feedback effect. They do not seem to recognize that the type of cut has a very substantial influence and impact on the economy. The Roth-Kemp proposal will cause the economy to grow in such a manner that it will make us more competitive with our foreign competition.

One of the problems in America today is that our plants are obsolete, compared with those of the Japanese and the Germans. They must be modernized; they must incorporate the latest technologies. That means there must be capital, capital formation.

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

Mr. ROTH. I yield myself 1 additional minute.

This capital formation will help working Americans by increasing production, so that their increased earnings will be real earnings and will not be eaten up by inflation.

It will help the poor by creating meaningful jobs in the private sector.

So, Mr. President, I urge the adoption of the Roth-Kemp legislation as a means of getting off the backs of middle America who otherwise face a substantial tax increase and equally importantly it will restore the American dream of a better life for all Americans by promoting work, savings, investment, and productivity.

I yield back the remainder of my time.

Mr. BAKER. Mr. President, will the Senator yield to me briefly?

Mr. ROTH. I am happy to yield such time as the Senator from Tennessee desires.

Mr. BAKER. Mr. President, I thank the Senator from Delaware.

How much time is remaining?

The PRESIDING OFFICER. The Senator from Delaware has 13 minutes; the Senator from Louisiana has 24 minutes.

Mr. BAKER. Mr. President, if I could have 5 minutes, I will be grateful to the Senator from Delaware.

Mr. ROTH. I yield 5 minutes.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. BAKER. Mr. President, I rise to pay my respects and tribute to the distinguished Senator from Delaware for his leadership in sponsoring, formulating and popularizing the Roth-Kemp amendment.

There are some in this Chamber, indeed some on this side of the aisle, who may quarrel with some aspects of the amendment as it stands, but I think there is virtually no one in this Chamber who would seriously dispute the proposition that the song the people of the United States are singing at this time is, "We want the Government off our backs and out of our hair."

Most people understand, certainly those of us in this Chamber know, that there are few easy answers to most of the critical problems that confront the country. But many of us in this Chamber would agree, I think, that one of the things we can do is to consider a prudent and timely measure to relieve the tax burden on the average American taxpayer.

I believe the Roth-Kemp proposal is such an effort.

I took special pride a year-and-a-half ago when the Republican Senators in conference assembled adopted by a virtual unanimous vote a statement of economic and tax policy which provided three elements:

First, that there should be a tax cut;

Second, that it should be of substantial dimension; and

Third, that it should be for more than 1 year so that taxpayers of the United States could depend on it in their future planning for investment, retirement and recreation, their plans to educate their children, to build their homes, to buy automobiles, and the like.

I also remember, Mr. President, that at the time, the administration called that proposal unwise, in fact irresponsible.

So I observed with some interest that the administration later advocated essentially the same proposal that the Republican conference had suggested a year-and-a-half ago. The Roth-Kemp amendment now before the Senate is in substantial agreement with the statement of principle adopted by Republican Senators last year and I believe it is in substantial agreement with what the people of the United States require at this time.

So, Mr. President, whether we agree with every aspect of the Roth-Kemp proposal or not, I urge my colleagues, all of them, but particularly those on this side of the aisle, to support this measure because I think it responds in the very best traditions of representative government to the song that the people of the United States are singing this year.

I thank the Senator for yielding.

Mr. ROTH. Mr. President, I ask the Senator from Tennessee to reserve the remainder of the time he has not used.

Mr. BAKER. Mr. President, rather than claim that time, I relinquish to the Senator from Delaware, or reinstate to the Senator from Delaware, the control of whatever time remains under the previous order.

Mr. LONG. Mr. President, if this amendment should be agreed to, especially just the first year of it be agreed to, people will think that the Senate must have absolutely lost its mind. Any thoughtful person would have to think that we must have political schizophrenia because on yesterday we voted to say that we should shift the tax cuts from the big corporations down to the small corporations and the small employers. Now here comes the Kemp-Roth amendment saying we should shift the tax cuts from the little people up to the big people.

For example, on the first year of Kemp-Roth, compared to the committee bill, this amendment would take $1,400 million—to be exact, $1,376 million—away from little people making less than $50,000, and who would get it? Well, every nickel of it, plus some—$1,609 million—in all would shift to people who make more than $50,000.

In other words, as far as individuals are concerned, it would be a shift of about $1 billion and a half away from the people, away from the many, toward the benefit of the few who are doing very well, indeed, making over $50,000 a year.

If you would compare it to the Senate, it would mean we would be voting for Senators to reduce our tax at the expense of everyone who works in the Senate office buildings, and if you are talking about the average working man, it means that only the chief executive officers and the plant managers would be getting the tax cut; that is, it would increase the tax cut for the chairman of the board, the president of the corporation, and the executive officers, at the expense of the workers.

Now, the bill is already being criticized with the argument that we have done too much for the very successful people in the country. We find a lot of criticism, and I do not offer any apology

for what we have done about capital gains. I will explain that later on.

But the bill has been criticized on the House side and the Senate side, saying we are doing a lot for the affluent in this bill. Do we want to do more, especially if that is going to be done at the expense of the low-income people and the middle-income people for the benefit of the upper-income people?

I would hardly think that the Senate, having voted on yesterday for a shift of tax cuts from the big corporations for the benefit of the small corporations and the individual employers, would now want to turn around and do just the opposite, shift the tax cut for the benefit of the wealthy at the expense of the middle income and the poor. It just does not make a lot of sense, Mr. President. Therefore, when the time comes I am going to ask for a division so we vote on the first part, the 1979 tax cut first, and we vote on the rest of it thereafter.

The rest of it, Mr. President, is really fiscally irresponsible.

Here is a thoughtful statement from Dr. Arthur Burns, speaking for the American Enterprise Institute.

If we were going to have a tax cut and a spending cut that would make some sense, but he said to vote for a huge tax cut without a spending cut—let me just quote him. He is speaking of that. He said:

> I would add that if we went the Kemp-Roth route and simultaneously cut expenditures, indeed if we cut expenditures a little more then tax revenue I would gladly embrace a proposal, but that is not the proposal as it now stands. They seek to cut taxes and apparently believe that expenditures will take care of themselves. I deem it unwise to take that chance.

There is the real pillar of fiscal responsibility speaking, Mr. President.

How much time do I have remaining, Mr. President?

Mr. ROTH. Mr. President, will the Senator yield for a question?

Mr. LONG. In just a moment.

The PRESIDING OFFICER. The Senator has 18 minutes remaining.

Mr. LONG. I yield for a question.

Mr. ROTH. Will the Senator from Louisiana support the Roth-Kemp if we added a restraint on the spending side? The Senator from Delaware would be happy to consider such a proposal.

Mr. LONG. I would want to see where the cut would apply, Senator.

Let me read what I found somewhat amusing, and it entertained those on the House side when it was stated. Here is a Democrat, Mr. PIKE, speaking, and he was talking about the fiscal irresponsibility of this amendment on the House side. He said:

> We always have to have a tax cut in election year. Everybody knows we have a tax cut every election year, but weep, ladies and gentlemen; grieve; lament for the death of fiscal responsibility in the party of Calvin Coolidge and Alfred M. Landon and Herbert Hoover and Robert Taft. As a great American President once said, "If they were alive today, they would be spinning in their graves."
>
> Fiscal responsibility has been replaced by political pie in the sky. We all know that the Republican party is in trouble, but we did not think in its death throes it was willing to sell its immortal soul.

Now that, Mr. President, is how this amendment looks to a great number of people. Here is an enormous tax cut in the outyear where it goes as high as—imagine this, Mr. President, in the outyears it goes as high as—well, in 1982 it would be $126 billion, and in 1983 $151 billion.

As many thoughtful people have pointed out, such an enormous tax cut, if it could be achieved with a spending cut in a responsible fashion, could be—it might very well be—a good idea. But to vote a huge tax cut just assuming you are not going to have a horrible deficit would be highly irresponsible.

Mr. ROTH. Mr. President, will the Senator yield for a question?

Mr. LONG. Senator, I yield on your time. My time is very short indeed now.

Mr. ROTH. What is the time situation?

The PRESIDING OFFICER (Mr. HARRY F. BYRD, JR.). The Senator from Delaware has 7 minutes remaining; the Senator from Louisiana has 16 minutes.

Mr. LONG. What was that again?

The PRESIDING OFFICER. The Senator from Delaware has 7 minutes remaining; the Senator from Louisiana has 16 minutes remaining.

Mr. ROTH. I yield myself 1 minute.

I would just point out that the distinguished Senator from Louisiana said at a recent press luncheon:

> Today in the United States we have taxes on individuals and corporations so high that they kill initiative and stifle new competition.

He goes on to say:

> We would make more revenue for the Government if we reduced the rates.

Of course, what the distinguished chairman is doing is referring to static studies of the economy. That misses the whole point.

The whole point of the Roth-Kemp legislation is to get the country moving up by lowering the tax rates. By doing so we intend to promote savings, we intend to promote investment, we intend to promote productivity, and the creation of jobs in the private sector. So it is false economy to try to claim that the Roth-Kemp amendment will not result in a growing economy.

I point out, Mr. President, that there are many economists—Alan Greenspan and a list of others—who say Roth-Kemp is exactly the kind of medicine this country needs today.

I also point out that by making a commitment to revenues we will also be imposing upon ourselves discipline, discipline on the budgetary process, and I think that is desirable.

I yield back my time.

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

Mr. ROTH. Mr. President, will the Senator withhold that? I yield 2 minutes to the distinguished Senator from Nebraska.

Mr. LONG. I withhold my request.

Mr. CURTIS. Mr. President, I am for balancing the budget by reducing expenditures not by further gouging the taxpayers.

There is but one issue here and that is what is an equitable way to cut taxes. This bill provides for an increase in the personal exemption; it provides for an increase in the earned income credit. These take care of the very low-income people.

I submit that the way to cut taxes from that point on is to apply the same percentage cut across the board.

Regardless of what an individual's income happens to be, if we can cut taxes by 8 percent or 10 percent or 5 percent they should all be treated alike.

Personal exemption, and many other provisions of the bill, intentionally, and rightly so, affect the lower income brackets. The way we can serve the economy of the United States is to give our tax relief the same percentage to all taxpayers.

There are two things involved in a tax reduction: one, the treatment of the individual; and, second, the effect on our economy in general.

If we vote to apply tax relief to help our economy in general, it means more jobs, more transactions, more opportunities for individuals of all ages and all circumstances.

If a tax cut results in enabling some individuals to have more of their money to invest and more of their money to buy something that can only be produced by other men having jobs, we have helped everybody.

So we must keep in mind in a tax reduction bill justice to individuals and the welfare of our economy as a whole, and the welfare of our economy can best be served by having some tax relief through a percentage figure that applies to all people.

I shall vote for the Roth-Kemp amendment because of the principle involved.

I yield back the remainder of my time.

Mr. LONG. Mr. President, I yield 2 minutes to the Senator from Colorado.

Mr. HART. Mr. President, I thank the distinguished floor manager.

The criticism of the Roth-Kemp proposal all along is that it does not tie its tax cuts to the control on the growth of Government spending. I think it is important for our colleagues to understand that in voting on this measure this will not be the only opportunity they will have to vote on a tax cut proposal.

There is, of course, the Finance Committee's proposal, very close to what the administration has proposed, but there are others of us who will be offering tax cut proposals, and the Senator from Colorado intends to offer a proposal which is an extended tax cut carefully calculated to the needs of the growth of the economy, to pursue some of the same goals as the sponsors of the pending measure.

But the proposal which the Senator from Colorado will offer ties very carefully and very closely the tax cuts to the control on the growth of Federal Government spending that is in the minds of many people, many economists of the right and left, conservative and liberal, as being the kind of measure we need.

I hope our colleagues understand that in casting a vote on the Roth proposal that will not be their only opportunity in this tax debate to vote on a tax cut

proposal, either between the Roth or the committee's position.

I thank the distinguished leader for this time.

Mr. LONG. Mr. President, how much time do I have?

The PRESIDING OFFICER. The Senator from Louisiana has 10 minutes. The Senator from Delaware has 5 minutes.

Mr. LONG. Mr. President, I ask unanimous consent that I might suggest the absence of a quorum for no more than 3 minutes.

The PRESIDING OFFICER. The time to be charged to whom?

Mr. LONG. Me.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. LONG. 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. LONG. Mr. President, I yield 5 minutes to the Senator from Maine.

Mr. MUSKIE. I thank the distinguished floor manager for yielding.

Other Senators may think it strange that Senator LONG and Senator MUSKIE are on the same side of an issue. Actually, we often are, and I take just a second to compliment the Finance Committee for reporting to the floor a bill which is within and consistent with the revenue assumptions of the second budget resolution. We may not agree on all the components of the bill, but the committee has scrupulously observed all the limits of the Congressional budget resolution. It is in that connection that I would like to make my first observation in connection with the Kemp-Roth proposal.

The Senate will have no doubt, I hope, that the Kemp-Roth proposal, which as first submitted provided for a tax cut of 10 percent in 1979, another 10 percent in 1980, and another 10 percent in 1981, has been modified; and the modification suggests precisely why.

By the first year modification, the reduction was reduced from 10 percent to 7 percent, making up the difference in the later years, because 10 percent would have breached the budget. In other words, notwithstanding the cuts we have been able to make since January in budget authortiy and outlays and in the deficit, under the budget process, we still would not have been able to accommodate the 10 percent cut for this year that the distinguished Senator from Delaware projected in his bill.

So his bill as originally introduced would have produced for this year the very result that those of us who opopse it predict for future years: It would have added to the deficit, it would have added to the inflationary pressures, and it would have reduced the possibility of balancing the budget at some time in the future.

The distinguished Senator from Delaware earlier used the Budget Committee report to justify his projection of future year implications. Let me sum those up very succinctly and briefly.

The Budget Committee's 5-year projections assumed $47 billion of possible additional tax cuts or spending in fiscal year 1983. In other words, there would be that much free board to accommodate additional tax cuts or spending, in addition to the tax cuts in the Senate bill that is before us. By comparison, the Roth amendment would provide tax cuts of $124 billion beyond the Finance Committee bill in fiscal year 1983. This is $77 billion more than provided in the budget assumptions, and it would add $40 billion aditional to the deficit in 1983.

Mr. President, if I may address myself to the underlying philosophy of Kemp-Roth, the 1983 inflation rate if Kemp-Roth is enacted would be nearly 2 percentage points higher under Roth than with the more moderate fiscal stimulus in the 5-year projection in the Budget Committee's report on the second budget resolution. Moreover, this estimate of inflation is conservative in view of the difficulty of achieving a 4 percent unemployment rate, given the demographic and structural changes in the labor market and the inflationary psychology evident in the economy today.

In other words, the Budget Committee's report is conservative in the light of the almost impossible challenge of achieving that 4 percent unemployment rate in fiscal year 1983—an argument, indeed, that I gather will be advanced by the opponents of the Humphrey-Hawkins bill, if and when that bill comes before the Senate for debate.

In addition, Mr. President, the budget deficit would also rise sharply as a result of the Roth tax cut, even after accounting for the substantial reflow produced by the increased GNP.

The net impact on the deficit after reflows of the Senate tax bill as amended by Senator ROTH would be approximately $80 billion by fiscal year 1983. The more moderate fiscal picture in the committee report would have a net impact of about $40 billion, so that the Roth deficit, in 1983, would be about $40 billion higher.

We project the budget to be roughly in balance under the committee's assumptions in fiscal year 1983, because the deficit will fall as the private sector growth raises revenue. On comparable assumptions about the strength of private sector demand, Roth would then show a deficit of about $38 billion in fiscal year 1983, almost identical to the $38.8 billion deficit in the second budget resolution for this fiscal year, 1979.

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

Mr. MUSKIE. Mr. President, could I have another minute?

The PRESIDING OFFICER. Does the Senator from Louisiana yield further?

Mr. LONG. Yes.

Mr. MUSKIE. So, Mr. President, a larger part of the revenue reflows would be generated under Roth by increased inflation, particularly in the later years. A comparison between the Senate bill with the Roth amendment and the committee's projection is shown in the table which I ask unanimous consent to have printed in the RECORD at this point.

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

[Fiscal years; in percent]

	1979	1980	1981	1982	1983
Senate bill with Roth amendment:					
Real GNP growth	3.9	4.5	4.9	4.3	3.9
Unemployment	5.7	5.2	4.6	4.3	4.1
Inflation	6.7	6.1	6.5	6.9	7.7
Deficit	−39	−64	−71	−59	−38

	1979	1980	1981	1982	1983
Committee's projections:					
Real GNP growth	3.9	3.6	4.3	4.3	4.3
Unemployment	5.7	5.5	5.2	5.0	4.7
Inflation	6.7	6.1	5.8	5.8	6.0
Deficit	−39	−44	−30	−13	+3

Mr. MUSKIE. Finally, it must be noted that these projections assume continued rapid growth under Roth in spite of its severe inflationary impact. In fact, as CBO has noted, this may not be realistic.

This growth would require very rapid growth of the money supply, well above the Federal Reserve's targets. The Federal Reserve is most unlikely to accommodate this rapid inflationary growth, and would almost surely restrict monetary growth to a much slower rate.

The PRESIDING OFFICER. The Senator's 1 minute has expired.

Mr. MUSKIE. May I ask the Senator for 1 more minute?

Mr. LONG. Yes.

Mr. MUSKIE. One result would then be sharply higher interest rates and the "crowding out" of housing and business investment by consumption spending—exactly the opposite of the increased capital formation which Roth-Kemp proponents claim. The high interest rates would then terminate the rapid expansion with a credit crunch, and the economy would fall into recession.

These are our projections of the long-term impacts of Kemp-Roth.

I yield back whatever time is left.

● Mr. HATCH. I rise to pay tribute to my friend and colleague from Delaware. Mr. ROTH, for his excellent leadership all over America for the Roth-Kemp tax-rate reduction. The Senator from Delaware is one of the most astute and innovative men in the Senate, especially on tax and financial matters. He and Congressman KEMP deserve tremendous credit for building their proposal from a zero acceptance to their present position of powerful endorsement by the Republican Party and the general public throughout the country. I salute my colleague and, regardless of the outcome of the vote today, commend him for providing a real choice for America—a choice between a static economy, fluctuating between the twin problems of inflation and stagflation, and a dynamic economy where we will outproduce both problems.●

● Mr. PELL. Mr. President, I favor and will vote for substantial income tax cuts for individuals.

Substantial tax cuts, particularly for middle-income families, are necessary and are justified to offset the increase in social security withholding taxes scheduled for next year. Substantial tax cuts are necessary to relieve the squeeze on family budgets caused by constantly increasing living costs, and an increasing burden of local and State taxes.

Substantial tax cuts for individuals are justified to maintain economic growth and to avoid a slowdown in our economy next year.

For all of these reasons I favor and will vote for substantial tax cuts for individuals in the tax bill now being considered by the Senate.

I will vote, however, against the excessive, reckless and dangerous tax cuts proposed in the Kemp-Roth amendment.

These tax cuts pose not the danger, but the virtual certainty, of fueling the fires of inflation by creating hugh Federal Govenment budget deficits—deficits as high as $130 billion according to the House Budget Committee.

Business Week, a magazine known to espouse conservative and prudent fiscal doctrines, said in an August 7 editorial,

Kemp-Roth would add $100 billion to a deficit that is already dangerously swollen. It would touch off an inflationary explosion that would wreak the country and impoverish everyone on a fixed income.

That same view is held by most leading economists.

Mr. President, the Kemp-Roth proposal is cruelly deceptive, because the dollars it gives in tax relief would be quickly and surely eaten away by the runaway inflation it would cause.

For that reason, I shall vote against the Kemp-Roth amendment, and for a substantial and responsible tax cut.●

Mr. SCHMITT. I am pleased to continue my support for the Roth-Kemp tax cut proposal by cosponsoring S. 1860, the Tax Reduction Act.

Americans are asking for tax reductions and Congress must respond to that call. The recent passage of proposition 13 in California has brought the taxpayers revolt out of the realm of wishful thinking and into political reality. There are signs in several States that more actions along this line will be forthcoming; for example:

Passage by the Arizona Legislature of a constitutional amendment limiting tax revenues to 7 percent of personal income in the State. The measures will be on the November ballot.

Passage by the Delaware Legislature of a bill to limit State spending to 98 percent of anticipated revenues.

Passage of a bill in the Massachusetts House to slash local property taxes by about $1 billion by limiting assessments to 2.5 percent of fair market value.

Announcement of a hiring freeze in Maryland by Acting Gov. Blair Lee III. (In Prince Georges County a group of residents has started a petition drive to freeze the county's property tax levy at the 1979 level.)

Endorsement by Maine's outgoing Governor, James B. Longley, of a citizens' effort to introduce a tax limitation amendment in the State legislature next January.

A proposal by the chairman of the Minnesota Senate's Tax Committee to cut property taxes and raise sales taxes to cover the difference.

Qualified approval by Washington Gov. Dixy Lee Ray to an initiative drive for a statute limiting State property tax increases to 6 percent a year. Washington in 1972 placed a constitutional ceiling on local property taxes.

Consideration of a State spending limit scheduled next month by the Hawaii Legislature.

On the national level, 24 State legislatures have passed resolutions calling for a constitutional convention to consider an amendment requiring a balanced Federal budget. If 34 States pass such resolutions, Congress would have to convene a national convention to prepare one or more constitutional amendments. It is clear that we are faced with a national movement of major proportions. In my view, the Roth-Kemp tax reduction bill is an excellent initial response to the demands of our people for tax reduction.

Further steps, however, must be taken to meet the demands of the people for more responsible Federal fiscal policies. It is clear that the most critical economic problems facing our Nation domestically and internationally are Government-created inflation, declining productivity, unemployment, and overregulation of the economy. Although the symptoms of these problems reinforce each other, there are commonsense solutions to each problem. If we begin to solve the problems, the symptoms will begin to recede.

INFLATION

The Federal Government's 5-year fiscal policy should: first, reduce the net Federal deficit by about $10 billion per year; second, permanently reduce taxes on the productive portions of our economy by about $10 billion per year; third, permanently reduce capital gains taxes to 25 percent; fourth, reduce the rate of growth of the Federal budget by about 2 percentage points per year until it falls below the rate of the growth of the GNP; and, fifth, require that the total Federal budget be no more than 20 percent of the GNP.

UNEMPLOYMENT

Tax policy should establish annual permanent decreases in personal and business taxes which will, first, encourage small business development and hiring; second, create increased long-term demand; and, third, create investment in increased industrial production and productivity.

Congress should increase the incentives for able-bodied persons on welfare to seek private sector employment or training for future private sector employment.

Monetary policy and fiscal policy should follow courses of restraint so that business and investment confidence can contribute directly to the creation of private sector jobs.

Social security taxes and minimum wage legislation should be considered in light of their impact on unemployment so that the bottom rungs of the economic ladder to success can be restored for unemployed youth and for those with dreams of starting their own business.

ENERGY

Regulatory and tax policy should create the incentives for production and efficient use of our vast domestic resources of oil, natural gas, coal, uranium, geothermal and solar energy, so that energy costs can be driven down by competition and increased low-cost domestic supply.

Both the administration and the congressional majority have failed to recognize that the high cost of energy is caused by Federal regulation that prevent the increases in domestic production that can break the back of the OPEC cartel. It is not caused by too little energy regulation and taxation.

The guarantee of a free market price structure for new domestic oil and natural gas would rapidly begin the discovery and production of a resource base of at least 300 billion barrels of oil and 700 trillion cubic feet of natural gas. That would provide several decades of supply while the Nation develops alternatives as fast as possible but without the threat to our national security and national economy that we now face.

REGULATION

Federal regulatory policy must be streamlined so that Congress can review major regulatory programs for their inflationary impacts on the economy before they became law. The method proposed in the Regulation Reduction and Congressional Control Act, S. 2011, should be examined as one mechanism for congressional approval or disapproval of major regulations to be implemented by Federal agencies.

These efforts, if undertaken as part of a comprehensive economic plan, would prove to be a tremendous impetus to the productive sector of the economy. The resulting increases in production would lead to significant reductions in both unemployment and inflation. The Roth-Kemp tax proposal is a necessary first step in the development of an economic policy that can solve the many economic and social problems facing the Nation.

The direct economic effects of this bill would be as follows:

First. It would provide substantial tax cuts to all income classes of taxpayers. While the tax cuts would average a one-third reduction in tax liabilities, the progressive nature of the present individual income tax structure would be preserved, and, in fact, enhanced slightly, since the tax cuts would be somewhat larger (as a proportion of present tax of present tax liability) in lower tax rate brackets.

Second. The individual income tax cut would be accomplished by reducing tax rates from the present range of 14 to 70 percent to a new lower range of 8 to 50 percent. Reduction of the marginal individual income tax rates should provide greater incentives to investment and risk taking, and thus accelerate the creation of jobs in the Nation's economy.

Third. The reduction in corporate income tax rates in the Roth-Kemp pro-

posal has two important characteristics. First, the overall tax rate on corporate income would be reduced by 3 percentage points. This would increase the after tax rate of return on corporate investment and thereby provide a stimulus to the purchase of corporate securities and to capital investment. Second, the bill would increase the corporate surtax exemption, a change which has major support in the small business community. This tax change would provide larger tax benefits to smaller corporations with net income in the range of $50,000 to $150,000.

It has been argued that such sweeping tax reductions would reduce tax revenues and increase the Federal deficit. But an analysis of the last major tax reduction in the Kennedy administration shows that it is likely that Federal revenues will increase rather than decrease. In 1963, the range of rates levied on personal income was reduced from 20 to 90 percent to 14 to 70 percent, and the corporate tax rate was cut from 52 to 48 percent. The Kennedy administration projected revenue losses of $89 billion over 6 years, but actually realized a gain of $54 billion over 6 years. The reason is that lower taxes increase incentives to work and produce, so the gross national product rises. While tax rates may have declined, there is a bigger pie to be divided—thus, after a few months delay, Federal revenues go up.

There are important similarities between present economic conditions and those which existed in 1964 when the Kennedy tax cut took effect. In 1978, we are approximately 3 years into an economic recovery from a recession, as we were in 1964.

In 1978, as in 1964, we have an unemployment rate which is lower than during the recession, but nonetheless allows considerable room for improvement. Our present unemployment rate is 6.1 percent, down from 9.1 percent during May of 1975. Thus, full employment has not yet been attained although among married males we seem to be very close. Similarly, in 1964, the unemployment rate (on an annual basis) was 5.2 percent, down from 6.7 percent in 1961. Two years after the 1964 tax cut, the unemployment rate had declined to 3.8 percent.

The two areas are also similar in terms of industrial capacity utilization, indicating room for expansion of output. In 1964, the capacity utilization rate for total manufacturing using the Federal Reserve Board measure, was 85.7 percent, substantially below full capacity. In the fourth quarter of 1977 the rate was 82.8 percent, up from the 70.9 percent rate experienced in the first quarter of 1975, but below the 1964 level and substantially below full capacity. The capacity utilization rate rose to 9.1 percent 2 years after the 1964 tax cut.

There are clearly many similarities between current economic conditions and those faced by the Nation in 1963–64. The Roth-Kemp tax reduction proposal is simply an attempt to apply a remedy with a proven history of success to current economic conditions. It offers the kind of sweeping reform that Americans are asking for, in stark contrast to the Carter tax proposals which are really a tax "wolf's" plan "in sheep's clothing."

It is time to reduce taxes on the productive sector of the economy so that more Americans can be put to work creating and producing the new goods and services that our economy has the potential to produce. The Roth-Kemp proposals would accomplish that goal and deserves the support of the American people, Republicans and Democrats alike.

The PRESIDING OFFICER. Who yields time?

Mr. LONG. Mr. President, I reserve the remainder of our time. Does the Senator from Delaware care to be heard at this point?

Mr. ROTH. Mr. President, I would just like to point out that the arguments that have been made by the distinguished Senator from Maine are the same old tired arguments that have put this country where it is today.

What I am proposing with the Roth-Kemp legislation—and I welcome my colleague from the House side, who is here with us—what we are proposing is to give a signal to the country that we are going to move in a new direction, that we are going to remove the tax drag from the American economy, in an attempt to promote savings, to promote investment, to promote the creation of jobs in the private sector, by providing some buoyancy in the economy.

It is about time that this country change its direction. It is about time that the Senate shows some leadership instead of continuing along the same old tired path that we have gone for the last 20 or 30 years.

Sure, you can pull out some of these economic studies, static studies that do not consider the basis of a tax cut. We are dealing here with growth, the supply side.

Mr. President, I think the most serious vote we will have is the one we face immediately on whether we are going to move in a new direction to promote growth, to promote jobs in the private sector, and to give some aid to those in the $10,000 to $50,000 bracket, and provide the assistance, the tax relief, they so badly need.

That is the question we face with this vote.

Mr. LONG. Mr. President, I would like to make one final appeal to Senators, particularly our friends on the other side of the aisle.

We need a tax cut. The business people need it to stimulate business; individuals need it to stimulate consumption. It is needed to help ease the burden of the social security tax increase in January, and it is needed to ease the burden of inflation.

Mr. President, if this amendment is agreed to, those who sponsor it are entitled to have a majority of the conferees. The House has already said they would not take it. It either means a deadlocked conference or it means that the President will veto the bill. He has threatened to veto what we have here now because the bill spends a lot of money in the out years.

There is not the slightest doubt, Mr. President, that if this amendment is agreed to, all the businesses, corporations, poor people, welfare clients, low-income people, the whole bunch of them just will not get a tax cut. The Congress will fail to keep its commitments. A vote for this amendment, Mr. President, is not a vote for a tax cut; it is a vote for no tax cut at all. The President will veto the bill, if it gets that far. Obviously, the House will not accept the amendment, and it will not vote to override, even if we stayed here until Christmastime.

In the last analysis, a vote for the amendment will mean no tax cut. Therefore, I hope the Senate will not agree to the amendment.

Mr. ROTH. One thing I would say in conclusion, Mr. President, is that I hope this will become law. I hope that the President would use the advice of the distinguished leader of the Finance Committee, that when it gets to the White House and he signs it he says it is mine.

Mr. LONG. I would hope and pray over it, Mr. President, but I know what will happen. I yield back the remainder of my time.

The PRESIDING OFFICER. All time has been yielded back. The yeas and nays have been ordered.

Mr. LONG. I ask for the yeas and nays, Mr. President.

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 amendment of the Senator from Delaware. The yeas and nays have been ordered and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. STAFFORD. Mr. President, on this vote, I have a live pair with the Senator from Texas (Mr. TOWER). If he were present and voting, he would vote aye. I voted nay; therefore, I withdraw my vote.

Mr. CRANSTON. I announce that the Senator from Minnesota (Mr. ANDERSON) and the Senator from Colorado (Mr. HASKELL) are necessarily absent.

Mr. STEVENS. I announce that the Senator from Texas (Mr. TOWER) is necessarily absent.

The PRESIDING OFFICER. The Senate will be in order.

I assume all Senators in the Chamber have voted.

The result was announced—yeas 36, nays 60, as follows:

[Rollcall Vote No. 451 Leg.]

YEAS—36

Baker	Griffin	Percy
Bartlett	Hansen	Proxmire
Bellmon	Hatch	Roth
Biden	Hayakawa	Schmitt
Chafee	Heinz	Schweiker
Curtis	Helms	Scott
Danforth	Johnston	Sparkman
Dole	Laxalt	Stevens
Domenici	Lugar	Thurmond
Garn	McClure	Wallop
Goldwater	Nunn	Young
Gravel	Packwood	Zorinsky

NAYS—60

Abourezk	Ford	McGovern
Allen	Glenn	McIntyre
Bayh	Hart	Melcher
Bentsen	Hatfield, Mark O.	Metzenbaum
Brooke	Hatfield, Paul G.	Morgan
Bumpers	Hathaway	Moynihan
Burdick	Hodges	Muskie
Byrd, Harry F., Jr.	Hollings	Nelson
Byrd, Robert C.	Huddleston	Pearson
Cannon	Humphrey	Pell
Case	Inouye	Randolph
Chiles	Jackson	Ribicoff
Church	Javits	Riegle
Clark	Kennedy	Sarbanes
Cranston	Leahy	Sasser
Culver	Long	Stennis
DeConcini	Magnuson	Stevenson
Durkin	Mathias	Stone
Eagleton	Matsunaga	Talmadge
Eastland		Weicker
		Williams

PRESENT AND GIVING A LIVE PAIR, AS PREVIOUSLY RECORDED—1

Stafford, against.

NOT VOTING—3

Anderson	Haskell	Tower

So the amendment (No. 3881) was rejected.

Mr. LONG. Mr. President, I move to reconsider the vote by which the amendment was rejected.

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

The motion to lay on the table was agreed to.

Mr. JACKSON. Mr. President, I ask unanimous consent that Larry Phillips, of my staff, have the privilege of the floor during the consideration of the pending tax bill.

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

Mr. METZENBAUM. Mr. President, I make the same request for Rick Sloan.

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

UP AMENDMENT NO. 1997

(Purpose: To provide for a reduction in individual tax rates)

Mr. BUMPERS. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The amendment will be stated.

Mr. KENNEDY. May we have order, Mr. President?

The PRESIDING OFFICER. May we have order so that the clerk may be able to state the amendment?

The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Arkansas (Mr. BUMPERS), for himself and Mr. KENNEDY, proposes an unprinted amendment numbered 1997 to the Packwood amendment numbered 3880.

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

Mr. LONG. I object, Mr. President. It does not appear that long.

The assistant legislative clerk proceeded to read the amendment.

Mr. BUMPERS. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with. I will be happy to explain the amendment as best I can.

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 amendment, insert the following:

SEC. REDUCTION IN RATES.

(a) IN GENERAL.—Section 1 (relating to tax imposed) is amended by striking out subsections (a), (b), (c), and (d) and inserting in lieu thereof the following:

"(a) General Rule.—There is hereby imposed on the taxable income, for the taxable years beginning in the calendar years specified in subsection (b)(2), of every—

"(1) married individual (as defined in section 143) who makes a single return jointly with his spouse under section 6013, and every surviving spouse (as defined in section 2(a)), a tax determined under the applicable schedule for the taxable year,

"(2) head of a household (as defined in section 2(b)), a tax determined under the applicable schedule for the taxable year,

"(3) every individual (other than a surviving spouse as defined in section 2(a) or the head of a household as defined in section 2(b)) who is not a married individual (as defined in section 143) a tax determined under the applicable schedule for the taxable year, and

"(4) a married individual (as defined in section 143) who does not make a single return jointly with his spouse under section 6013 a tax equal to one-half the tax which would be determined for an individual described in paragraph (1) with the same taxable income.

(b) APPLICABLE SCHEDULES.—For purposes of subsection (a) the applicable schedule for—

"(A) individuals described in subsection (a)(1) is schedule 2,

"(B) individuals described in subsection (a)(2) is schedule 3, and

"(C) individuals described in subsection (a)(3) is schedule 1.

"SCHEDULE 1

"If the taxable income is over the amount in the left-hand column but not over the amount in the right-hand column:		The tax is the amount in the left hand column plus a percentage (as shown) over the amount of the taxable income shown in the right-hand column:	
$2,300	$3,400	0+13%	$2,300
$3,400	4,400	$143+14%	3,400
$4,400	6,500	$283+16%	4,400
$5,500	8,500	$619+20%	6,500
$8,500	10,800	$1,019+24%	8,500
$10,300	12,900	$1,525+24%	10,800
$12,900	15,000	$2,079+26%	12,900
$15,000	18,200	$2,575+30%	15,000
$18,200	23,500	$3,535+34%	18,200
$23,500	28,800	$5,337+39%	23,500
$28,800	34,100	$7,404+44%	28,800
$34,100	41,500	$9,736+49%	34,100
$47,500	55,300	$13,362+55%	41,500
$55,300	81,800	$20,952+63%	55,300
$81,800	108,300	$37,647+68%	81,800
$108,300		$55,667+70%	108,300

"SCHEDULE 2

"If the taxable income is over the amount in the left-hand column but not over the amount in the right-hand column:		The tax is the amount in the left hand column plus a percentage (as shown) over the amount of the taxable income shown in the right-hand column:	
"$3,400	$5,500	0+13%	$3,400
$5,500	7,600	$273+14%	5,500
$7,600	11,900	$567+16%	7,600
$11,900	16,000	$1,255+21%	11,900
$16,000	20,200	$2,116+25%	16,000
$20,200	24,600	$3,166+29%	20,200
$24,600	29,900	$4,442+32%	24,600
$29,900	35,200	$6,138+38%	29,900
$35,200	45,800	$8,152+43%	35,200
$45,800	60,000	$12,710+49%	45,800
$60,000	85,600	$19,663+54%	60,000
$85,600	109,400	$33,492+59%	85,600
$109,400	162,400	$47,534+64%	109,400
$162,400	215,400	$81,454+68%	162,400
$215,400		$117,494+70%	215,400

"SCHEDULE 3

"If the taxable income is over the amount in the left-hand column but not over the amount in the right-hand column:		The tax is the amount in the left hand column plus a percentage (as shown) over the amount of the taxable income shown in the right-hand column:	
"$3,000	$5,100	0+13%	$3,000
$5,100	7,200	$273+14%	5,100
$7,200	9,400	$367+16%	7,200
$9,400	12,500	$919+22%	9,400
$12,500	15,700	$1,601+24%	12,500
$15,700	18,900	$2,369+27%	15,700
$18,900	24,200	$3,233+31%	18,900
$24,200	29,500	$4,876+36%	24,200
$29,500	34,800	$6,734+42%	29,500
$34,800	45,400	$9,010+46%	34,800
$45,400	61,300	$13,886+54%	45,400
$61,300	82,500	$22,472+59%	61,300
$82,500	109,000	$34,980+63%	82,500
$109,000	162,000	$51,675+68%	109,000
$162,000		$87,715+70%	162,000

(b) Effective Date.—(1) The amendments made by this section shall apply with respect to taxable years beginning after December 31, 1978. The Secretary shall adjust the tables prescribed under section 3402(a), effective July 1, 1979, to reflect one-half of the full year effect of the amendment made by this section for wages paid after June 30, 1979. The tables in effect on January 1, 1979, shall continue in effect with respect to wages paid before July 1, 1979.

Mr. BUMPERS. Mr. President, I thank the distinguished floor manager for not objecting. It should not take an inordinate length of time to dispose of the amendment, because it is fairly simple in its intent and its purpose.

There is a common perception across the country, and I believe it is a legitimate one, despite the very best efforts of the committee, and I applaud the committee for their diligence and the time they have spent on this bill, that the people of this country who need tax relief most are the ones who also are being slighted most under this bill.

One of the primary reasons for the tax cut is to protect people against the impending social security increases and against inflation. I think the committee probably considered a 7-percent annual inflation rate in arriving at these figures. Let me cite some statistics that will indicate that the very lowest income people in this country do very well under this bill and those people in the very highest income brackets do very well. However, if you happen to be in the $10,000 to $30,000 income bracket, even with the tax cut that you are going to get, because of the rate structure in the committee bill, you are not going to be much better off with inflation; and if the inflation rate is more than 7 percent, you will get nothing out of this tax bill.

The vast majority of the American people fall into the category of $10,000 to $30,000 incomes. It is keeping faith with those people that I think is most important. Inflation has eroded our credibility with them. They are the backbone, literally the stability, of the country. They are the ones who are not being treated fairly under this bill.

Let me cite an example, first, of what happens to those income categories so far as the inflation rate is concerned.

Those people in the $10,000 to $15,000 a year income bracket will get protection against an inflation rate of 8.7 percent. This means that if the inflation rate is

7 percent, those people are going to get only an additional 1.7 percent benefit from this bill. They are going to get an 8.7-percent inflation protection, but if the inflation rate is 7 percent, they wind up with virtually nothing.

The people in the $15,000 to $20,000 a year income category get an 8.9 percent protection against inflation, or 1.9 percent above the inflation rate and that is practically nothing.

The people in the $20,000 to $30,000 income bracket get only a 7.7-percent protection against inflation, so they get only seven-tenths of 1 percent protection over and above the inflation rate.

Now, I will go to the bottom of the rung and the top of the rung and cite what has been happening to those people.

If you are in the zero to $5,000 income, you get a 12.8-percent protection against inflation, or an effective tax reduction of 5.8 percent.

If you are in the $5,000 to $10,000 annual income category—and there are a vast number of Americans in that category—you get a 15.7-percent protection against inflation, or an 8.7-percent actual cut in your taxes.

But go up to the highest annual incomes, and listen to this: If you are making $50,000 to $100,000 a year, you are protected to the extent of 12.1 percent, or an actual tax cut of 5.1 percent.

If you are making $100,000 to $200,000, which represents about one-tenth of 1 percent of the American people, you get a 17.9-percent protection against inflation, or a 10.9-percent cut in your taxes.

If you are one of those rare specimens making more than $200,000 a year, you get an inflation protection of 74 percent, or 10 times the projected inflation rate of 7 percent.

Mr. President, I do not see how, in good conscience, we can ignore these statistics. I believe them. How can we go to the American people and say, "If you are making between $20,000 and $30,000 a year, you are going to get a tax cut of seven-tenths of 1 percent, but if you happen to be making more than $200,000 a year, you get a tax cut of 67 percent"? You cannot do it. I do not think the committee intended it. I doubt that the committee really considered this inflation factor and the kind of tax cuts we are providing.

Let me state what it means in actual dollars.

If you make $10,000 a year and you are a married person with two children, your tax liability under the bill is $254 a year. Under our proposal, your tax liability would be $223, and we would save you an additional $31.

That is not anything monumental. At least, it is better than the committee bill, and we are saying to the American people that we recognize that the people who make $10,000 to $30,000 a year are the ones who are being wiped out in the economic atmosphere of the country right now.

If you are making $15,000 a year, your liability under the present law would be $1,233. That is your tax liability. Under our proposal, it would be $1,103; so we would give you an additional $130 tax break.

If you are making $20,000 a year and are married with two children, your tax liability under the committee bill is $1,984. We cut it to $1,864, or a $120 tax break.

Mr. President, this does not seem very drastic to me. Admittedly, it has a total cost of more than $3 billion. But regardless of the cost—and I am as concerned about that as anybody else, and I intend to vote for some of the amendments offered here to restore some revenues in this bill—my concern is that we have these big benefits for the people earning under $10,000 and big benefits to the people earning more than $50,000, and we are literally breaking faith with everybody in between.

Mr. President, inflation is the No. 1 problem in the country. We know it; the American people know it. They demonstate it every time they are asked in the Gallup poll or the Harris poll what they consider the major problem in this country, and it is always inflation.

Right now, this bill provides an average of 10.6 percent in tax cuts against inflation, or a net cut—still assuming that the inflation rate is going to be 7 percent—an average tax cut to the American people of 3.6 percent.

What we do in this amendment is to keep faith with the middle-income working people in this country and increase their inflation protection an average of 94 percent. I think it is the very least we can do.

I urge my colleagues to consider this amendment seriously, to look at the charts to see who is going to benefit and who is not.

I yield to the distinguished Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I hope the Senate will give favorable consideration to this amendment.

At the outset, I join in commending the chairman of the Finance Committee and the members of the Finance Committee for helping the neediest people in our society. I think that in the past 20 years that has been a major factor in the Finance Committee's deliberations.

We have enacted the low-income allowance, the standard deduction, the increased personal exemption, the general credit, the earned-income credit, and a variety of other factors which have shown sensitivity to bringing low-income groups in our society off the tax rolls. In general, we have tried to protect the lowest income groups first, the middle income groups next, and the upper income groups third.

However, the pending committee bill reverses these priorities. Through its actions increasing the earned-income credit and providing additional tax relief for capital gains, the committee bill provides reasonable generous relief for the lowest income groups and extremely generous relief for the highest income groups. But the middle income groups are shortchanged. They are the hole in the committee's doughnut.

When inflation and the social security tax increases are taken into account, those in the $10,000 to $50,000 income groups receive substantially less protection from the committee bill than other income groups. I believe that additional protection for these groups is needed. This amendment would provide such relief. For a family of four with income of $15,000 the amendment would provide an additional $130 in tax relief.

The lower and middle income groups deserve additional protection, because they are the groups hit hardest by inflation, especially in essential areas like food, housing, medical care, and energy, where prices have been rising even more rapidly than the Consumer Price Index. For example, in the first half of 1978, the cost of these four basic necessities rose at an annual rate of 13.2 percent, compared to a 5.2-percent increase for other commodities.

The proposed amendment takes nothing from other income groups. By rate changes, it simply allocates among the lower and middle income groups the $4.5 billion necessary to provide a fairer distribution of the overall tax relief in the committee bill.

The amendment will not violate the budget resolution, since the additional relief will be made available through withholding beginning on July 1, 1979, in a fashion similar to that used by the committee for the increase in the earned-income credit.

I recognize that the amendment will generate additional revenue losses in future years, which must be offset by other changes if a sound fiscal and budget policy is to be achieved. But middle income groups are entitled to share fairly in any tax relief granted by Congress. The amendment that Senator BUMPERS and I are proposing will enhance the likelihood that the interests of these income groups will not be neglected, as they are in the committee bill.

Mr. President, the amendment offers tax relief of $3.7 billion at 1978 income levels. The revenue loss will be $4.528 billion in calendar year 1979.

As the charts in the back of the Chamber show, the purpose of the Bumpers-Kennedy amendment is basically to bring the middle class to the conference table. They will really not be effectively at the conference table without this amendment because, if they are shortchanged in the bill as it leaves the Senate, they will be shortchanged in the final bill that comes back from the conference.

Mr. President, the primary purpose of this tax reduction legislation is to protect taxpayers against the effects of inflation, which is actually a tax increase because it pushes people into higher tax brackets without any increase in real earnings. Another major purpose is to protect taxpayers against the social security tax increases scheduled for next January 1.

The House bill was actually even more unsatisfactory than the Senate committee bill, because it protects only those earning over $50,000 a year against last year's inflation and the social security tax increase scheduled for January 1,

1979. All income groups under $50,000 would not be fully protected against the inflation tax increase and the social security tax increase.

The Senate Finance Committee bill protects everyone against inflation and the social security tax increase for 1 year. But the bill gives substantial additional protection only to the lowest and highest income groups. The middle class is left out.

For 1979, the committee bill and our amendment would provide protection against the following levels of inflation:

	Committee (percent)	Bumpers/ Kennedy (percent)
$0–$5,000	5.8	7.1
$5,000–$10,000	8.7	13.4
$10,000–$15,000	1.7	7.8
$15,000–$20,000	1.2	7.8
$20,000–$30,000	0.7	3.5
$30,000–$50,000	0.6	1.1
$50,000–$100,000	5.1	5.3
$100,000–$200,000	10.9	11.1
Over $200,000	67.0	67.1

Mr. President I ask unanimous consent that four tables showing the revenue effects of the amendment and comparisons to the House and Senate committee bills may be printed in the Record.

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

TABLE I.—AGGREGATE TAX EFFECTS IN 1979

[1978 income levels, in millions of dollars]

Expanded income class (thousands)[1]	Inflation tax increase[2]	Social security tax increase[3]	House bill tax cut[4]	Net tax change
Below $5	192	42	−51	+183
$5 to $10	984	86	−433	+637
$10 to $15	1,075	120	−852	+343
$15 to $20	1,310	297	−1,345	+262
$20 to $30	2,121	1,345	−3,037	+429
$30 to $50	1,808	1,005	−2,640	+173
$50 to $100	944	218	−1,388	−226
$100 to $200	286	45	−512	−181
$200 and over	105	11	−689	−573
Total	8,824	3,169	−10,948	+1,045

[1] Expanded income equals adjusted gross income plus tax preferences (as defined under the minimum tax) less investment interest to the extent of investment income.

[2] Tax change from indexing the rate brackets, general tax credit, personal exemption, zero bracket amount and earned income credit for a 7-percent inflation.

[3] Tax increase from increase in social security tax rate from 6.05 percent to 6.13 percent and increase in wage base from $18,900 to $22,190.

[4] Tax change from individual income tax changes in House bill except provisions dealing with unemployment compensation and inflation adjustment for capital gains.

TABLE II.—TAX RELIEF FOR LOW- AND MIDDLE-INCOME GROUPS

[Dollar amounts in millions; 1978 income levels]

					Senate Finance Committee bill			Proposed amendment		
Expanded income class	Inflation tax increase	Social security tax increase	Combined inflation and social security tax increase	Senate Finance Committee bill tax relief	Additional relief over inflation and social security (4)−(3)	Percent additional protection against inflation (6)÷(2) (5)÷(1)	Protected inflation rate (percent)	Additional tax relief above committee bill	Percent additional protection against inflation	Protected inflation rate (percent)
0 to $5,000	$192	$42	$236	$395	$159	83	12.8	$37	102	14.1
$5,000 to $10,000	984	86	1,070	2,292	1,222	124	15.7	661	191	20.4
$10,000 to $15,000	1,075	120	1,195	1,449	254	24	8.7	941	111	14.8
$15,000 to $20,000	1,310	297	1,607	1,966	359	27	8.9	1,103	112	14.8
$20,000 to $30,000	2,121	1,345	3,466	3,681	215	10	7.7	847	50	10.5
$30,000 to $50,000	1,808	1,005	2,813	2,960	147	8	7.6	147	16	8.1
$50,000 to $100,000	944	218	1,162	1,849	687	73	12.1	30	76	12.3
$100,000 to $200,000	286	45	331	776	445	156	17.9	6	158	18.1
Over $200,000	105	11	116	1,121	1,005	957	74.0	1	958	74.1
Total	8,824	3,169	11,993	16,490	4,497	51	10.6	3,773	94	13.6

TABLE III.—BUMPERS/KENNEDY AMENDMENT

	Additional tax relief					Additional tax relief			
Income groups	Millions	Percent distribution	Average SFC & tax relief	Average additional tax relief	Income groups	Millions	Percent distribution	Average SFC & tax relief	Average additional tax relief
0 to $5,000	$37	1.0	$54	$9	$50,000 to $100,000	$30	0.8	$1,294	$22
$5,000 to $10,000	661	17.5	128	42	$100,000 to $200,000	6	.2	2,595	22
$10,000 to $15,000	941	24.9	104	69	Over $200,000	1	0	14,372	21
$15,000 to $20,000	1,103	29.2	170	96					
$20,000 to $30,000	847	22.5	284	66	Total	3,773	100.0	231	58
$30,000 to $50,000	147	3.9	507	25					

TABLE IV.—FEDERAL INDIVIDUAL INCOME TAX BURDEN: SINGLE PERSON AND MARRIED COUPLE WITH NO, 1, 2, AND 4 DEPENDENTS

[Assuming deductible personal expenses of 23 percent of income]

	Tax liability														
	Single person			Married couple with no dependents			Married couple with 1 dependent			Married couple with 2 dependents			Married couple with 4 dependents		
Adjusted gross income	Under SFC	Under the proposal	Reduction	Under SFC	Under the proposal	Reduction	Under SFC	Under the proposal	Reduction	Under SFC	Under the proposal	Reduction	Under SFC	Under the proposal	Reduction
$3,000	0	0	0	0	0	0	−360	−360	0	−360	−360	0	−360	−360	0
$5,000	250	227	23	0	0	0	−600	−600	0	−600	−600	0	−600	−600	0
$6,000	422	379	43	84	78	6	−600	−600	0	−600	−600	0	−600	−600	0
$8,000	787	719	68	374	343	31	−136	−152	16	−276	−282	6	−360	−360	0
$10,000	1,177	1,129	48	702	631	71	414	363	51	254	223	31	−36	−42	6
$12,500	1,584	1,555	29	1,152	1,031	121	972	871	101	792	711	81	454	413	41
$15,000	2,027	2,017	10	1,614	1,476	139	1,414	1,266	149	1,233	1,103	130	873	783	90
$17,500	2,526	2,517	9	1,999	1,880	119	1,799	1,670	129	1,599	1,460	139	1,220	1,091	129
$20,000	3,094	3,085	9	2,416	2,316	100	2,184	2,074	110	1,984	1,864	120	1,584	1,444	140
$25,000	4,343	4,334	9	3,358	3,297	62	3,100	3,029	72	2,860	2,779	82	2,380	2,279	102
$30,000	5,697	5,688	9	4,436	4,413	23	4,156	4,123	33	3,876	3,853	43	3,316	3,253	63
$35,000	7,199	7,190	9	5,664	5,642	22	5,344	5,322	22	5,024	5,002	22	4,394	4,270	25
$40,000	8,865	8,856	9	7,034	7,012	22	6,654	6,632	22	6,274	6,252	22	5,616	5,594	22
$50,000	12,538	12,529	9	10,195	10,173	22	9,765	9,743	22	9,335	9,313	22	8,475	8,453	22
$60,000	16,371	16,362	9	13,614	13,592	22	13,124	13,102	22	12,646	12,624	22	11,786	11,764	22
$70,000	20,221	20,212	9	17,387	17,365	22	16,897	16,875	22	16,407	16,385	22	15,427	15,405	22
$80,000	24,071	24,062	9	21,190	21,168	22	20,690	20,668	22	20,190	20,168	22	19,200	19,178	22
$90,000	27,921	27,912	9	25,040	25,018	22	24,540	24,518	22	24,040	24,018	22	23,040	23,018	22
$100,000	31,771	31,762	9	28,890	28,868	22	28,390	28,368	22	27,890	27,868	22	26,890	26,868	22

Staff of the Joint Committee on Taxation.

Mr. KENNEDY. One chart shows the available protection against inflation. If the inflation rate is 7 percent next year, the chart shows that the middle income groups are really not protected at all. Persons in the $15,000 to $20,000 income group are protected only against 1.2 percent inflation. But people in the top group are protected against 67 percent inflation. Of course, no one expects that sort of inflation. The figure just shows how enormously well they are protected by the committee bill, while the middle income groups get nothing. And that is not fair.

So our amendment, Mr. President, is effectively to bring this middle income group to the conference table. It is focused on that group that we think is the hole in the committee donut.

We commend the committee for the work in behalf of the lowest group. I have reservations about the extent we should be granting relief to the wealthy in the capital gains area. But the highest and lowest income groups do very well in the bill, compared to the middle income groups.

I believe that with the acceptance of this amendment, the conferees are going to be under a greater obligation to work out an adjustment that conforms with the budget and with fairness to middle income taxpayers. It will give the $10,000 to $50,000 group a front row seat at the conference table.

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

Mr. KENNEDY. I yield to the Senator.

Mr. DOLE. I am interested in the amendment offered by the distinguished Senator from Massachusetts. I am wondering if we will run into any budget problems. Are we faced with any budget problems because of the potential cost of the amendment?

Mr. KENNEDY. For this particular year, there is a $1 billion or so window in the budget resolution. This amendment falls within that for this fiscal year. Because it does become effective in the current year, we avoid the issue in the debate during consideration of the Roth-Kemp amendment. So the amendment conforms to this year's. In the future, it will have to meet the other priorities of fiscal policy.

Mr. DOLE. It will extend beyond 1 year?

Mr. KENNEDY. What we are dealing with here is only the tax rates. A question has been asked, although not in this particular debate, why do we not just redistribute the tax relief in the committee bill, instead of adding additional relief. But effectively, because of the capital gains-earned income split in the high income group, we could not find enough to redistribute with cutting back too sharply on those who do not have capital gains. There is only about $1 billion that could be redistributed. So we decided to offer additional relief.

Mr. LONG. Mr. President, the Senator is speaking for a further tax cut of $4.5 billion a year.

The chart to which the Senator makes reference includes a number of items that I believe Senators should understand. One of them, as I understand it, is that he would include on his chart the effect of 2 years' inflation. We in the committee found that there is enough money available in the budget to provide a tax cut large enough to take care of next year's increase in social security, and in addition we could take care of the inflation that has occurred in the last year.

(Mr. HUDDLESTON assumed the chair.)

Mr. LONG. There simply was not enough money in the budget, Mr. President to take care of inflation for 2 years, that is for the inflation that occurred last year and the inflation that occurred the year before.

Of course, some could contend that we should try, if we could, to adjust for inflation since the 1976 act. The fact is that there is just not enough money in the budget to do that and, therefore, if cannot be done in the budget.

What the Senator would seek to do here is to provide this very large tax cut, which ordinarily would go beyond the budget, but he would say that people would earn the tax cut from January up until July. They would not start getting the benefit of it until July, and then starting in July they would start getting the benefit in the withholding. Then at the end of the year they would get a big refund because they would not have the benefit of it from January until July.

By holding back the tax cut that people would have under law until they were paid or at least received a refund in the following year, the Senator would keep the cost of his amendment within the budget.

It still works out for a further tax cut of $4.5 billion. If the Senator's proposal were one to take effect just within the next year it would work out that it would be subject to the same budgetary objection that was made last night in that it falls in a future year. But in this case it would not be, because it starts in this year and then continues over into the following year.

But no matter how you move the figures around to meet the budget, Mr. President, it still works out to a $4.5 billion tax cut that the budget does not have the money to cushion, most of it occurring in the next out year, that is, after July 1 next year, and then going up, following in the months and years that occur thereafter. The money is not there to pay for it, Mr. President.

We have had a great deal of expression of concern about the cost in the out years already, and this increases it by about another $4.5 billion.

It would mean, if agreed to, that the provisions in the energy bill, the tuition tax credit, the earned income credit abroad, the effort to cut the tax on airplane tickets would have to be squeezed out in the main in order to make room for it.

The Senator says the tax bill we have before us does a great deal for people in tax brackets of $50,000 and over. I assume he is referring to the fact that this bill proposes a major reduction in capital gains tax.

Mr. President, it was my privilege to be in this body when John F. Kennedy was President of the United States. At that time he sent to us a recommendation that instead of taxing 50 percent of the gain on a capital gain, that we tax it at ordinary income rates, but that we tax only 30 percent of the gain.

His Secretary of Treasury, Douglas Dillon, his Under Secretary of Treasury, Mr. Henry Fowler, came before the committees to testify that this would not cost the Government any revenues, because they said it will cause a stimulative effect on the economy, it will cause a great number of additional transactions, and will result in an additional increase in economic activity, which will mean that it will cost us nothing.

In effect, they were testifying that the rate on capital gains, even at that time, was so high that it was counterproductive. People would not make gains that they should make otherwise.

I believe at one point in President John F. Kennedy's statement, he said, "A rising tide raises all boats." So if you make it reasonable, if you keep the tax from being so high the people will not be deterred from engaging in capital gains transactions, from selling a farm, selling a home, selling an office building, selling some stock, it was the view of President John F. Kennedy, ably testified to by Douglas Dillon and Henry Fowler, his Secretary of Treasury and Under Secretary of Treasury, that there would be induced effects, which means more transactions, more business, more commerce, resulting from those transactions that would make money for the Government.

So, Mr. President, you would have no budget loss.

Now, knowing that those arguments were made, I took it upon myself to write Mr. Fowler, and he came and testified before us that that was still his opinion; that since that time capital gains taxes have been raised a great deal more, because of the so-called tax reform bill. The minimum tax being made applicable to it was an add-on tax, and he testified before the committee—and I will make available to all Senators his testimony—that in his judgment this tax cut would actually have a positive impact on revenues, and it would make money for the Government.

Mr. Douglas Dillon wrote a very strong letter saying the same thing.

Mr. William Simon, who served as Secretary of Treasury with distinction, under President Ford, made the same statement.

We have the same statement made by Mr. George Shultz, a great economist as well as a great Cabinet officer, who served under President Nixon.

In fact, six former Secretaries of Treasury said the same thing. The same statement was made by a majority of those who had served with distinction on

the Federal Reserve Board, and by those who served in position of Under Secretary and high positions in the Treasury, whose opinion was sought.

There was a division of opinion among those on the Council of Economic Advisers. Some said "yes," some said "no." I will make available to all Senators their

But the point is it is the prevailing view, the overwhelming majority view, statements as we discussed this matter in the debate.

Mr. President, of those who have had the responsibility of studying these matters that what the committee did on capital gains is no bonanza for the wealthy. Everybody would get a cut in the tax they pay on capital gains, be they in the lowest bracket or in the highest bracket, but because it would result in more capital gains and those who make these transactions, those who buy office buildings would repair them and improve them; and those who would buy small factories or plants would fix them up, because they wanted to make better use of them; those who buy stock in a company would be the activist type who see some potential for the company, while those who sell would not be the activist type, and it would be a matter of separating those who do not see potential from those who do.

It would move the economy, and it would have a positive effect on the budget.

I will make available to the Senators the statements. I have had them printed, and we will bring them in before this debate is over showing that there is no loss to the Government. It is a matter of reducing a counterproductive tax that is slowing down this economy.

Just to give you an example, Mr. President, oftentimes the capital gains tax is taxing nothing but inflation. Let us assume for the sake of argument that a person bought some land, and he bought it at $1,000 an acre. Then 10 years later he sells it for $2,000 an acre. In real terms, the $2,000 will not buy one bit more than the $1,000 would have bought at the time he bought the land. So the tax is on a purely fictitious gain. He is being taxed, because the Government failed to maintain the purchasing power of its money.

In a situation of that sort, it amounts to a tax on capital, not a tax on income at all. It amounts to more than a 100-percent tax on income, because there is no income in a real sense. Contrary to the views of President Carter, the American people understand that. President Carter thought we ought to tax capital gains as just ordinary income. That had a lot of appeal to a lot of people, up until the Roper organization went out and took a poll of the American people. They said, "Do you think we ought to tax capital gains the same way we tax ordinary income?" What did the American people say? The great majority of them said:

Oh, no, a capital gains transaction is an entirely different thing from the ordinary income that you receive in terms of wages, dividends, and things of that sort.

So, recognizing that, the committee also recognized the wisdom of those who served under President John F. Kennedy, those who served under President Lyndon B. Johnson, and those who served under President Nixon and President Ford, and we recommended that the tax be cut to make it a productive tax rather than a counterproductive tax.

So the Senator says, "Well, these people in the $50,000 to $150,000 and up bracket are being given a bonanza" with the great bonuses they are supposed to be getting.

Mr. President, the Government would make money by that, and that is testimony to the ability of those who have that kind of responsibility.

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

Mr. LONG. In just a moment.

Furthermore, when you list those people up there with $50,000 to $150,000 because they get a great benefit, because of the cut in the capital gains tax, let us keep in mind who it is we are talking about.

Mr. President, it was my good fortune, some years ago, to buy a little farm on the outskirts of Baton Rouge from an elderly couple; the old man was a retired plantworker, and the dear old lady was a schoolteacher. She had inherited 200 acres of land from her father, they had worked very hard to try to make it on that land, with very little topsoil. The city of Baton Rouge began to approach it, and I thought I could probably buy it and it would pay out over a period of time.

I made those people an offer, and they accepted. I should imagine those people at no time in their lives made more than $20,000 a year, but the year they signed that contract they would go down as people who made $150,000 or almost $200,000. Next door to them here was another citizen, a brother, a fellow who had a little house, awfully old, and badly in need of repair; he would do a little farming on that, and had a modest amount of income. The year he sold his property, it would look as though that man was in the $100,000 and up bracket, a millionaire.

No such thing, Mr. President. All he did was sell Grandpa's farm, something they had saved and tried to keep up during a lifetime. But they are listed as millionaires on that chart, because they sold something they inherited from Grandpa.

That does not convey quite the picture. When one looks at a chart like that, it looks like a lot of people are millionaires, because they sell something that has been in the family for a long period of years.

Mr. President, I yield to the Senator from Nebraska.

Mr. CURTIS. I thank my distinguished chairman, and I commend him for what he has pointed out here.

Mr. President, a person of very modest income can on one occasion sell his small farm or his residence, he has a big paper gain as a result of inflation, and in those circumstances we cannot point to that taxpayer and say he is in such and such a bracket, because it is a one-time happening, on a gain that is not real.

I also commend the Senator for pointing out the effect on our economy of capital gains reduction.

Who benefits when we have an ongoing economy, with plenty of jobs? Who benefits? The more jobs there are available, the easier it is for young people who have never had a job to get one. The more jobs there are available, the easier it is for the individual who is not very productive and has not had much training to get a job.

Our tax burden is in the neighborhood of $400 billion. How that is applied to our economy can have a great deal of effect on how the economy runs. So, in measuring how the tax bill affects this bracket or that bracket, you have to measure the local effect of his stake in an economy that is running well and providing jobs. So I commend the Senator.

Now, the chart over there has factors in it that represent certain judgments as to what you should figure in there as to who gains what. I call attention to table 5 on page 34 of the committee report. The last column shows what percent of tax reduction each bracket gets, compared to the present law.

Those under $5,000 have their taxes reduced by 68.3 percent. Those from $5,000 to $10,000 have a tax reduction of 27.8 percent. Those from $10,000 to $15,000 have a tax reduction of 8.5 percent. Then it runs on down: 8.2 percent, 7.5 percent, 5.9 percent, and the like. That is what we have done on the individual taxes.

This same chart, in the next-to-the-last column, shows that 77 percent of the tax relief granted in this bill goes to those people making less than $50,000. Here is something else: Nearly 60 percent of the individual tax reduction goes to those who make under $30,000 a year. Sixty-five percent of the tax reduction goes to those who make between $10,000 and $50,000, and 77.3 percent—almost 80 percent—goes to those who make less than $50,000.

These things are complex. These tables were worked out over many months by professional staff. They were not concocted to win arguments or to persuade; they were to inform the committee. They are as objectively drawn, I think, as they could be.

I thank my distinguished chairman for yielding. I did not intend to take so much of his time.

Mr. LONG. I yield the floor, Mr. President.

Mr. KENNEDY. Mr. President, I listened with interest to the argument of the chairman of the Finance Committee, saying that there was just not enough money to go around to protect everyone against inflation.

The fact of the matter is that the Senate Finance Committee would protect some people against inflation, and went well beyond that.

The lowest and highest income groups are well protected, but the middle income groups are not.

The Senator from Louisiana says, "We

cannot understand why we should be questioning the issue of capital gains, that in the 1960's President Kennedy advocated a lowering of the rates."

He did, Mr. President, but it is also important, when you represent the position of a previous administration, you state the full position, not just part of the position.

In reading from the tax message he sent to Congress in 1963, which recommended the 70 percent exclusion for capital gains, he also said:

I therefore recommend the following changes, the nature of which requires their consideration as a unified package

I underline "as a unified package."

coupling taxation with more sensible, equitable limitations.

Included in that package is the full taxation on gains on property transferred at death, the recapture of depletion on the sale of oil and gas properties, the recapture of all depreciation on buildings sold at gain, taxation on timber income as ordinary income, taxation on all coal sales as ordinary income, taxation as ordinary income of long-term deferred sales, and on and on.

So if you are going to present a position, you should present it fully, not just selectively talking about 30 percent for capital gains. I, for one, would cosponsor with the chairman of the Finance Committee the 30 percent reduction, if he had a package which included the same measures which were recommended in 1963. But that is not the issue.

Mr. President, we will probably get into a discussion later about capital gains. It is always interesting to realize, as we will talk further about it, that two-thirds of the capital gains relief goes to people above $50,000. Effectively, that is what we are talking about. The recommendation of the Senate Finance Committee is going to mean a $20,000 saving for every taxpayer who makes over $200,000 in income. It is going to mean $20,000 to him.

We are talking here about $125 for the person who makes $25,000. The Senate Finance Committee is talking about $20,000 for the person who has $200,000 in income.

That brings this into somewhat sharper perspective.

Mr. President, what we are effectively trying to do is to bring the middle-income people to that conference table. I think it is essential for the Senate to do so, when we look at what the conferees will be considering in the House-passed bill, which is a sizable net tax increase, based on inflation and the increase in social security.

Mr. President, I would hope that the Senate would consider favorably this particular amendment.

Mr. LONG. Mr. President, the Senator's argument that those in the high brackets will save $20,000 a year is based on the assumption that the Government is going to lose money by reducing the capital gains tax rate.

The Senator talks about the fact that there were a lot of other items in the recommendations by John F. Kennedy that did not become law. There were also a lot of items that did become law, and I am happy that they did. I fought for them. I was the floor manager of that bill. I was not the chairman of the Finance Committee at the time. I was the ranking member. It was a very big tax cut. At that point, Mr. Harry F. Byrd, Sr., did not think it was responsible to cut taxes that much unless you were going to cut spending just as much. It fell on me as the next Democrat to see what I could do about passing that bill.

Mr. President, Douglas Dillon, who testified for that capital gains tax cut, is still here. He is still living. He is still available to us to tell us how he arrived at the conclusion that you would make money by cutting the tax on capital gains. That man is still very much alive and well and able to give us the benefit of his views.

We have his letter. He can state for you how he arrived at the conclusion that you would make money by cutting capital gains and show you the same factors apply today, the same general logic applies, that if you do that you will make money by cutting the tax on capital gains.

So when we talk about cutting the capital gains tax rate, we are not talking about losing any $2 billion a year to the Government as the Senator from Massachusetts would like to contend. We are talking about reducing a counterproductive tax down to the point where the Government makes money rather than losing money at it.

Again let me point out that in many cases you are applying a tax that goes above 40 percent on income that does not exist at all, purely imaginary income.

A person buys land at $1,000 an acre and 10 years later he sells it at $2,000 an acre. The money that he is getting is worth only 50 cents on the dollar for what he paid when he bought the property. So he made nothing. But he is going to pay a big tax on that.

If you reduce the tax rate, it is more likely that he would sell the property to somebody who could make better use of it than he does. When he does it, by virtue of the fact that they make better use of the property, being a farm, a factory, a building, whatever it might be, that generates more income for the Government. Also, it produces the secondary and tertiary benefits, because people make further investments.

Because these people sell the property that they inherited from their fathers or grandfathers and grandmothers, and made a one-time gain which is a once-in-a-lifetime gain they made when they sold their home, sold their farm, or sold their little business, to say someone is a millionaire is no such thing. He has the good fortune of having perhaps $100,000, or maybe even less than that, maybe $50,000 or $60,000 worth of resources that that person could sell.

They would all have a tax cut and it would generate revenue for the Government.

Mr. President, since we use the minimum tax, not as an alternative tax but as an add-on tax, what was once a 25-percent tax on capital gains has been moved up to a 49-percent tax on capital gains in the extreme case.

Obviously, if that is the tax rate where most that is being taxed is inflation, it is so discouraging that people are just not going to make the transaction, even if the economics would otherwise compel it. So it locks in assets. It slows up the economy. It has a very bad overall result on the economy.

But the Senator is not seeking to change that. I assume later on he will seek to eliminate the amendment that cuts the tax on capital gains. All we are talking about here now is this add-on, another $4.5 billion in tax cuts.

Mr. President, the budget will not stand it. It may be that at some future point we could find ways to cut spending so we could have a further tax cut.

But the same logic that compelled us to vote down the Roth amendment applies to this, except that the Roth amendment did not involve as much money. We just do not have that much money to vote responsibly to reduce taxes by that much. To do so would mean that we would have to eliminate and squeeze out some of the other things we have already voted for, such as the insulation credit, which has been passed twice by the Senate; the legislation to do something about the tuition credit for young people going to college, or the legislation to take care of the working people who go abroad and seek to earn some money and take American know-how abroad and bring profits back to this country. Those things would have to be squeezed out, even though we in the Senate felt they ought to be acted upon.

Mr. President, I hope the amendment is not agreed to.

Mr. BUMPERS. Mr. President, the Senator from Massachusetts and I are not going to belabor this point. I simply want to say that I am inclined to agree with some of the points the chairman makes on capital gains. I may vote against my good friend from Massachusetts on the capital-gains thing and I do not think we ought to bog down here in this debate on the merits or demerits of the capital-gains reduction provided for in the Senate bill. The facts are that the tables showing the effect of our amendment do in fact assume that that reduction is going to be made. Whether you agree with that or not is something else. We are talking about the number of dollars and who is going to get the benefit of them.

There are 87 million taxpayers in this country. Eighty-seven million returns are filed with IRS every year. Eighty-four percent of those have below $30,000 in income. Sixteen percent are the people in this country who file income tax returns with incomes over $30,000, a very small number. When you get above $50,000, the numbers of taxpayers involved go down exponentially. We are not asking here to debate the merits of the capital-gains tax. What we are saying is let us provide simple justice and

simple equity to the people who need it the most.

Everybody in this body knows very well that the Members here do not have tax shelters, because they know that any kind of tax shelter they have would represent some kind of conflict of interest. Most of us just have to list our income, go down the table, and pay it. I personally have had to borrow money the last 3 years to pay mine, but I am not suggesting that I want to go down into the $20,000-income category to avoid that.

Look at what we are doing, Mr. President. We are saying to the people in the zero to $5,000 income category, instead of getting a 5.8-percent reduction above inflation, we are going to give you 7.1 percent. In the $10,000 to $15,000 income group—and I believe that is where the vast number of those 87,000,000 taxpayers are, making $13,000 a year. That is the median income.

In that category, the $10,000 to $15,000 a year income, under the Finance Committee's bill, those people are only going to derive a 1.7-percent net tax cut. That is based on an anticipated 7-percent inflation rate. As the Senator from Massachusetts pointed out, right now, the wholesale price index as of last night is on an annual basis of 10 percent.

Even the CPI is well above 7 percent right now.

I bet that right now, for the first 9 months of this year, the Consumer Price Index is up over 8.5 percent. If that is true and if it holds for the rest of this year, these people get no tax cut; we leave them right where they are.

On the $20,000 to $30,000 income, those people, under the Senate Finance Committee bill, are getting a seven-tenths of 1 percent tax cut, still assuming the inflation rate is 7 percent. If the inflation rate should be 8.5 percent, those people actually would lose almost 1 percent under this bill. Under this amendment, we give those people a 3.5-percent cut above the anticipated inflation rate.

I do not see how we can do less. I do not like the cost of this amendment. When the Senator from Massachusetts and I talked about this thing yesterday, I said:

> You know, I am really a fiscal conservative. I really believe in trying to help the President balance the budget. I believe we can have a viable economy and still not spend more than we can take in.

If I may digress for just a minute, the American people ought to be told that in this year's budget, which is almost $500 billion, $64 billion of that is in loans. We are not actually spending more than we take in. Sixty-four billion dollars is in loans to the communities and the States of this country to do things they ought to be doing, but that they are going to be paying us back for. That is the reason people get water and sewer treatment facilities, because they can borrow the money at reasonable rates of interest from the Federal Government, and $64 billion of this year's budget is in that category.

Five billion dollars of it is in the strategic oil reserve. That is an appreciating asset.

I am not for deficit spending, but I am saying it is sometimes just not the way people paint it to be. I want to help the President keep his commitment to balance the budget for 1981 and I think Congress has done a yeoman's job in cutting the President's estimated deficit of $68 billion down to $38 billion. Maybe we can cut off $2 or $3 billion more before we get out of here next week.

But I cannot in good conscience allow the figures, which do not lie, to remain unchanged. I cannot in good conscience go back to 80 to 85 percent of the people in my State and say, "We took care of the poorest of the poor and the richest of the rich and all you other 85 percent of the people, good luck."

That is what we are going to be doing if we do not adopt this amendment. I strongly urge my colleagues to vote aye.

Mr. KENNEDY. Mr. President, I think this argument has been made and made effectively. What this particular amendment, regardless of your view about capital gains, is saying is that we are preserving what was done by the Senate Finance Committee for the lowest income groups. We have given modest relief for the $5,000 to $10,000 group. We have not attempted to reduce the protections for the highest income groups, which are represented by capital gains, in this amendment. But the one significant hole in the donut, Mr. President, has been the middle-income group. What we are doing is attempting to protect them against the problems of inflation and the social security increases. That is fundamentally the issue.

I think many people will have the perception that we have done very well for the highest income groups in this country in the Finance Committee legislation and the House bill. I personally think the bill goes too far. But we are not, in this amendment, adjusting or changing that particular fact. All we are trying to do is insure adequate protection for the middle-income group. I certainly hope that this amendment will be accepted.

Mr. LONG. Mr. President, we in the Committee on Finance attempted to leave some room—we voted for as much in the way of tax cuts as we thought the budget could afford. Then we tried to leave some room in the budget for the energy bill and the tuition credit, and some of the other pressing items that have already been passed by the Senate and which are in conference with the House of Representatives.

This amendment would use up and preempt the slack that we left for the other items in the budget. On a 4-year basis, the cost is $4.5 billion. By moving the dates so it goes into effect January 1 but the withholding rates do not change until July 1, it would hold down the first-year budget year cost to $906 million. But the $4.5 billion tax cut, added on top of something that the administration tells us in the letters we have before us, is already a bigger out-year cost than the budget can afford. So the fact is that we cannot afford it. We do not have the money to pay for it and take care of the other items to which reference has been made.

Here is a letter from the Secretary of the Treasury having to do with amendments of this sort. It was certainly intended to cover the Roth amendment, but it also covers these others.

It says:

> The Administration is strongly opposed to the adoption of any of such amendments.

It goes on:

> These excessive outyear costs would prejudice our efforts to reduce the budget deficit and bring inflation under control. The inflation rate, which has begun to decline from the double digit pace of the first half of this year, must remain our number one concern and must be steadily reduced through the remainder of this decade.

So it goes.

Mr. President, we have voted for as much tax cut as is available in this area. This is a matter that works out to be a budget-busting resolution.

It stays within the budget this year, I understand that. But, in the out year, it drastically increases the revenue loss by $4.5 billion a year. That is something that we just do not have the money at this time to cushion and it preempts the tax cuts for energy and other matters.

I hope it is not agreed to, Mr. President.

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, that letter was directed toward the Roth-Kemp amendment. Mr. Lubick of Treasury indicated to us it was not directed at our amendment, and the language of the amendment obviously does not refer to our amendment.

Mr. LONG. My understanding is that the Treasury would go along with this amendment if the Senate was successful in raising other revenues by these other so-called reforms the administration recommended, which have not been agreed to by the House or Senate committee.

Of course, that remains to be seen, whether they will be passed to raise revenue.

Mr. KENNEDY. The point is that we can raise the revenue to pay for it here in the Senate, or in the conference.

I am hopeful other measures will raise the revenue, and I intend to offer amendments to do so.

But, if it goes to conference, the conferees at least will be able to consider it.

Mr. HATHAWAY. Mr. President, I want to join the Senator from Arkansas and the Senator from Massachusetts in support of this amendment.

First, I want to commend the chairman of the Finance Committee for bringing up a bill which I think is more equitable than the House bill.

I want to point out that the class of

people we are trying to give a little better break to with respect to this amendment is in the income class where they are paying, in addition to their income taxes, property taxes, sales taxes, social security tax and of course everybody else is paying those also but as a percentage of their income, these, essentially, head taxes are much greater.

They are also the people who are getting the most impact of all taxes.

We know the corporations, the businessmen, the lawyers and doctors, those in the upper-income brackets, can pass on most of the increased taxes that are assessed upon them to others. Whereas, in this group, we are talking about the clerks, the white-collar workers, and the vast amount of blue-collar workers who are not in that position to pass on that impact to anyone else; 80 percent of the blue-collar workers are not organized, are not members of labor unions, and find it very difficult to get the pay raises from time to time to offset that burden.

I am hopeful the Members would keep in mind just what the status is of this particular group we are trying to protect, and that they are actually more entitled to protection, more entitled to tax cuts, than any other group that is in the overall bill.

Mr. KENNEDY. Mr. President, just a final comment.

I ask unanimous consent to have printed in the RECORD the letter and attachments of the Secretary of the Treasury dated October 3. I will just read this relevant paragraph:

Second, the bill's tax relief is unbalanced. While the distribution of the individual's tax cuts is better than in the House version, it is still not satisfactory. The tax cuts for middle income families barely offset the 1979 Social Security tax increase and one year's inflation, while the relief afforded very high income taxpayers offsets these factors many times over. The individual relief should be redistributed in favor of middle income taxpayers.

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

THE SECRETARY OF THE TREASURY,
Washington, October 3, 1978.

DEAR SENATOR: The Finance Committee has reported H.R. 13511, the Revenue Act of 1978, to the full Senate for debate. In some respects, the bill marks an improvement over the House version. However, the Administration has major objections to the Committee bill.

First, the tax reductions in the bill are excessive and inflationary. The Finance Committee bill exceeds the Administration's proposed net tax reductions by $5.4 billion in calendar 1979, by $5.3 billion in FY 1980, and by $6.7 billion in FY 1981. These excessive outyear costs would prejudice our efforts to reduce the budget deficit and bring inflation under control. The inflation rate, which has begun to decline from the double digit pace of the first half of this year, must remain our number one concern and must be steadily reduced through the remainder of this decade. The budget deficit in FY 1979 will be about $40 billion. We must reduce that deficit as quickly as possible, and this requires discipline not only on spending but on the size of this tax cut, and not solely for FY 1979 but also for FY 1980, 1981 and beyond. The Finance Committee bill does not reflect an adequate anti-inflationary discipline in the outyears. It would seriously compromise the outyear budget flexibility and discretion of both the Congress and the Administration.

Second, this bill's tax relief is unbalanced. While the distribution of the individual's tax cuts is better than the House version, it is still not satisfactory. The tax cuts for middle income families barely offset the 1979 Social Security tax increase and one year's inflation, while the relief afforded very high income taxpayers offsets these factors many times over. The individual relief should be redistributed in favor of middle income taxpayers.

Third, the bill is deficient in that its alternate minimum tax permits very high income taxpayers to shelter more of their income from tax than does present law. I'm sure you agree that every taxpayer should contribute a reasonable amount to the costs of government.

The Senate Finance Committee bill does not accomplish this objective. Accordingly, the alternative minimum tax in the bill needs strengthening.

Fourth, the bill ignores most of the proposals for structural reform advanced by the Administration and instead would clutter the tax law with a collection of new and inequitable preferences, loopholes, and special interest tax breaks. For example: tax forgiveness for those inheriting appreciated property; reopening a loophole for bond issues engineered by one securities firm; revival of expired investment credits to benefit a single company; a special exception to reporting requirements for charge account tips; preferential tax postponement for executives of trade associations; and special accounting rules for a few large corporate farms.

A major source of the first three problems—excessive outyear costs, unbalanced distribution of relief, and excessive tax sheltering—lies in the Committee's additions to the House bill in the area of capital income taxation. The House bill cut capital gains taxes by about $1.7 billion on an annual basis, reducing the maximum tax rate on capital gains to 35 percent. The Senate Finance Committee supplemented this very generous relief with another $1.4 billion in revenue losses, further reducing the maximum tax rate on capital gains to only 21 percent (versus 70 percent on ordinary income). Facing stringent budget constraints, the bill's relief for capital gains should be more reasonable in amount and should, as noted, be accompanied by a genuinely effective alternative minimum tax.

The budget constraints also make inadvisable the Committee's liberalization of depreciation rules, another addition to the House bill. The revenue cost of this provision, $1.9 billion, hits hardest in the outyears. These costs cannot be responsibly undertaken until competing budget needs for those outyears are assessed by future Congresses.

Taken together, these added features have made the bill too large from the point of fiscal prudence and have skewed its relief inequitably toward the very highest income brackets.

I urge you to help improve the bill on the Senate floor. While the FY 1979 fiscal impact of the bill is about right, the outyear revenue losses are clearly excessive. The American economy needs a tax cut which allows progressive reduction in the budget deficit, and the American people deserve a cut that is more balanced and equitable.

It is especially important that the Senate refrain from further enlarging the revenue losses.

In this regard, I wish to re-emphasize our opposition to indexing the tax system to inflation. This dangerous and unworkable experiment would mark a surrender by the Congress in the fight against inflation.

I am enclosing a detailed description of H.R. 13511, together with revenue estimates and a summary of the Treasury's position on each provision.

I am also enclosing two tables. The first compares, for fiscal and calendar years 1979, 1980, and 1981, the size of the net tax reductions under the Administration's proposals (including urban initiatives), H.R. 13511 as passed by the House, and H.R. 13511 as reported by the Finance Committee. This table illustrates the excessive current and outyear costs associated with the Finance Committee bill.

The second table shows the distribution of the tax changes attributable to the capital gains provisions of the Finance Committee bill. Of the $3.1 billion in tax relief provided by these provisions, the table demonstrates that about 30 percent of the benefits go to those with expanded incomes of $200,000 and more. Over two-thirds of the benefits go to those earning more than $50,000 annually.

I look forward to working with you to make H.R. 13511 comport with budgetary constraints and basic principles of tax equity.

Sincerely,

W. MICHAEL BLUMENTHAL.

TABLE 1.—*Revenue effects of the administration's tax proposals and H.R. 13511 as passed by the House and by the Senate Finance Committee—calendar year liabilities and fiscal year receipts, 1979–81*

[Dollars in billions]

	Calendar years			Fiscal years		
	1979	1980	1981	1979	1980	1981
Administration's proposals [1]	−33.5	−39.4	−48.1	−22.5	−36.7	−43.3
House bill [2]	−31.6	−35.9	−45.5	−18.3	−33.5	−40.2
Senate Finance Committee bill [2]	−38.9	−44.5	−55.8	−20.6	−42.1	−50.1

[1] Includes the urban initiatives proposals in the Midsession Review of the budget and the extension of temporary tax reductions as estimated by the Joint Committee on Taxation.

[2] Includes offsetting revenues from induced capital gains and the extension of temporary tax reductions as estimated by the Joint Committee on Taxation.

Source: Office of the Secretary of the Treasury, Office of Tax Analysis, October 2, 1978.

TABLE 2.—*Distribution of tax changes from capital gains provisions of the Senate Finance bill—1978 levels of income*

Expanded income class	Capital gains provisions as reported	
	Tax change (millions)	Percentage distribution
Less than $5,000	−$6	0.2
$5,000–$10,000	−25	0.8
$10,000–$15,000	−64	2.1
$15,000–$20,000	−119	3.9
$20,000–$30,000	−292	9.6
$30,000–$50,000	−509	16.7
$50,000–$100,000	−716	23.5
$100,000–$200,000	−425	13.9
$200,000 and over	−894	29.3
Total	−3,051	100.0

Source: Office of the Secretary of the Treasury, Office of Tax Analysis, October 2, 1978.
NOTE.—Details may not add to totals due to rounding.

Mr. KENNEDY. The paragraph I read is what this amendment is intended to do, and that is an additional reason for the support.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Arkansas. 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 Alabama (Mrs. ALLEN), the Senator from Minnesota (Mr. ANDERSON), and the Senator from Colorado (Mr. HASKELL) are necessarily absent.

Mr. STEVENS. I announce that the Senator from Virginia (Mr. SCOTT), and the Senator from Texas (Mr. TOWER) are necessarily absent.

The PRESIDING OFFICER. The Senate will be in order. Are there any Senators in the Chamber who are not yet recorded?

The result was announced—yeas 52, nays 43, as follows:

[Rollcall Vote No. 452 Leg.]

YEAS—52

Abourezk	Hatfield,	Melcher
Bayh	Mark O.	Metzenbaum
Biden	Hatfield,	Nelson
Brooke	Paul G.	Packwood
Bumpers	Hathaway	Pell
Burdick	Heinz	Percy
Case	Helms	Proxmire
Church	Hodges	Randolph
Clark	Huddleston	Riegle
Cranston	Humphrey	Sarbanes
Culver	Inouye	Sasser
DeConcini	Jackson	Sparkman
Dole	Kennedy	Stevens
Domenici	Leahy	Stevenson
Durkin	Magnuson	Stone
Ford	McClure	Thurmond
Griffin	McGovern	Williams
Hart	McIntyre	Zorinsky

NAYS—43

Baker	Glenn	Moynihan
Bartlett	Goldwater	Muskie
Bellmon	Gravel	Nunn
Bentsen	Hansen	Pearson
Byrd,	Hatch	Ribicoff
Harry F., Jr.	Hayakawa	Roth
Byrd, Robert C.	Hollings	Schmitt
Cannon	Javits	Schweiker
Chafee	Johnston	Stafford
Chiles	Laxalt	Stennis
Curtis	Long	Talmadge
Danforth	Lugar	Wallop
Eagleton	Mathias	Weicker
Eastland	Matsunaga	Young
Garn	Morgan	

NOT VOTING—5

Allen	Haskell	Tower
Anderson	Scott	

So Mr. BUMPERS' amendment (No. UP 1997) was agreed to.

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

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 3880

The PRESIDING OFFICER (Mr. RIEGLE). The question then occurs on the amendment, as amended, of the Senator from Oregon.

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

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. MUSKIE addressed the Chair.

The PRESIDING OFFICER. The Senator from Maine.

Mr. PACKWOOD. The rollcall has started.

Mr. MUSKIE. Is the rollcall under way?

The PRESIDING OFFICER. The Chair will advise no one has yet answered, so the Senator is able to seek and gain recognition at this point.

Mr. MUSKIE. Discussion is in order?

The PRESIDING OFFICER. The Senator is correct.

Mr. MUSKIE. Mr. President, I will not take much time.

The PRESIDING OFFICER. The Senator will suspend until we have order in the Chamber.

Let me ask, if I may, that Senators find seats and conversations cease.

The Senator from Maine.

Mr. MUSKIE. Mr. President, I expected further amendments would be offered to the Packwood amendment and what I am about to say I could have had an opportunity to say later.

Senators will remember the point of order I raised last night to the Roth amendment. The Packwood amendment is subject to the same point of order, under my interpretation of the act.

I am not going to raise it at this point because the Senate spoke to me twice very loudly last night. I see no point in going down that rough path again so soon.

In the course of debate on this tax measure occasions for raising this same point of order will arise because there is a provision in the bill that came out of the committee which is subject to it, and there are other amendments being offered or being considered to be offered that would be subject to it.

I just want to be sure before we finally nail down into the budget process the ruling that the Senate itself made last night, which Senators understand fully the effect of that on budgetary discipline over revenues.

In talking to several Senators since last night I gather that a substantial number of them did not understand what that would imply.

Senator BELLMON and I are going to do our best to see to it that they are given an opportunity to understand before I make the point of order again because we have not yet had the opportunity to take that educational program and put it into effect. I am not going to raise the point of order now and risk getting another precedent before I am ready to make it.

Mr. ROBERT C. BYRD. Mr. President, will the Senator yield?

Mr. MUSKIE. I yield to my good friend, the majority leader.

Mr. ROBERT C. BYRD. I congratulate the Senator on his decision not to make that point of order now. I voted with him last night. I voted with him also on tabling the motion to reconsider. But the matter was settled by the Senate at that time.

I wish to see us get on with this bill, dispose of it, and a future time if the Senator wants to raise a point of order again I might be constrained to support him. But I hope it will not be done on this bill because I want to see us complete action on this bill.

The Senator made a fine statement last night. I thought he was right, but the Senate made its decision at that time. Perhaps in due time the Senate will want to change its decision. I am glad the Senator is not going to make that point of order, and I hope it will not be made on this bill again.

Mr. MUSKIE. Mr. President, I will reserve final judgment on that second point, may I say to the distinguished majority leader, but I am so concerned that what we have done is removed for all practical purposes the budget discipline with respect to revenues, and I just want the Senate to know that we are considering what we might do to fully inform Senators before they act finally and set this precedent finally into law.

So my position now is the Packwood amendment is subject to this point of order. I will not raise this point of order now. But I will add nothing further to my comments at this point and not object.

May I say I discussed this with the distinguished floor manager of the bill, and he understands I will not make the point of order now and that at some point we may have a further opportunity to discuss this issue and maybe I can, in the meantime, educate him as well as other Senators on what it is that bothers me about the whole business.

Mr. LONG. Mr. President, as the manager of this big tax bill, when one managing such a bill has the roof cave in on him, as I had it cave in on me on the previous amendment involving a $4.5 billion add-on to this tax bill, I must concede it would be a great bit of consolation to the Senator from Louisiana and the chairman of the committee if he had available to him the same point of order that the Senator from Maine speaks to.

Mr. President, first, may I thank the distinguished Senator for his help since we voted last night, his helping me to try to hold down the further spending

on this bill. I appreciate his help on both the Roth amendment and the Kennedy amendment. He was doing his job as he saw it. in a dedicated fashion, quite contrary to his own feeling on the merits, trying to maintain the budgetary balance of this Congress, and I appreciate his help.

I went to him and personally asked him for his help, and he has helped me, and I appreciate it.

Let me say, Mr. President, however, if the Senator's position were sustained by the Senate, we would still be subject to amendments for the off years. For example, Mr. ROTH still could have moved his dates over by several months, and he still could offer an amendment that would have the enormous impact that his amendment would have had.

He had the right to offer it in a revised form even if Mr. MUSKIE's position had been sustained.

From my point of view, Mr. President, I have every intention at the time, the way things are going—and I hope the Senate will support my position and Mr. MUSKIE's position in saying that we have loaded as much cost on this bill as it can stand the way it is now. I have had the experience of standing here, even with the support of the chairman of the Budget Committee, and having the Senate further load a revenue bill down.

At the end of it I would expect to offer my little fiscal responsibility amendment to say that when this bill comes back from conference it should be a fiscally responsible bill and it should be within the budget target.

We had something of that sort, I think, on the 1976 Tax Act. The Chairman of the Budget Committee was aghast and very dismayed at the time that bill finally passed after about 6 weeks, and I do say there have been some enormous cost factors added to it, and I added an amendment to say it was the sense of the Senate that in conference the bill should be pared down to the point where it stayed within the budget objectives. There was no objection to it even though I guess some perhaps doubted that that would work.

But when we went to conference, that was the first thing the House agreed to. They said, "Here is an amendment you have which we would like to agree to. You say you would like to keep this within the budget target. That is one amendment you have got that we will take." The conference started from that point forward.

If the Senate insists on loading a revenue bill of this sort far bevond any hope of maintaining a balanced budget in any year for the future, I would hope that we would still succeed before the bill finally becomes law in paring it down to the point where it is a fiscally responsible bill.

We, of course, can have our differences about the matter. I have felt, and I do feel, that notwithstanding the tremendous burden it places on those of us managing the bill in trying to be responsible about the matter, that we still ought to have the right of Senators to offer amendments that would have an impact not during the budget year but in the year immediately following the budget year in which we are working and, of course, I cheerfully respect the right of a Senator to renew the point if he wants to do it.

It is my feeling that we ought to have some meeting and talk about the matter.

The Senator made a good case. I must say I never heard a better case made for such a weak case than the one the Senator made.

[Laughter.]

Mr. MUSKIE. Is that a compliment?

Mr. LONG. Yes. I would like to have an opportunity to talk with the Senator and work with him to try to resolve our differences, because he is a great chairman, a great American. I not only admire him but genuinely love the Senator. He is one of the great men I have had the pleasure and opportunity of knowing in this life.

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

Mr. LONG. Yes.

Mr. MUSKIE. I know the Senator will come back from the conference with a bill that is consistent with the budget. The Senator has done that before. I may say that every day of exposure to the chairman of the Finance Committee by the chairman of the Budget Committee shows the Senator from Louisiana to have great effectiveness, sometimes to my complete frustration. But the Senator does live up to the expectations of the final result in conference. I would rather see some of those results achieved on the Senate floor, but the Senator himself has explained why that historically has been very difficult. So he has constituted himself a one-man revenue-responsibility Senator when he goes to conference and pretty well does what he sets out to do.

As to the makeup of a tax bill, we can all have differences, but he has demonstrated his willingness to live within the aggregates laid out in the budget resolution, and for that I would like to express my appreciation even though we have differences about procedures and maybe other differences from time to time.

So I thank the Senator for his kind remarks. May I say, in addition, that although I may not appear to be enjoying our vigorous exchanges when we disagree, in retrospect I always count them among the high points of my Senate career.

Mr. LONG. Mr. President, I would like to remind the Senator and all Senators that the Senator from Louisiana oftentimes comes off losing when he finds himself at odds with the Senator from Maine, and that it was less than a couple of weeks ago when he and I had a difference of opinion. I really must confess the Senator was the overwhelming victor. I think he beat me by about 2 to 1 on a similar type budget matter. All I can say is I am sure he was right because the Senate agreed he was right.

I enjoy debating with the Senator, and in the spirit of the Senate we ought to present our views and try to persuade the Senate we are right, and if we are wrong, at least if we lose, then I try to persuade myself the Senate was right. Sometimes I find it very difficult to do so.

But I do have tremendous respect and appreciation for what the Senator has done, and I hope he will continue to help me as the manager of this bill to try to hold it down to a responsible budget figure.

Mr. MUSKIE. I will do my best.

Mr. PACKWOOD. Mr. President, I would just like to remind the Senate before we vote that this is a college-only tuition tax credit provision. It is within the budget limitations that have previously been approved by the Budget Committee. In fact, it is slightly reduced from that because it is the conference, House-Senate conference, version, and those were scaled down from the Senate version to reduce the costs of the bill.

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

Mr. PACKWOOD. I yield.

Mr. MUSKIE. The Senator is correct in what he said. The point of order, if I had raised it, would have been to the fact that the credits increased in out years, and it is on that point only. But with respect to overall costs, the Senator is correct that this is a more conservative provision in terms of its budgetary costs, and I am happy to endorse that view.

Mr. LONG. Mr. President, I believe I should explain my position, because I favor this tuition credit. I do not favor it on this bill, though of course I will cheerfully accept the verdict of the Senate, which I am sure will be, in all likelihood, an overwhelming vote for it.

As I say, I have voted for it in years gone by, but I will not vote for it on this particular occasion, because, when we have worked out a conference report to send it down to the President, I devoutly hope and pray he will sign it. But the President has previously vetoed a bill providing this credit, and if the President would not sign that bill and he is the kind of Chief Executive I believe him to be, and the kind of willful man most Presidents are, he will take the attitude, having vetoed that bill, as he did veto it, that he is not going to sign any other bill that has that on.

That would mean he would veto the whole tax bill; and I really believe he has the moral fortitude and the political courage to do that, if he thinks it is a bad bill.

Presidents do that kind of thing; if they think it is a bad bill and it should not be done, and they veto it, and you send it back to them on some other bill, they have a way of vetoing that one, too.

I hope we will not wind up in that situation, where all the work we have done for 2 solid years all goes for naught.

I want my able friend from Oregon to understand why I do not feel the Senate should support it at this point, because I feel if the President did indeed veto the exact same language when it went down to him as a separate bill, it is my deep fear that he would veto this bill because it is on there.

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

Mr. LONG. I am happy to yield to the Senator from Delaware.

Mr. ROTH. As a prime proponent of

this measure, I would assume the distinguished Senator from Louisiana is not a party to any certain knowledge that the President is going to veto it?

Mr. LONG. No, I hope very much he will sign it. My name is on it. If the President asks my views, I will ask him to sign it. But as the Senator knows, I have been on his side for a long time on this. I have fought for it in conference, more than a year ago, on the social security bill, when we tried to do it. But I persuaded the Senator he was not going to be able to get it then, and he himself graciously removed it from the bill, but he said he was going to renew it, and I commend him for that and congratulate him on his work in this area.

I just want to remind Senators that this bill has a lot more in it than this tax credit, and we might at some point have the problem of getting it back off.

Mr. ROTH. I just wanted to make sure that the President has not made the final decision, and that we can hope he will sign it when it comes to the White House in the next couple of days.

Mr. LONG. Mr. President, I have tried to urge the President to stop threatening so many vetoes before a bill comes to his desk; that it is sort of like waving a red flag in front of Congress, it upsets them and tends to make them react in an aggressive fashion, and that it is much better not to do that.

But if it should work out that way, I would just like Senators to understand my problems in this connection.

● Mr. BELLMON. Mr. President, I will vote against the amendment. I have consistently opposed tuition tax credits; and I see nothing in this version of it to cause me to change my position on the issue.

Some will say: "We have done a good job. This is an extremely limited tax credit. It is limited to post secondary education; and the credit is smaller than the one passed by the Senate just last month."

I must respond, Mr. President, that I have never believed that a tax credit of even $500 was going to solve the problems of a family that could not afford to send their children to college; and a $100 credit—rising to $250 in 1980 and 1981 is obviously not an answer to this problem.

We must ask, then, Mr. President, just what is this credit going to accomplish? I can only envision one of two possible objectives to be served by this legislation. Either it is a political sop to the middle-income taxpayer who is crying for relief; or it is a foot in the door for those who would advocate much more generous credits. I can support neither of these. The middle-income taxpayer would be better served if we were to save the $2,644,000,000 this would cost between now and 1982—and though I may be fighting a losing battle, Mr. President, I shall vote to do just that.

All of our major higher education legislation is scheduled for reauthorization next year. That seems to me the appropriate time to consider expansions of Federal programs for this purpose. As my colleagues may know, I believe an affordable loan program is a much more appropriate, much more fiscally feasible approach to the problem this bill is supposed to address. I have introduced a bill (S. 3403) which would create such a program. I look forward to hearings on my proposal next year. I sincerely hope we will come up with a solution to the problems confronting parents with college age children, who need assistance to finance their educations. Some may argue that these parents should not be asked to wait; but better to wait for a solution than to settle now for a sop.

As I said earlier, Mr. President, I may be fighting a losing battle. Even if we defeat this amendment and if the bill we passed last month is vetoed and the veto is sustained, many will argue that we must somehow respond to the demand for middle-income tuition assistance now—perhaps by appropriating money for the President's proposed expansion of existing grant and loan programs. It is not that I do not sense the political pressure in this election year. We all do. But we owe it to ourselves to carefully consider what we are doing. We should carefully examine the question: what should be the form and extent of middle-income tuition assistance? And then we should carefully relate the answer to existing programs.

Mr. President, I must continue to argue for an orderly process and careful consideration, before we commit ourselves to billions of dollars for a new program—whether it be a tax credit or a spending proposal. As I said earlier, therefore, I shall oppose this amendment; and I urge my colleagues to do likewise.●

SEVERAL SENATORS! Vote

The PRESIDING OFFICER. The question is on agreeing to the amendment, as amended, of the Senator from Oregon (Mr. PACKWOOD). 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 Alabama (Mrs. ALLEN), the Senator from Minnesota (Mr. ANDERSON), the Senator from Colorado (Mr. HASKELL), and the Senator from Mississippi (Mr. STENNIS) are necessarily absent.

Mr. STEVENS. I announce that the Senator from Virginia (Mr. SCOTT), the Senator from Texas (Mr. TOWER), and the Senator from North Dakota (Mr. YOUNG) are necessarily absent.

The PRESIDING OFFICER. Are there any Senators in the Chamber who have not voted?

The result was announced—yeas 67, nays 26, as follows:

[Rollcall Vote No. 453 Leg.]

YEAS—67

Baker	Ford	Jackson
Bayh	Garn	Johnston
Bentsen	Goldwater	Kennedy
Biden	Gravel	Laxalt
Brooke	Griffin	Leahy
Bumpers	Hatch	Lugar
Byrd, Harry F., Jr.	Hatfield, Mark O.	Magnuson
Cannon	Hatfield, Paul G.	Mathias
Case	Hathaway	Matsunaga
Church	Heinz	McClure
Danforth	Helms	McIntyre
DeConcini	Hodges	Melcher
Dole	Hollings	Moynihan
Domenici	Huddleston	Nelson
Durkin	Humphrey	Packwood
Eagleton	Inouye	Pearson
Eastland	Jepsen	Percy
Randolph	Schmitt	Proxmire
Ribicoff	Schweiker	Wallop
Riegle	Sparkman	Weicker
Roth	Stevens	Williams
Sarbanes	Stevenson	Zorinsky
Sasser	Thurmond	

NAYS—26

Abourezk	Culver	Metzenbaum
Bartlett	Curtis	Morgan
Bellmon	Glenn	Muskie
Burdick	Hansen	Nunn
Byrd, Robert C.	Hart	Pell
Chafee	Hayakawa	Stafford
Chiles	Javits	Stone
Clark	Long	Talmadge
Cranston	McGovern	

NOT VOTING—7

Allen	Scott	Young
Anderson	Stennis	
Haskell	Tower	

So the amendment (No. 3880), as amended, was agreed to.

Mr. PACKWOOD. I move to reconsider the vote by which the amendment was agreed to.

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 3808

(Purpose: To eliminate the authorization of $500,000,000 in fiscal relief for States and local governments)

Mr. DANFORTH. Mr. President, I call up amendment numbered 3808 and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Missouri (Mr. DANFORTH, for himself, Senators BELLMON, BENTSEN, BUMPERS, CHILES, DECONCINI, EAGLETON, HODGES, PACKWOOD, and STEVENS) proposes amendment numbered 3808, as follows:

Beginning with line 12 on page 383, strike out all through line 14 on page 387.

Redesignate sections 602 through 609 as sections 601 through 608.

Mr. DANFORTH addressed the Chair.

Mr. McCLURE. Would the Senator yield for a unanimous-consent request?

Mr. DANFORTH. Certainly.

Mr. McCLURE. I thank the Senator for yielding.

Mr. President, I ask unanimous consent that Rob Fersh and Gale Picker of the Budget Committee be granted privilege of the floor during debate and vote on this measure.

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

Mr. McCLURE. I thank the Senator for yielding.

Mr. DANFORTH. Mr. President, this amendment is offered on behalf of myself and Senators BELLMON, BENTSEN, BUMPERS, CHAFEE, CHILES, DECONCINI, DOMENICI, EAGLETON, HODGES, PACKWOOD, STONE, TOWER, ROTH, and BARTLETT. It would strike section 601, which is the fiscal relief section of the bill.

Mr. President, much has been said already in the last 2 days about the budgetary effects of this tax bill and its effect on increasing the deficit, and there has been speculation as to whether or not it will be the kind of bill which the President will sign.

This amendment would strike an authorization of $500 million for fiscal relief to the States. It would, therefore, assist with the budget problem which we are otherwise facing with this bill. My

amendment would strike the fiscal relief section of the bill which was added by the Finance Committee over the strenuous objection of the administration.

Therefore, if our concern is to fashion a bill which is likely to be signed by the President, one thing we could do to make the bill more acceptable to the President is to adopt this amendment and strike the fiscal relief provision.

The fiscal relief provision of the bill has no real place in a tax bill. That is, this provision does not provide for any tax relief. It does not provide for any economic relief for people. It does not provide for any economic relief to organizations, businesses, and the like.

Instead, what it is a grant of funds from the Federal Government to State governments in an authorized amount up to $\$1/2$ billion, of which it has been predicted that approximately $315 million would actually be claimed by the State governments.

It is fiscal relief without any strings at all.

I saw in one letter written by Senators MOYNIHAN and CRANSTON to a Member of the Senate that it was described as welfare fiscal relief. It is not welfare fiscal relief. There is no requirement in the law that a single penny of this money has to be spent for welfare. There is no requirement that a single penny of this money has to find its way to the poor people of this country.

Instead, it is a no-strings grant to State governments without any kind of legal obligation at all on the State governments to use the money for the poor. They can build golf courses with it, if they like. They can erect statutes or build office buildings if they like. Anything they want to do with the money is all right.

The distribution formula in the bill has no relation whatever to the need of the States that are the recipients of the funds.

There was absolutely no effort to allocate the money between the States to those States where it is needed.

I am certain that it is true that there are some States in the Union which have serious economic problems, but it is equally true that there are a number of States that do not have serious economic problems and, in fact, have a surplus in their own budgets.

Yet this bill is a shotgun approach. This provision is a shotgun approach to distributing funds around the country and, in that respect, it is very similar to the countercyclical revenue-sharing problem we faced a week ago last Saturday here on the floor of the Senate.

There is, in fact, no evidence—no evidence—of a general need by the States for fiscal relief.

In 1977, State and local governments had an aggregate surplus of $29.6 billion—an aggregate surplus in State and local governments.

We all know that the Federal budget has no surplus. Instead we have a deficit. We are facing a deficit of about $40 billion.

So the theory of this bill is to distribute money from the Federal Treasury, which has a deficit, to State governments on a shotgun type basis, whether or not the State in question actually needs the funds.

The largest recipient of the funds under this provision, by far, is the State of California. Out of an estimated $315 million to be distributed, California is estimated to receive approximately $68 million.

Is there a need in California for the $68 million?

I do not see how we can justify it because California has just enacted a one-shot income tax reduction in its State of $675 million for 1978.

How can we say to the people of America that we are going to ship from the rest of the country $68 million to California because they have just cut their own tax liability of their own people by $675 million?

The second largest recipient of funds is New York under this section. They are estimated to receive $39 million.

I would say this to the two Senators from New York who are here today. I spent 3 years of my life living in New York, living on the island of Manhattan. I started my professional career in New York. I have great compassion and concern for it, and I am sure that it has special circumstances.

For that reason, Senator MOYNIHAN has repeatedly made very eloquent arguments that we should do something for New York, and we have affirmatively responded to those arguments in the loan guarantee that we just passed for New York. We affirmatively responded to that special plea for New York City.

So there is no lack of compassion for New York and there is no lack of compassion from me. I am not telling New York City or State to drop dead.

In fact, under this particular bill, under this section, no funds would be distributed until next September, almost a year from now. If between now and September there is some special need for New York, I would be delighted to work with Senators MOYNIHAN and JAVITS to try to see what we can do.

The point simply is this: If there is a targeted special need for New York State of $39 million, let us give New York State $39 million. Let us not create a $500 million authorization, of which approximately $315 million will be distributed around the countryside, because some of that money will have to fall on New York.

In other words, if we are going to create a program and increase a program for the relief of the States, let us target the relief, so it does some good, rather than just "drop it out of airplanes" as we are doing once again under the bill as it now stands.

It was argued in the Finance Committee that this section is designed to help the poor. It will not help the poor.

To repeat: There is no requirement in the law that a single penny of this money must be used to assist the poor. Instead, it can be used for any purpose.

Moreover, the distribution formula that is contained in the bill has nothing to do with where the poor reside. If the intention of the bill is to help the poor, surely the distribution should have something to do with where the poor are, but it does not.

For example, New York State has 7 percent of the poor people in this country, and it would receive 14.1 percent of the authorized funds. By contrast, Texas has 7.5 percent—somewhat more of the poor people in the country than New York has—and Texas, instead of receiving 14.1 percent, would receive 3 percent

The State of Maine has 2.8 percent of the Nation's poor and would receive 6/10ths of 1 percent of the authorized funds under this program.

The computation of distribution is made on the basis of general revenue-sharing formula plus AFDC distribution formula and then applying an error rate formula on top of it, to come up with the final computation.

The strange thing about the use of the error rate—and it is not the real error rate; it is shifts and movements in the error rate that are measured here—is that some places are cut out entirely. For example, the District of Columbia, according to projections from HEW—and all of us here know that there are poor people in the District of Columbia—would receive nothing under this proposal. The State of Arkansas would receive nothing. The State of Mississippi would receive nothing. I was told that my own State of Missouri would receive nothing, and then I was told that maybe it would receive a little something.

How can you have a program that is styled in a letter sent out by Senator CRANSTON and Senator MOYNIHAN as being welfare fiscal relief when it does not have anything to do with welfare, does not help the poor, and none of it goes to the District of Columbia or the State of Mississippi?

Welfare reform, if we are going to have it, would be to progress toward equal treatment between the States, not to provide absolutely nothing for that one State which perhaps more than others should be helped. So this is not welfare reform.

Mr. President, I think I have pretty well presented my case at this point.

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

Mr. DANFORTH. I yield.

Mr. BELLMON. Are we under a time agreement?

Mr. DANFORTH. No.

Mr. BELLMON. Mr. President, I commend the distinguished Senator from Missouri (Mr. DANFORTH) for leading this effort to drop the so-called "fiscal relief" payments from this tax bill. The Senator from New York (Mr. MOYNIHAN) and I have been having a friendly disagreement about this issue for many months—back at least to the debate on the first budget resolution for fiscal year 1979. Senator MOYNIHAN is obviously convinced that fiscal relief is an important priority for Federal funds. I believe that Senators DANFORTH, MOYNIHAN, and I, as well as many other Senators, agree that the Federal Government will need to increase its share of welfare costs in order to get some needed improvements made in the welfare system. What we disagree on is whether there should be fiscal relief in

fiscal year 1979—before we deal with any of the needed changes in the AFDC program. The real question is, which comes first, fiscal relief or welfare reform? In my opinion, both should come together.

I am encouraged by the progress that has been made this year on some of the changes Senators DANFORTH, RIBICOFF, BAKER, and I advocated in the welfare reform bill we introduced last March—S. 2777. The bill before the Senate contains several things we advocated. The CETA bill now in conference with the House has a number of features very close to the jobs proposals we advocated in S. 2777.

I want to remind Senator MOYNIHAN that S. 2777 would shift to the Federal level well over half of the AFDC costs currently borne by State and local governments. So Senator DANFORTH and I are not opposed to fiscal relief. We are for it, apparently on a large scale—and I believe a more equitable basis—than Senator MOYNIHAN has proposed, since the welfare reform bill he cosponsored provided only about half as much permanent fiscal relief as did S. 2777.

Mr. President, here are the problems I see with the fiscal relief provisions in this bill:

First. No reform would be achieved with the spending of this large sum of money. Indeed, there is no requirement that the State use the money to help poor people. I believe that is a point every Member of the Senate should realize.

It is really another form of general revenue-sharing, with a special allocation formula.

Second. Many of the State and local governments that will get this money do not need it as badly as the Federal Government does, and Senator DANFORTH has made this point very well. We still are groping for the elusive goal of a balanced Federal budget. Many States have large surpluses. The money the States would receive simply would be added, presumably, to those surpluses, at the time the Federal Government is running a deficit anticipated to be between $35 billion and $40 billion.

Third. This type of payment can become addictive. Supposedly, this is a one-time payment. But last fiscal year we handed out $187 million on roughly the same terms. The more times we do this, the stronger the pressure becomes for Congress to continue along the same paths and to become more generous year by year. The more times we do this, the stronger the pressure will be for us to continue doing it.

Fourth. This bill would provide money to the States and localities very late in fiscal year 1979. If Congress and the administration get together on a welfare reform bill in the next session of Congress, there is no reason why increased Federal matching for AFDC costs could not take effect at the beginning of fiscal year 1980. In other words, we could provide fiscal relief almost as quickly as part of a welfare reform package as we would do under this bill.

Fifth. There are many better uses for the $350 million or so that would be paid out of the Federal Treasury as fiscal relief if the Danforth amendment is not adopted. One better choice would be to reduce the Federal budget deficit. But there are other alternatives as well for spending the money. I am sure we will consider many of those if we adopt the Danforth amendment and do not spend money in this way.

Sixth. There are inequities in the distribution formula for the money. I appreciate the actions the Finance Committee has taken to correct as many of those as possible. My own State of Oklahoma, for example, would receive about $4 million under this bill. It would have received nothing had the Finance Committee not written in a protection for States which have AFDC error rates that are still quite low, although now higher than they were in some of the earlier rating periods. Again, I appreciate this change, and I thank the committee for this consideration. But I point out that the bill still produces some unjustifiable results. As I understand it—and the Senator from Missouri has made the point—Mississippi, which had an AFDC error rate of 9.2 percent in the July to December 1977 rating period, would get no fiscal relief under this bill unless it reduced its error rate to 6 percent or less during the next 6 months. On the other hand, I understand that New York, with an error rate of 11.9 percent in the July to December 1977 rating period, would get $39 million even if it achieved no improvement at all during the next 6-month rating period. I do not think this is fair, and I believe it shows the difficulties we get into when we try to hand out money in this fashion.

In short, Mr. President, the Senate should delay provision of AFDC fiscal relief until we resolve some of the welfare reform issues that I believe all of us agree need to be resolved. The Federal Government needs this money right now more than the States and localities do.

I urge adoption of the Danforth amendment.

The Federal Government needs this money now far more than most of the States and localities do.

I strongly urge that the Danforth amendment be approved.

Mr. CHAFEE. Mr. President, I rise in support of the Danforth amendment.

There is not a Senator in this Chamber who does not say either here or at home, or both, how concerned he is about inflation. This is the No. 1 topic of concern to the citizens of the Nation. We are going to do something about it. Yes, we are going to do something about it except if it involves a little bit of spending that affects us all for our own States.

Mr. President, I received recently from the sponsors of this bill a very interesting letter which shows that they are playing hard ball, but the gravy train is getting geared up ready to roll. They point out in a very polite, nice letter urging my support for what they call the welfare fiscal relief act amendment, and they simply want to point out that $2,390,000,000 adjusted for AFEC error rates would flow to Rhode Island in fiscal 1979 under this provision.

We hope you will join us in seeking to retain it.

Cordially,

Signed by both of the prime sponsors of this.

This puts it very blunt. This gets right to the point. They do not fool around. They get right to the point. The gravy train is going to roll for my State and jump on board so we can get something.

I want something for my State just as much as anyone in the Chamber does, Mr. President, and I am sure as both the sponsors of this part of the tax bill do.

But I believe that I speak for the citizens of my State, and I think all of us can say the same thing that the principal concern our people have is inflation and the only way we are going to do something about it is to make every effort to cut back spending.

I do not think there is a person in this Chamber who is not voting to reduce taxes, and indeed I voted to reduce taxes. But at the same time I want to cut down spending to the greatest extent possible.

So I commend the able Senator from Missouri for his amendment. I listened to him debate on this. I thought the points he made were extremely good as backed up by the Senator from Oklahoma, and I certainly hope that this amendment prevails today.

Mr. DANFORTH. Mr. President, I am happy that Senator CHAFEE read from the letter that he had received because I have seen the same kind of letter that was sent to another Member of the Senate which made the same point.

The point is, do not vote for the Danforth amendment because some of the money is to be distributed here will go to your State.

It just seems to me that we have had so much of that around here. When you talk about pork barrel politics, that is it.

Senator CHAFEE called it the gravy train. That is exactly what that is. It is announcing to people in the Senate, "Hey, folks, the gravy train is pulling out of the station; better get on board."

That is what has gone wrong. It is not as though we are doing something generous by giving our money in Washington to California, New York, Rhode Island, Missouri, or whatever. It does not belong to us in Washington. The money belongs to the people. It belongs to them, the people in the gallery; it belongs to people throughout this country. Scattering around some $315,000,000 of the taxpayers money on the theory that some of it falls on your State is not justification. If we drop it out of the airplane, some of it is bound to fall on you. I think it is just absolutely wrong.

I commend my colleague from Rhode Island for his statement.

Mr. CHAFEE. Mr. President, I wonder if the Senator from Missouri will yield for a question.

Mr. DANFORTH. Certainly.

Mr. CHAFEE. As the Senator knows this money comes to Washington through taxes, and then they say we are distributing it out to the States. I suppose some can say well what comes in goes out. But there is a skim factor, is there not?

Mr. DANFORTH. That is absolutely correct.

Mr. CHAFEE. The skim factor is for the bureaucracy here in Washington to

pay this public servant or that public servant or that GS–19, that GS–10. I do not know what the filter rate is. What the skim rate is. But if it is less than 20 percent I would be amazed before the shower falls gently as soft as dew back on New York, back on California, a pittance perhaps on Rhode Island, not too much, just enough to tempt, just enough to tempt us, "Come along for $2.3 million."

Well, Mr. President, I do not think we can be bought for $2.3 million. It is tempting, but we will resist. We will resist because our hopes are that somehow this little effort in resisting will assist in curbing this vicious inflation.

Not everyone in the United States is included into some indexing system. Not everyone is like the civil servants or the retired military that on October 1 received a pay raise because the inflation index went up, and they are taken care of. That is great.

But what about the people who saved? Remember those ads when we were growing up that showed the silver-haired mother and father in their row boat in Florida saying, "I retired in Florida on $200 a month." These were the ads that tempted people to save and make this effort. That was in 1939 and 1940. Two hundred dollars would not get them through a week now.

And if there is one thing we can do in this Senate, it is attempt to curb Government spending and thus reduce the inflation that is working such wicked effects on this Nation.

I thank the Senator.

Mr. MOYNIHAN. Mr. President, many large consequences have been predicted for the Roth-Kemp multibillion-dollar tax cut, perhaps the most extraordinary proposal in American fiscal history. As I calculate it, it is a proposal to cut approximately $350 billion from our finances in the next 4 years. It is said that it would be the most extraordinarily irresponsible act that has been contemplated in the history of political economics.

Mr. President, it was said that it would have consequences, and indeed it has produced consequences—within 45 minutes.

It has turned the Senators from Rhode Island and Missouri into prudent fiscal conservatives alarmed at the thought that $305 million going to welfare recipients might bring about an increase in the price index. Less than and hour after voting to dismantle the finances of the American Government they come before us alarmed that a few small dollars might go to welfare recipients. At one moment, $350 billion is scarcely enough; $305 million threatens the very Republic. Twenty minutes later, I say to Senators——

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

Mr. MOYNIHAN. Not yet.

Mr. DANFORTH. Mr. President, will the Senator yield on that point?

Mr. MOYNIHAN. I say to Senators the Kemp-Roth bill has had consequences beyond even my imagination—and I predicted dire consequences.

It has turned two reasonably easy-going men into legislators terrified at the thought that the slightest compensation for the poorest people of this country would undermine the veritable value of the dollar—the base of the Republic and the foundation to which all true men repair in times of difficulty. To them, $350 billion is fine 1 minute and $350 million is subversive, alarming, terrifying, and the act of wild-eyed spenders bent upon ruining the sacred integrity of American fiscal policy.

Well, sir, it has been instructive. I would say this: One might have expected that the frenzied Keynesianism of the Republican Party would not be long lasting and, indeed, it appears to have lasted about 45 minutes.

Well, anything for a new sensation.

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

Mr. MOYNIHAN. The Senator will yield for a question.

Mr. DANFORTH. All right, for a question. Is it not true that your statement is erroneous and that, in fact, this is not $315 million for the poor but, in fact, there is no requirement in this law that a single penny go to the poor? This is just distributing money to the State governments and they can spend it any way they want to, for golf courses, bowling alleys, or statues?

Mr. MOYNIHAN. No, the answer is no. The Senator asked a question to which I was going to address myself until I found that the Senator from Rhode Island had so quickly reverted to his normally careful ways after such a dramatic lapse.

These moneys will provide the Federal share of AFDC payments to States. As we all know, money is fungible, so that in some respects you cannot accurately follow the flow of dollars. But it would, according to basic principles of public finance, be accurate to say that every nickel of this money will go in payments to AFDC families or to defraying the administrative expenses of making those payments. That is the only legitimate way to describe this measure. This is matching Federal money for AFDC.

Mr. DANFORTH. Mr. President, will the Senator yield while he is getting his notes together so I can just correct the record on that?

Mr. MOYNIHAN. I would prefer not to yield until I have finished speaking. But if the Senator really feels I said something wrong, please say so.

Mr. DANFORTH. The Senator said something wrong.

Mr. MOYNIHAN. All right, I yield for that.

Mr. DANFORTH. I would just point out that my office talked today to a Mr. Barry Van Lare, who is the Associate Commissioner for Family Assistance, the office which administers the AFDC program, and put the question. HEW states the money can be spent in any way the State cares to spend it.

Mr. MOYNIHAN. I am baffled by this. I do not know if the man knows what he is saying. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. METZENBAUM). The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. MOYNIHAN. 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. MOYNIHAN. Now, Mr. President, I am sorry to have interrupted the Senate for this moment. If I seem uncertain in my response it is out of sheer bafflement.

Section 403(a) of the Social Security Act is the measure that provides matching payments for aid to families of dependent children. Now, what in the name of heaven was that man saying to you?

Mr. DANFORTH. We will be happy to——

Mr. MOYNIHAN. Let me make clear that I do not think the Senator is in any way trying to give misinformation. But I am quite baffled by this contention. Mr. President, I suggest the absence of a quorum and we can settle this thing.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. BENTSEN. 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. BENTSEN. Mr. President, as a cosponsor of the Danforth amendment, I would like to take a few moments to explain why I think it makes eminent good sense and should be accepted by the Senate.

Senator DANFORTH proposes to eliminate a $500 million expenditure from the tax bill. That fact alone makes the amendment attractive at a time when we are deeply and legitimately concerned about the level of government expenditures.

But I would urge my colleagues to support this amendment not merely because it saves money. I would submit that the proposal is as logical as it is fiscally responsible.

The pending legislation contains what might be described as a $500 million incentive payment, to be doled out among the States in order to encourage what is loosely described as "welfare reform." The basic thrust of the legislation is to establish a 4-percent target for welfare errors, and and to reward the various States as they eliminate errors and move toward this 4-percent goal.

This is a commendable objective. No doubt about it. We can all agree that welfare reform and the elimination of errors is an important national priority.

I am not at all convinced, however, that we can afford to spend half a billion dollars at this time in the name of fiscal relief or welfare reform, particularly when the proposal being considered is so blatantly unfair and ineffective.

The proposal Senator DANFORTH seeks to delete is generous in the extreme to two categories of States: those with unusually high welfare expenditures and those with traditionally sloppy accounting procedures. The two categories, of course, are not mutually exclusive.

New York and California have tradi-

tionally been the two States most generous to their welfare recipients. It comes as small surprise, then, that these two States could receive 28 percent of all the funds distributed under the proposed formula, while they have only 16.3 percent of the poor people in this country.

By way of comparison, Texas—with 7.5 percent of the poor—could only get 3 percent of the funds. Similar imbalances apply to States such as Louisiana, Georgia, South Carolina, Tennessee, and Kentucky. The basic rule involved here is: the more you pay, the more you get.

The shortcomings of this proposal are not limited to a skewed distribution of funds. The legislation in question would also reward the States which have had the highest rates of error. It transforms a history of carelessness into a virtue. Because of the way the formula works, a State with a 6.7 percent error rate could collect nothing, while a neighboring State with a 12-percent rate could reap millions of dollars.

Mr. President, I think it was our distinguished former colleague from Illinois who once remarked that "You take a few million dollars here and a few million there, and pretty soon you are talking about real money."

Well, today we are talking about real money: a $500 million program of dubious merit has been affixed to a tax bill in the name of welfare reform. I think—in the name of fiscal responsibility and for that matter in the name of welfare reform—we should strike it.

This is hardly the time to be increasing expenditures for welfare. During the past year—that is, April 1977–78—43 jurisdictions had a decrease in the number of welfare recipients; 19 showed an absolute decrease in the amount of welfare payments. Nationwide, there has been a 4.2 percent decline in the number of recipients, with the CBO predicting a further drop.

At a time when we are facing a $40 billion budget deficit and a taxpayers revolt, I find it difficult to believe that we are actually contemplating an expenditure of this magnitude on such an ill-advised project.

How is it that the Federal Government, with high levels of expenditures and a crushing deficit, can open its purse further to the States that enjoy—by even the most conservative estimate—a $6 billion surplus? Why do we have to provide an expensive incentive for the States to clean up their welfare rolls when the States already have the incentive enough; when they pay between 17 and 50 percent of the cost of their oversights?

If the case can be made for more fiscal relief to the States, then let us provide that relief through the general revenue sharing program, not through some bizarre subsidy tucked away in the tax bill.

Mr. President, we do not need this expense and we cannot afford it. I urge the adoption of the Danforth amendment.

Mr. MOYNIHAN. Mr. President, I will not detain the Senate at any great length on this matter. First of all, I spoke to the curious proposition of members who had just voted for the most extraordinary tax cut in history coming along and expressing great alarm at a fiscal relief measure in welfare.

Second, I would have to say that this proposition is unfamiliar to me—to have it suddenly suggested that somehow this money was not going to be extended under the title of fiscal relief. It is under that title that it has been expended and is being expended in this very year, as a matter of fact.

I do not know why we have to come in and break the chain of thought by such a contrary contention. It is simply not the case; the case is what I said to be the case.

I do feel that something is being sapped from our national life when letters such as this from the Senator from Missouri and others are circulated, in which opposition is stated, not to an extraordinary proposition, but to a commitment in the Democratic platform.

This is a commitment in my political party's platform: fiscal relief for State governments. I believe it is to be found in the Republican platform as well. It is nothing out of the ordinary.

But it is said that the money is allocated not on the basis of where the poor reside, but to the States that have given higher benefits to their poor in the past; that the allocation does nothing to equalize the treatment of the poor in different States.

What this is saying, Mr. President, is that those States which have shown a responsibility, a sense that they would discharge their responsibility to their poor, are estopped; they made a mistake, and now have taxes far out of line with other regions, and that is too bad.

Why are there more poor people in Texas than in New York? Well, surely the Senator from Texas knows why. It is because the people of Texas, and the government of Texas, leave their poor people poor, and so does the government of Oklahoma, sir.

Other States have chosen not to do that. There is a volume recently published by the National Institute of Education called "Tax Wealth In the Fifty States." It is a very eloquent inquiry into the tax capacities and the tax efforts of the States, utilizing an econometric contour worked out by Selmer Mushkin and our own Alice Rivlin in 1964. I commend it to all Senators.

Now, the State of Texas actually has a higher tax capacity than the State of New York. Based a 100 average, New York has 102, Texas has 113. But we in New York tax ourselves at a tax effort of 152, and Texas has a tax effort of 68.

Yes, you have more poor people, but that is not because you must; you have the same capacity to provide for your poor as we do, but you do not.

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

Mr. MOYNIHAN. I would be happy to yield.

Mr. LONG. Is it not a fact of life that under the present welfare program, each State is permitted to decide for itself just how far it wants to go, how much money it wants to put into this welfare program, and that some States do a lot more than others?

There was a time when Louisiana was regarded by some as a welfare State. That was a time when Louisiana was paying more money in its program for the aged than the State of New York.

That was many years ago, may I say, more than 30 years ago, before I came to the Senate. I helped to make the State's program that way.

But New York, since that time, has seen fit to do a great deal more for its low-income people. It saw fit to raise benefits and do a lot more for people, not only in this area, may I say to the Senator—is it not a fact that they have also done a lot more in terms of education? For example, in Louisiana, where we pride ourselves on being very liberal, we never felt we could provide young people an opportunity to go to college without paying tuition, while a great university in New York, as I understand it, has had a policy of trying to provide young people an opportunity to go to college even though they could not pay the tuition.

Each State has had the privilege of deciding for itself how much of its resources it would choose to put into an effort to help its poor.

Mr. MOYNIHAN. That is right.

Mr. LONG. Some States, including New York, including Illinois, including California, went the extra mile in trying to help their poor.

Now they find themselves with a problem. They have a high-cost program. But when we seek to provide additional money to the States, and give it to those States that do what they can to improve the efficient administration of their programs, is it not fair that those States making the greater effort, on a matching basis, ought to receive more than those making the lesser effort?

I am not trying to find fault with States which provide lower payments. Those are good people, and they make their decision on the basis of their resources as their conscience dictates.

But it is also somewhat unfair, is it not, to suggest that because a State tried to go the extra mile to look after their low-income people and their poor, they should not be given some consideration when we try to help them with a very heavy burden, the burden of caring for the poor?

This money, as I understand it—and I ask the Senator if this is not correct—is to go for the low-income people; it is for their benefit.

Mr. MOYNIHAN. Entirely correct.

Mr. LONG. If States want to do it, and I hope they will, this gives them what it will take to at least try to provide some meager increase in cost-of-living payments for these poor people.

Mr. MOYNIHAN. May I say that in my own State there has been no increase in 4 years and the true value has declined by 28 percent.

The gentlemen who composed this letter have mixed their grounds. They have said, "You do not need to do anything for New York, as it were, or California, because those States do not have that many poor people," knowing full well

that we do not have that many poor people because we have followed a national policy to try to eliminate poverty.

The Federal Government has always encouraged people to raise these standards—they are not very high—by helping them match. And having said, "Too bad that you did that, that is your problem now," at the same time they invoke the claim that, "We in State X or Y have poor people and somehow can make a claim on a collective response." Follow me. If you get no credit for having eliminated your poor by taxing yourself to do so, certainly you claim no consideration for not having done so, because we have already said people are on their own.

It is like the well-known case of the child that murdered his parents and asked for clemency on the grounds that he was an orphan. Just like that, you are tearing up a compact that has been around for a long time—a compact which says we try to help each other. The fact of helping is not something to be used against you in argument, but perhaps something quietly to be acknowledged—it is not a dishonorable thing.

I happen to think it is not an act, or a product, of irresponsible behavior that there are not as many poor people in New York as there are in some other places. There are not as many because we tax ourselves higher than any State in the Nation so that those 3-year-old children do not live in poverty. When other States of very considerable wealth let their 3-year-old children live in poverty, their distress makes no very great claim on me. It is easily correctable.

I hate to see an ethic of common provision rendered in this Chamber. I hate to see the people of my State, who for three generations have embraced national levels of provision, told that we made a mistake, that now we are in trouble and no one else cares, and that we will have to get out of it on our own.

Mr. BELLMON. Will the Senator yield?

Mr. MOYNIHAN. I have one more thing to say and I have nothing else to say after that.

Yesterday and the day before, I attended meetings in the majority leader's office. We were attempting to determine whether we were going to get the votes to put through the water projects in Louisiana, Oklahoma, Colorado, the Mississippi Valley——

Mr. BELLMON. New York.

Mr. MOYNIHAN. And the Great Plains.

New York had less than 1 percent. Considering what we pay in taxes, we were going to pay 20 times the amount we would have received—three tiny recreational projects.

Those water bills are for the great American desert and for the Mississippi Valley. I daresay I was going to vote to override the President's veto. I will say it now even if lightning strikes and we lose that tiny project in Cattaraugus County.

It is a simple national ethic of provision to which we respond. It is the American desert, and not just the Arizona desert. There is a social calamity in the middle of New York City and it is an American calamity of welfare as much as it is New York's. But if it turns out that our side, having tried to do something about our children, made a mistake, then this would not be the country that Franklin D. Roosevelt set out to make it.

Mr. President, I have nothing more to say. I yield the floor.

Mr. BELLMON. Will the Senator yield?

Mr. MOYNIHAN. My senior colleague has the floor.

Mr. JAVITS. I yield.

Mr. BELLMON. Senator MOYNIHAN was pointing out that if we do not go along with this, we will render the policy for the poor. If the Senator will look at it, the largest item is what we call income transfers and that virtually all goes to the poor.

Mr. MOYNIHAN. No, it does not. It goes to social security payments, where it should go. Those are not poor people but retired people.

Mr. BELLMON. A great deal goes to food stamps, to school lunches, to medicare, to medicaid. The whole proposition is to aid people who cannot help themselves. I do not think it is fair to say that if we do not come along with another $350 million we have broken our covenant with the poor people.

Mr. MOYNIHAN. I did not say that. I was referring to the argument introduced in the letter transfer. I said there was a fundamental conflict in that argument—to say that those States which, in response to national commitments, had fulfilled them on their own, were now to be told that therefore they could make no further claim on the national resources, but those States which had been derelict or for whatever reason had not fulfilled them, could make such claim, then we have set an example of what not to do. If those States with significantly greater tax capacities than my own—and half the tax effort—somehow claim they are more deserving than those States foolish enough to have looked after their children on their own, then I think we have introduced a counterproductive principle. In any event, I have finished talking and I wish to sit down.

The PRESIDING OFFICER. The senior Senator from New York.

Mr. JAVITS. Mr. President, I bring up two points which I have been fighting on here for years, which Senator MOYNIHAN has touched upon accurately. One is the sudden burst of honest indignation from Texas, Missouri, Rhode Island—how outraged they are being about $315 million. He has pointed out very accurately that these Senators voted in the main for the Roth-Kemp bill, which, in my judgment, would have made inflation go to 20 percent, if we were unwise enough to go through with it. That was OK.

But worse than that, Mr. President, we appropriate billions for farm price supports. Has anybody ever heard me get up, and I have been here for years, and inveigh against it on the ground that those farmers are doing just fine, why give them supports?

Mr. President, here are the figures: Agricultural subsidies in 1977, $1.5 billion, and, in 1978, $4.358 billion estimated. What kind of chicken feed is Senator MOYNIHAN engaged in this kind of relief?

And, Mr. President, what about these rivers and harbors? Senator MOYNIHAN was talking to me about sustaining the override of the veto, which was then in the House. He pointed out that we had $77 million in projects as against roughly $2 billion elsewhere, and that we would pay back over $3 billion in taxes.

Mr. MOYNIHAN. Seventeen billion dollars.

Mr. JAVITS. Seventeen billion. New York would pay back over $17 billion in taxes over a period of years in order to pay the bills of others.

Mr. President, what about all these formulae that I have been fighting about here for years, absolutely slanted against New York 20 and 30 years ago, doubling the per capita income to show that States are poor, not just leaving it to the figures but doubling it, in order to get more money out of the common till for particular purposes in those States?

Are their poor any less poor than ours, or their blind any less blind than ours?

Mr. President, I must say this "honest indignation" is very, very wrongly placed. I looked at this very carefully. I am not given to doing things blind. What has happened is that New York has paid a very heavy penalty for a major demographic shift in this country.

In my native city of New York—and everybody knows this; it is common knowledge, but I shall state it—there has been a change of 3 million of the 8 million population from normal-earning workers to poor. Most of those poor get support. That public support really busted New York. Sure, New York has had lots of other troubles, but what really busted it was this demographic fact, because New York City pays 25 percent of the welfare cost. New York State pays 25 percent of the welfare cost. When it comes to Federal reimbursement, Texas gets 70 percent, we get 50 percent. There is your disparity right there. Texas gets 70 percent, we get 50 percent.

What has happened? What has happened is that we have an unemployment rate two points above that of most States, certainly above the national average. New York City has one of the highest unemployment rates in the country and so have the main population centers of western New York.

Why? Because we are hemorrhaging due to the loss of jobs. Why? Because industry is moving out and not moving in, precisely because of the heavy burden of taxation brought on in part because of this disparity in Federal reimbursement.

And I getting up here to inveigh against these gentlemen, that they are competing against my State unfairly, taking away its business and keeping other business from coming there, just because they have not done what we have done—to wit, treat our poor as fairly? Never in New York State's history has there been a waiting period. Why did the blacks flow from Mississippi and Alabama and other States to New York in the 1950's and the 1960's? Because, as far as those States' payments were concerned they

could starve to death down there on $50 a month. So they moved. They voted with their feet, as the saying goes. For that, we should not be penalized.

What is happening here is that New York is to get some reimbursement for the things which it has done, really, beyond the call of national duty and due to a major national demographic shift. The amount involved is certainly, compared to all the things I have just outlined, modest enough so that it deserves redress. We pass private bills here by the bushelful to redress injustices. This is a public bill to redress an injustice.

Senator MOYNIHAN is entitled to enormous credit for fighting this through the Committee on Finance and getting it passed here once.

I hope that, for these reasons of basic equity and fairness, the Senate will sustain the section.

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

Mr. JAVITS. I yield.

Mr. DANFORTH. I do not know if the senior Senator from New York was present when I made my presentation a while ago, but I made the point in that presentation that I am certainly not anti-New York. I had the privilege of living for 3 years of my life, after I got out of law school, in Manhattan, practicing law in New York, living in an apartment in New York. I agree with those who say that New York is our window on the world and that New York is certainly entitled to every consideration. Even assuming that that is the case, I ask the Senator this: Why do we have to spend $315 million, scattered around the country, not necessarily on the basis of need, to provide $39 million for New York?

Second, as long as we are scattering it around, why do we not provide something for the District of Columbia? The District of Columbia has poor people, too. All you have to do is drive around the District of Columbia and look, and I do not think we have been ungenerous in taking care of them. Yet, under this, the District of Columbia would not get a penny.

How about Mississippi? Are there not poor people there? We are the Federal Government. We allegedly are concerned about poor people no matter where they live, whether they live in New York, the District of Columbia, or Mississippi. Why do we not provide for the poor people in Mississippi, or the poor people in Arkansas, or the poor people in Alaska in this bill? As a matter of fact, New York, which has 7 percent of the poor, gets 14 percent of the benefit under this bill. Maybe that is justified, but there are disparities up and down this table. All you have to do is look at it. It does not make any sense.

The Senator from New York has consistently said, in the time I have been in the Senate, that we need carefully focused, targeted approaches to solving our problems. Why, then, have a program that just spreads the money around in the hope that some of it will come into New York?

Mr. JAVITS. I answer the Senator's question by saying I think he is completely blinded by his own point. Nobody contends for 30 seconds—I have not heard it—that this is a program to spread money around to the poor. It is a program to redress injustice. It is a program to redress a demographic difficulty which concerns not only New York but other States in which they suffer adversely in terms of their welfare payments. So, over the years, an effort has been made to try to redress that difference, because of the excess burden upon New York and other States—and that is the reason, I assume, for the division by the Finance Committee.

Mr. DANFORTH. I never——

Mr. JAVITS. If I may just continue. The Senator took a little while.

Therefore, the Senator's argument is completely irrelevant. This is not a program to aid the poor. Senator BELLMON just pointed out that there are billions in the budget in various kinds of transfer payments. AFDC payments alone, by the way, are $5.6 billion a year. So this is not a program to get a helicopter and sprinkle money around. That is not its justification. That is not, as I understand it, the justification claimed by Senator MOYNIHAN, who is its author. The justification is a rectification of injustices of the past; therefore, a sum of money is provided to try to rectify those injustices.

Now, if Senators have any argument with the way it is done, the amendment should be not to strike it and not make the argument that is not deserved, that it just is spreading largess to the poor, but to state a particularization of the way they want this amendment reformed so that it reflects the purpose of the man who proposed it.

Mr. DANFORTH. If the Senator will yield, I have never made that argument.

Mr. JAVITS. I am sorry, I am not quite through.

The Senator is making the argument now that it is some largess to the poor.

Mr. DANFORTH. I never made that argument.

Mr. JAVITS. The Senator has just done it. And therefore, it should not be scattered around to particularly benefit a lot of States; why not give $39 million to New York? Well, we do not want your $39 million except on the basis of justice to redress past injustice. That is all that Senator MOYNIHAN has argued.

Now I yield.

Mr. DANFORTH. I just say that I have never made the argument that this is money that goes to the poor.

Mr. JAVITS. Mr. President, I may be hard of hearing, but that is what I have heard and I think that is what the whole Chamber has heard constantly.

Mr. DANFORTH. If the Senator has heard it that way, let me restate my argument, because I had an extensive debate with his junior colleague. There were a couple of quorum calls on just this issue.

This money is not designed to help the poor. There is nothing in this proposal to help the poor. There is no assurance that a penny will go into the pockets of the poor people in this country. This is money that goes to State governments. Some of it has to be passed through to local governments; most of it goes to State governments. The money goes to State governments to do with as they wish.

They do not have to spend it on the poor. They do not have to spend it on welfare programs. They can spend it on anything they want. They can spend it on putting up buildings, salaries for their State officials, limousines; anything that the State wants to do, this money can be spent for. It is not meant to help the poor and it is not distributed on the basis of a formula of where the poor reside.

That is exactly the point. New York has 7 percent of the poor; New York gets 14 percent of the benefit. Texas has 7.5 percent of the poor; Texas gets 3 percent of the benefits. It does not make any sense at all.

Mr. CRANSTON and Mr. JAVITS addressed the Chair.

Mr. JAVITS. Mr. President, if I may just finish, I think I heard the Senator very, very distinctly argue only 4 minutes ago, that this was just spreading money around for the poor and if we wanted to give New York $39 million, let us just give it to them.

As to his argument that it just goes to the State, Senator MOYNIHAN has dealt effectively with that. As to the point on Texas, let me point out first that Texas gets a 70–percent reimbursement from the Federal Government, and second, the poverty level is based on a national standard. In New York, you can be poor, and you are really poor, and have an income 1½ times or double the national standard. So those figures, in my judgment, are not convincing.

The essential point that I am making, whatever the Senator may want to make me make, is that this is a redress for past injustice, with the State paying far more than it should have paid for demographic reasons affecting the United States and that, therefore, this reimbursement is not unfair.

If the Senator objects to the way in which it is distributed, it is his privilege to try to amend the amendment, or the provision, in order to make it what in his opinion may be more fair.

But that is not the Senator's purpose. The Senator is moving to strike it all on the ground it should not be done, and that is what I fight and thoroughly disagree with. That is the point of my argument.

Mr. CRANSTON addressed the Chair.

The PRESIDING OFFICER. The Senator from California.

Mr. CRANSTON. Mr. President, I ask unanimous consent that John Steinberg and Babette Polzer be granted privilege of the floor during debate and votes on this bill.

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

Mr. CRANSTON. Mr. President, there is little I can add to the eloquent, forceful and factual statements made by my two colleagues from New York. I join them in feeling very strongly that it is important for us to provide some fiscal relief to States and counties from the burden of welfare costs, and, in doing that to help poor people, which we very

plainly do by the approach involved in the language this amendment would strike.

We cannot continue to hold fiscal relief hostage to the broader welfare reforms we all want to accomplish. Senator MOYNIHAN has been leading the effort to achieve reforms in the welfare system in our country for 10 years or more.

Always we hear the argument that next year we will get a great bill and, therefore, we should do nothing this year. The result, however, is that the proposals become so complicated and costly and controversial that nothing ever happens.

Now, we have an opportunity to at least take one small step that will not undercut, in any way, future efforts to do more.

I trust all of us, no matter what side we are on on this particular amendment, will join in the effort once again next year to achieve something great and grand. But I am not very optimistic, because of all the troubles we have had in that effort up to now.

I remind my colleagues we have waited for relief to be provided the States and counties year after year. It has not come, and who suffers? It is not some amorphous State government. It is the welfare recipients who do not receive cost-of-living increases. They are the ones who suffer from our inaction. They are the ones who will suffer from our inaction now if that is the course we take.

Without fiscal relief, we can expect that there will not be cost-of-living increases. It is poor and hungry people that will suffer as a result.

This measure is designed to help poor people. Concerns have been expressed about the fact that roughly one-quarter of the funds that would be provided by the provisions now in the bill would go to New York and California.

I would simply like to point out that one-quarter of the welfare recipients on the AFDC program live in New York and California. Where else would the relief then appropriately go in any percentage allocation? The fiscal relief in this bill falls where the recipients are.

I would like to point out that many recipients in my State of California came from Missouri, Oklahoma, Texas, and other States, some even from New York State. Many are doing well. Many are paying property taxes and other taxes that go to provide relief for those who are not doing that well.

What about property taxes? The real tax revolt in our country and I have seen it in my State of California, is most of all over property taxes.

A direct impact of this measure, insofar as taxation is concerned, would be on local property taxpayers. These are the people who are carrying most of the burden of welfare, and they need relief.

This measure now in the bill that would be knocked out if this amendment prevails provides some relief for those property taxpayers. This measure provides that the bulk of the relief will be passed through to local governments in States where local governments share in welfare costs to help relieve property taxpayers from the fiscal burdens of supporting welfare recipients.

Following the vote in my State on proposition 13, pollsters working at the polling places found that a majority of the people who voted for proposition 13 thought they were voting to relieve the burdens that they pay on the property tax.

Here is an effort to respond to that complaint, to that burden, that feeling that is widespread in the country, and is not limited to my State of California.

Let me finally say in regard to the error rate factor in the formula for distribution of relief, it provides a real incentive for States and localities to reduce errors in administration of welfare programs.

There has been a great deal of concern about error and fraud. Well, here is an effort to get at that, so strike it out of the bill, let error continue, do not reward States like my own that have done something about reducing error.

Despite our efforts and those of the administration to get more comprehensive reform enacted, we have been unable to get more extensive changes. This measure does provide for discouraging error, for providing some property tax relief, and for helping poor people.

I urge rejection of the amendment.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Arkansas.

Mr. BUMPERS. Mr. President, first, I ask unanimous consent that Mark Asch of Senator METZENBAUM'S staff be granted privilege of the floor during debate and votes on this measure.

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

Mr. BUMPERS. Mr. President, this debate between city boys and country boys is going to be a prevalent practice here on the floor, and I regret it.

I must say, I do not see it in those terms. One of those terms, as I see it, is that this morning Senator KENNEDY and I offered an amendment to this bill which will cut $3.7 billion its first year. But it is all going to the people in this country who need tax relief more than anybody else, and that is the category from $10,000 to $30,000.

This tax bill does a very good job of taking care of the poorest of the poor. The zero to $10,000 a year get anywhere from 8 to 12 percent in tax relief above the inflation plus social security rate.

It is a big help to them, and the Finance Committee should be commended for doing that.

Something else they did, of course, takes care of the very richest of the rich, because the people making over $200,000 get a 64-percent tax cut.

That makes no sense.

But that is not totally relevant to what I want to talk about here. What I want to talk about is that here is a chance for the U.S. Senate to save $500 million in order to fund a very good amendment that was adopted this morning, $500 million that is going to States based on their AFDC error rate, but is totally irrelevant in the disbursement and spending of the money to the poor.

The county judges in my State, God bless them, I know they would not do it, but if they should happen to get anything under this formula, and it is not likely for my State to get anything, but, if they did, they can build a monument to themselves. There is nothing in this bill that says this money will go to these children.

All we are doing is using the formula as a little carrot to say, "If you reduce your error rate, we'll give you a little money."

Mr. MOYNIHAN. Will the Senator yield?

Mr. BUMPERS. I am happy to.

Mr. MOYNIHAN. I do not want to persist in this, but the Senator has been misinformed. This money will be transferred to the States under the provision of matching grants for AFDC.

Apparently the point cannot be made. But I assure the Senator I am correct in this matter.

Mr. BUMPERS. I may be misinformed. I do not want to misspeak myself.

Can the Senator quote me the part of the statute that says that this will go back to the States, and the subdivisions, for that purpose?

Mr. MOYNIHAN. Yes.

Mr. BUMPERS. Because it might possibly go to the merit of my argument.

Mr. MOYNIHAN. I appreciate that. It is just that I quoted it earlier. It is section 403.

Mr. BUMPERS. If I may proceed.

Mr. MOYNIHAN. We have it right here.

The Senator knows that there is a section of the Social Security Act under which funds are appropriated to be transferred to the States to provide for AFDC payments.

Mr. BUMPERS. Will the Senator repeat that?

Mr. MOYNIHAN. The Senator knows that there is a section in the Social Security Act which provides for the transfer of Federal funds to the States to provide for AFDC payments.

Mr. BUMPERS. Yes, I am familiar with that.

Mr. MOYNIHAN. That is section 403. Title VI in this bill, fiscal relief for States and political subdivisions with respect to costs of welfare programs, states:

> The last paragraph of Section 403(a) . . . is amended.

It does not have much to do with the argument of the Senator from Arkansas.

Mr. BUMPERS. I am pleased if I stand corrected.

Mr. MOYNIHAN. I do not know how this idea got going.

Mr. BUMPERS. The Senator from New York has diminished the strength of my speech by one decibel, if that is correct.

Mr. MOYNIHAN. I just did not want the Senator from Arkansas to say something that was wrong.

Mr. BUMPERS. The Senator can assure me and my colleagues that any funds that go to the States under this measure will indeed be used by the States to fund every AFDC program?

Mr. MOYNIHAN. That is correct.

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

Mr. BUMPERS. I yield.

Mr. DANFORTH. The Senator from Arkansas was correct in his original statement. The Senator from New York is not correct.

These moneys are received by the States with no strings at all. My office has communicated with HEW. I reported the gist of the telephone conversation on the floor. We have called to HEW. A letter is on the way explaining it. There is absolutely no requirement nor any assurance that any of this money has to go to AFDC recipients or anybody else who is poor.

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

Mr. BUMPERS. I yield.

Mr. DOLE. Perhaps the Senator from New York will agree that some proviso can be added to the language of the Moynihan amendment which would indicate clearly that the funds could not be used to supplant funds that now may be in the hands of the States or localities but must be used for those who might be eligible under the AFDC program.

That might satisfy almost everyone in the Chamber.

Mr. MOYNIHAN. I would be happy to do that.

Mr. BUMPERS. I appreciate the suggestion of the Senator from Kansas.

Mr. DOLE. Would that satisfy the Senator from Arkansas, if that were done?

Mr. BUMPERS. It would help my feelings a good deal. I do not think Arkansas will get any of the money, anyway. I hope the amendment of the Senator from Missouri will be adopted and that no State will get any money under this. But if they do, it will be fair if it goes under the AFDC program to AFDC children.

To continue, Mr. President, I should like to make a couple of observations.

If you go to the Rotary Clubs, what do they talk about? Balance the budget. That is all you hear.

Let me point out something about the budget: 25 percent of it, $127 billion, is going back to the States and local governments. Do you know what it was about 10 or 15 years ago? Five percent. The Federal Government, which is in 10 times worse shape than any State in the Nation, is now becoming nothing but a tax collector for the States and local subdivisions.

I was led to believe that this provision of the bill simply gives $500 million more to the States in revenue sharing.

The Governor of my State has just been elected to this august body by telling everybody he is leaving a $60 million surplus. In a billion-dollar budget for our State, there is a $60 million surplus, and half of that budget down there is coming from the Federal Government, which has a $38 billion deficit.

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

Mr. BUMPERS. I yield.

Mr. BENTSEN. This is interesting, and I am getting a little weary of hearing it time and time again. The same Governors turn around and talk about the waste in the Federal Government.

Mr. BUMPERS. I am one of them.

Mr. BENTSEN. And the waste in Congress, and what kind of deficit budget we have up here, and the fact that they are running on a surplus budget. Then they turn around and want more diversion of Federal funds to the States, unaccountable, to spend as they desire.

Mr. BUMPERS. The Senator is absolutely right. He hit me right between the eyes, because when I was Governor and ran for the Senate, I boasted about the big surplus I left and the great financial condition the State was in—and it was. We do not allow a deficit in my State, because we cannot spend more than we take in.

We send $500 or $315 million—whatever figure you want to accept—back to the States, almost every one of which has a surplus, and build our deficit another half billion. That is the prerogative of this body, and we can do it if we wish.

Let me tell you something else: It happened while I was Governor of my State. We had one of the lowest error rates in AFDC. Since I left, the error rate has been going up a little, and we are now up to about 9 percent. Our base under this bill would be about 6.7 percent.

Do you know something else? The Senator from New York said a moment ago that New York City—because the blacks in the South had been voting with their feet and emigrating to the North—that the inner city of New York City was a social calamity.

I do not want to denigrate my State, because I am telling you that it is one of the most beautiful States in the Nation, and I hope you will come to see us—but do not stay. We are being inundated now. It is a beautiful State, and I want to keep it that way. But we have had a social calamity ever since Reconstruction, in my State; 1.6 percent of the Nation's population are poor. Eighteen percent of the people in my State are under the poverty line.

What are we going to get out of this? Not a thin dime; not a red cent. Last year, this group appropriated $187 million for the same purpose, to alleviate the suffering of the States, and what did we get? Not one red cent.

The District of Columbia has a 20-percent error rate. If the District of Columbia reduces its error rate to 10 percent, it is going to come in for a healthy share of this. But if a State already has a 5-percent error rate and just cannot get it any lower, and is doing a magnificent job, I do not care if 50 percent of the people in the State are poor, they are not going to get a red cent, under this provision. Where is the equity in that?

Can you tell me how you can justify this in your conscience? Do not think of it in political terms. Just think of it in plain, commonsense, helping the poor terms. Can you justify it? Of course you cannot.

I will tell you something else: When the Senator from New York talks about the blacks flowing out of the South into the urban areas of the country, he is right. In 1935, my State had 33 percent of the population black. When I was Governor, it was 16 percent, and it is now almost 18 percent.

I want to make two points. No. 1, the blacks did not leave my State because they wanted to. They left because of economic circumstances.

It was a disaster for everybody during the depression, but especially for blacks. They left not because they wanted to. They loved that State, and that is where their families were. They did not go to New York from my State. They went to Kansas City, Chicago, St. Louis, and Detroit. But they are coming home; they are coming back. We are pleased to have them. They are coming back to their families and to a little more space, a little cleaner air, and to economic opportunities which never existed before.

So I recognize that the urban areas in this country, indeed, have had a problem in dealing with some of the problems we have exported. But let me tell you something: When the blacks left the South, it did not leave the rest of us in any better shape. We still were economically deprived.

I do not want to fight Reconstruction or the Civil War over again. All I am telling you is that we are struggling. We are trying to get there. We still have an inordinate number of people in my State who are very, very poor.

Mr. President, I hate to keep fighting this battle, but the truth of the matter is, No. 1, that we cannot afford it.

No. 2, it is a grossly inequitable proposition. I hate to keep talking about it, because we are not proud to be poor; we are not proud in Arkansas of being 48th in per capita income, 48th in earned family income, 49th in something else, and 50th in something else. God knows, I am doing everything I can, and have for 8 years, to try to raise our standard of living there, to improve the quality of life for the people there, and we are doing it. But we are not going to continue doing it very long if you say to us, "It is too bad about you being poor. We are going to put out $500 million for the poor folks; but because of the formula and the fact that you have twice as many poor per capita as any other State in the Nation, or the Nation's average, you have pretty good error rate in the AFDC program, so you are not going to get anything under this."

I cannot support it.

I supported aid to New York City five times when it came up on the floor, and I said that is not the most politically popular act I ever did back home. We never had free tuition for our people. The child of the poorest dirt farmer in Franklin County pays $200 a semester for his child to go to the University of Arkansas.

I was happy to do it. When the unique situation such as that arises again, I will do it again.

I am not that parochial in my outlook. I voted for billions of dollars for ConRail. The railroads in my State are just fine, making money hand over fist. And ConRail is bankrupt. I voted for ConRail, because they told me 17 States in the Northeastern part of the country would go bankrupt if I did not. I did it. I knew the economic disaster that the Northeastern part of the country would suffer if I did not. I did it, so I am trying to tell the Senator I am not parochial in my outlook. But I am not going to vote for something that deprives my State of any money at all, when we have twice as many poor per capita as the rest of the Nation.

I yield the floor.

Mr. CURTIS. Mr. President, I rise in opposition to the pending amendment.

I do not view it as an economy vote. I believe that if you consider the possible expenditures for AFDC, and that is what is involved here, in the next 2 or 3 or 4 or 5 years, a vote to strike this money out will increase the overall expenditures.

First, this is not a no-strings grant that we are making to the States. The formula is tied to the quality control issue. That is a substantial portion of the funds will not be made available until the States do a better job of reducing their error rates.

This is a highly desirable goal, and I believe it. I believe we should be doing everything possible to encourage its accomplishment.

There are two philosophies of welfare reform. Many of us believe that the more reform you have right at home close to the people the more real reform you are going to have. You are going to have a concern for people at home. You are going to have more input from the people rather than national bureaucrats.

There are others who believe that welfare reform means more of a Federal-dominated system.

I am thoroughly convinced that if the latter view prevails we will have some sort of guaranteed annual income or family assisted plan, or whatever you choose to call it, a plan where the less you work the more you get. I think the States will be able to reverse that.

It is my honest feeling that, if this money is stricken out of here, it will add to the momentum of a demand on the part of the States for the wrong kind of welfare reform early next year.

I judge no man. Those who believe exactly opposite of what I do about welfare reform not only have a right to their opinion, but I respect their opinion. But there are those who are for this amendment who believe that we should have a welfare reform. This goes into that area and makes use of that philosophy of a guaranteed annual income. I respect their views. I disagree. But I do not believe for a minute that striking this money from the bill is a matter of economy. I think that it will lead to greater Federal expenditures in the field covered by AFDC in the next 3, 4, or 5 years than if we left it in there.

Mr. President, I think on the part of some, not all, this thinking motivated some of the votes in the Finance Committee, and while there has been a lot of oratory about welfare reform, the big broad plans have been submitted here and come to naught. The Finance Committee under the leadership of Senator LONG with the aid of such men as Senator TALMADGE have little by little brought in reform measures that have been good for the country and good for the people involved. Work programs, programs compelling runaway fathers to support their children, programs to collect from individuals who have it, who should be supporting their family, and I could go on and on and enumerate welfare reform that has been taking place. I believe a denial of this money will retard that and lead to an economic situation in the States that will play right into the hands of those who base their hope on welfare reform on nationalizing welfare.

For that reason, I shall oppose the amendment. I realize that others are opposing it for different reasons.

Mr. MOYNIHAN. The Senator is welcome.

Mr. CURTIS. But the Supreme Court of Nebraska has said that a trial judge's decision will not be overruled if he arrives at the right decision even though he reasoned by the wrong road.

Mr. MOYNIHAN. On that exemplary note, Mr. President, I propose that the matter has been carefully discussed by none so eloquently or elegantly as by the ranking member of our committee, the incomparable Senator CURTIS. Why do we note vote?

Mr. ROBERT C. BYRD. Vote.

Mr. CURTIS. I thank the Senator. He is very kind.

Mr. MOYNIHAN. Vote. No one is going to make a better speech or a more persuasive one. No one will come more precisely to the heart of the matter and produce the correct solution. When we have attained a degree of limited perfection we ought to desist, lest we challenge the godhead of perfection himself, which is a risk and brings woe.

Mr. DANFORTH addressed the Chair.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. MOYNIHAN. Vote.

The PRESIDING OFFICER. Was the Senator from Missouri seeking recognition?

Mr. DANFORTH. Yes.

The PRESIDING OFFICER. The Senator has been recognized.

Mr. DANFORTH. I thank the Chair. I appreciate that.

Mr. President, just a few brief points and then I, also, am ready for a vote.

First, in response to Senator CURTIS, will this fiscal relief proposal encourage States to reduce their error rate? The answer to that question is "No." The States already have every incentive to reduce their error rate. For every dollar they reduce their error rate the State gets 50 cents as it is.

Second, would frittering away this money at this time make it more difficult next year to have a meaningful welfare reform program? Of course, it would.

If welfare reform requires any additional funds at all, to the extent that we waste it now we will not have it available to go along with a meaningful welfare reform program.

I think Senator CURTIS has stated it well. But I do not agree with the way he seeks to do it. I agree with the point, the same point, made by Senator BELLMON who is pushing for welfare reform.

Third, with respect to the use of these funds, I cannot say that the messenger from HEW has been exactly Mercury with winged feet in delivering it over here, but we have the text of the letter which has been dictated over the phone, and it says as follows:

DEAR SENATOR DANFORTH: It is my understanding that Section 601 of H.R. 13511, the Revenue Act of 1978, as presently drafted amends Section 403 of the Social Security Act to provide additional Fiscal Relief to State and local government.

It is our interpretation that Section 403 of the Social Security Act does not impose any limitations on the use of these funds by State and local government except that the funds must be passed through as required by the Act to local governments which share in the cost of the AFDC program. As a result we have responded to inquires from States that these monies may be used for any purposes that they choose.

Sincerely,

BARRY L. VAN LARE,
Associate Commissioner for Family Assistance.

So the answer to that is part of the funds have to be passed through to local governments under certain conditions, but with respect to the use of the funds, they go to the general treasury of the State or local government and they can be used for any purpose at all, not necessarily for welfare purposes.

Finally, and in summation, Mr. President, I would say this: This is a chance to save somewhere between $300 million and $500 million from this tax bill. It is an opportunity to delete a section of the bill which is opposed by the administration.

It is money which is distributed to the States not on the basis of need but on the basis of a very strange formula that does not have anything to do with the local or State need. It is money which does not aid the poor, which does not go to the poor—to welfare recipients—but goes to State governments. It goes to State governments even in cases of States which have surpluses, or States, such as California, which has recently reduced its State income tax because apparently they do not need the money. Therefore, it is simply frittering money away, and that is why it should be deleted.

Mr. President, I yield the floor and I ask for the yeas and nays.

The PRESIDING OFFICER (Mr. SARBANES). The Senator has requested the yeas and nays on his amendment. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The Senator from Missouri has yielded the floor. The Senator from Kansas is recognized.

Mr. DOLE. Mr. President, I think there is a great deal of concern by many of us who serve on the Finance Committee. We had this matter before us last year. I think there was some agreement on $185 million or $187 million, and at that time I expected it would be about half of what might be needed.

As I understand, H.R. 7200 contained this provision, and I think many of us who voted initially for so-called fiscal relief have the same doubts as the distinguished Senator from Missouri has had, and one the Senator from Kansas has is raised by the distinguished Senator from Nebraska.

I think I might ask a question of the distinguished Senator from New York: We are not in any way trying to impede any progress of welfare reform by passing this bill?

Mr. MOYNIHAN. Certainly not. We are making the case that this is one of the aspects of welfare reform. Certainly not.

Mr. DOLE. Is this going to be an on-

going process where every year you are going to ask for more funds to avoid——

Mr. MOYNIHAN. No. Hopefully next year we will get a comprehensive program. Hopefully we were going to have one this year, but we did not.

Mr. DOLE. Because I think there is a great deal of concern expressed by Senator BELLMON and others, and whether we agree on standardization of benefits or eligibility or whatever, there is a great deal of concern about the cost of welfare reform and when we will approach welfare reform, when we will actually have welfare reform, and there is some feeling that by this effort—and I do not ascribe that motive to anyone—that we might be delaying real welfare reform.

Finally, with reference to the letter just dictated to the distinguished Senator from Missouri (Mr. DANFORTH), I assume that would be true in any case. When you pour money into a pot I assume you can probably say you could use it for nearly any purpose.

UP AMENDMENT NO. 1998

It may not solve the problem, but I think we all share the same concern about how the money should be used. I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislature clerk read as follows:

The Senator from Kansas (Mr. DOLE) proposes an unprinted amendment numbered 1998:

On page 387, at the end of line 14, insert the following new subsection:

(f) any funds payable to a State or subdivision thereof pursuant to this section may be used by such State or subdivision only for purposes of making payments under Part A of title IV of the Social Security Act.

● Mr. EAGLETON. Mr. President, I wish to associate myself with the most forthright remarks made by my distinguished colleague from my home State of Missouri. In my opinion, the Moynihan proposal is dead wrong for two reasons: First, this "so-called fiscal relief for welfare costs" proposal does not require States to use this money to pay for welfare costs—in many States this money could be used for such unrelated things such as building bridges, paving highways, providing for cost-of-living increases to State employees, and so forth; and second, the Federal Government, which is approximately $40 billion in debt, is giving financial assistance to the States who are in the black by a estimated $5 to $6 billion. Frankly, I do not understand why the Federal Government thinks that we can be so generous with our money considering the fact that we are running a $40 billion deficit.

During the discussion of this proposal it is my understanding that some Senators and their staffs have alleged that the reason Senators DANFORTH and myself are opposed to this fiscal relief proposal advanced by Senator MOYNIHAN is because Missouri (according to the chart on pages 228, 229, and 230 of the Finance Committee report) does not receive any fiscal relief, because our ADC error rate increased between 1975 and 1977.

For the benefit of my fellow Senators, and in order to set the record straight, I would like to take a moment to provide some historical perspective on the ADC program in Missouri. In 1974, Missouri ADC benefits were based upon a maximum grant formula. In very simple terms, this means that no matter what the State determined to be the standard of need for a family of four, with no income, they could receive no more than $170 per month in ADC benefits. This benefit level ranked Missouri near the bottom compared to other States in the amount of money provided to ADC recipients. Obviously, this formula was programed into all State computers and monthly checks were sent out to approximately 240,000 ADC recipients based upon this formula. In 1974, our error rate was 13.7 percent. I am not proud of that rate, but I do point out that my State had a better error rate than 15 other States in 1974. In 1975, the error rates were again computed—Missouri was still using this so-called maximum grant formula—and my State's error rate decreased to 11.2 percent. In 1975 Missouri had an error rate better than 20 States. Clearly, Missouri was making real progress in reducing its error rate. In 1976 and 1977, the Missouri State Legislature debated and then finally enacted into law legislation that changed the ADC benefit formula so that ADC recipients would on the average receive approximately a 15-percent increase in their benefits. The new "percentage of need formula" officially began in my State in July of 1977. Simply stated, this formula allows a recipient to receive 70 percent of the standard of need, minus income, in benefits. Under the old law, the maximum a family of four could receive with no income in my State was $170. The new percentage of need proposal would allow that same family to receive a maximum of almost $260 per month. As to be expected, when this change was made the computer programs, and application forms all had to be changed. In addition, staffs had to be retrained in order to understand the new benefit formula. It so happens that in July of 1977 the new quality control error rate was measured, and at this time Missouri's error rate increased to 14.1 percent. As is easily understandable, this increase in error rate was almost totally due to the change from one program to another. Missouri was not becoming more lax on catching welfare cheaters, we were simply implementing a new more sophisticated benefits formula. By the Moynihan proposal, my State would be penalized, because we increased our welfare benefits to poor people—this is not what I call welfare relief.

Just so my colleagues understand that Missouri is not soft on welfare fraud, I want to point out that Missouri has an outstanding Department of Investigation which for sake of comparison is almost identical to the Office of Inspector General at HEW. Just last year, the Missouri Department of Investigation filed approximately 450 ADC criminal fraud suits which amounted to approximately $630,000. I submit that most States cannot match this record.

Soon, States will be required to send to HEW the results of their new quality control studies, and according to early information, the Missouri error rate will drop to close to 12 percent—a drop of approximately 2 percent since December of 1977. I think all my colleagues will agree that this is certainly a step in the right direction.

Mr. President, let me reiterate that even if Missouri benefited financially from the Moynihan proposal I would oppose it for the reasons stated earlier in my statement.

The Moynihan proposal is nothing more than revenue sharing—it is certainly not fiscal relief for welfare costs.●

Mr. DANFORTH. Mr. President, I raise a point of order.

The PRESIDING OFFICER. The Senator from Missouri raises a point of order. The Senator will state the point of order.

Mr. DANFORTH. Mr. President, I raise the point of order that that amendment to my amendment is not in order since my amendment is an amendment to strike.

The PRESIDING OFFICER. It is the Chair's understanding that the amendment submitted by the Senator from Kansas is not an amendment to the amendment of the Senator from Missouri, but is an amendment to the language in the bill which the Senator from Missouri seeks to strike and, therefore, the amendment offered by the Senator from Kansas is in order.

Mr. MOYNIHAN. The manager of the bill would like to say the amendment is acceptable.

Mr. DOLE. I think the amendment speaks for itself. I am not certain it solves the problem, but at least it indicates the concern that the Senator from Missouri has, the Senator from Kansas has, the Senator from Arkansas has, and everyone in the Chamber has, and I hope it will be acceptable.

Mr. MOYNIHAN. It is, and I thank the Senator from Kansas.

Mr. DANFORTH. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state his inquiry.

Mr. DANFORTH. Mr. President, if this amendment is accepted, what is the status of the amendment I have offered?

The PRESIDING OFFICER. The question would then recur on the amendment of the Senator from Missouri.

Mr. DANFORTH. On this amendment, whether this amendment is agreed to or not, then this amendment would be the pending business, and the question would recur on the amendment that I offered?

The PRESIDING OFFICER. The Senator's amendment would then be the pending business, the Senator is correct. But it is in order for the Senator from Kansas to offer this amendment for the Senate to consider at this time.

The question is on agreeing to the amendment offered by the Senator from Kansas.

All in favor, "Aye." Opposed, "No." The "ayes" appear to have it. The "ayes" have it. The amendment is agreed to.

Mr. DANFORTH. Mr. President, I ask for a division.

Mr. MOYNIHAN. Does the Senator——

The PRESIDING OFFICER. The Chair will say to the Senator that the amendment has been agreed to. The Chair announced the result of the vote on the amendment and, therefore, the demand for a division comes too late. The Senator can move to reconsider. The Chair stated that it appeared that "ayes" had it and hesitated and then went on to announce the results.

Mr. LONG. Mr. President, I would just like to say one additional word about the issue that is before us. The point has been made that the formula before us is generous to the State of New York and even to the State of California.

Many times we have voted for formulas to help the poor in the States, and to help States to help their poor. We have looked at the per capita incomes of the States and considered their problems; we have looked at many factors and generally, we have been very favorable to States like the one I have the honor to represent, the State of Louisiana, because it has a lot of poor people and has a low per capita income.

But, Mr. President, the formula before us does take into account at least the problems of a State trying to help its people. It does take into account the fact that the State of New York has a problem, because that State has tried to help its poor to the extent that it has almost moved itself into fiscal insolvency, trying to look after the needs of its people.

It is legitimate that we should consider the plight of the State as well as the plight of its people in a Federal aid program seeking to provide a better life for people.

The Senator from Nebraska made a point which I think is relevant to this entire problem. There are those in the Department of Health, Education, and Welfare who do not want to see us do anything to help ease the burden of welfare on the States. There are some of those people who want to keep the squeeze on the States, to the extent that these gentlemen will come in almost on their knees, begging the Federal Government to take the welfare program off their hands. This program is costing the States a lot of money. Those at HEW would hope that they could buy the program from the States and pay them a profit for selling it, in effect.

If they could put that over, Mr. President, they feel they could have a very much larger program. The Congressional Budget Office costed out the last welfare reform program they proposed at $20 billion a year over and above what we have now, and undoubtedly they could bring a vast constituency to that porgram by making millions of more people eligible for it.

That sort of effort might be succesful; then again, it might not. It would certainly run into opposition here in Congress. But why should we in the Senate play that game of putting pressure on the States, trying to make it more and more difficult for them to look after their poor, in order to cooperate in a scheme to make them come begging the Federal Government to take the welfare program off their hands?

As long as it is a State program we ought to leave it to the States, and leave for debate the question of the merits of whether we want to go into a federalized program, put 20 million people on the rolls, and all of those issues.

Mr. President, if we had been waiting for a vast Federal program to solve this problem, and doing nothing in the meantime, we would not have the earned income credit, we would not have the jobs credit, we would not have public service jobs, we would not have a great number of things we have done to help the States solve the problem. The situation would have become worse and worse; and while perhaps that would have brought pressure on the States and caused the Governors to scream in even more anguish for the Federal Government to take it off their hands, it would have, at the same time, caused a lot of poor people to suffer very badly.

Mr. President, we should not seek that sort of answer to the problem. The answer is to ease the burden on the States, to provide them with some additional resources to take care of their poor who, so far as the Federal Government is concerned, have not even had a cost-of-living increase for years. If anything has been done, it has had to be done by the States coming up with additional funds.

It is time we should look at the problem of the States, Mr. President; and I hope very much the amendment of the Senator from Missouri will not be agreed to. It seems to me it is time we consider this problem both with regard to the needs of the people as well as the needs of the States.

Mr. ROBERT C. BYRD. Mr. President, could we vote on the amendment? I believe it has been sufficiently debated.

Mr. DANFORTH. Mr. President, I will be prepared to vote in 30 seconds.

Mr. ROBERT C. BYRD. All right.

Mr. DANFORTH. Mr. President, I considered making a motion to reconsider the vote on the Dole amendment, but because that amendment is so purely cosmetic, and really adds nothing whatever to the substance of what is before us, I think it would accomplish nothing whatsoever to have a rollcall vote on that amendment. Therefore, I am prepared to proceed with a rollcall vote on my amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Missouri (Mr. DANFORTH). 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 Minnesota (Mr. ANDERSON), the Senator from Colorado (Mr. HASKELL), the Senator from Kentucky (Mr. HUDDLESTON), the Senator from West Virginia (Mr. RANDOLPH), the Senator from Mississippi (Mr. STENNIS), and the Senator from Georgia (Mr. TALMADGE) are necessarily absent.

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

Mr. STEVENS. I announce that the Senator from New Mexico (Mr. DOMENICI), the Senator from Utah (Mr. HATCH), and the Senator from Texas (Mr. TOWER), are necessarily absent.

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

The PRESIDING OFFICER. Are there any Members in the Senate who have not voted who wish to vote?

The result was announced—yeas 52, nays 37, as follows:

[Rollcall Vote No. 454 Leg.]

YEAS—52

Baker	Eastland	Metzenbaum
Bartlett	Ford	Muskie
Bayh	Garn	Nunn
Bellmon	Goldwater	Packwood
Bentsen	Hansen	Pearson
Biden	Hart	Proxmire
Bumpers	Hatfield, Mark O.	Roth
Byrd, Harry F., Jr.	Heinz	Sasser
Cannon	Helms	Schmitt
Chafee	Hodges	Scott
Chiles	Hollings	Sparkman
Church	Laxalt	Stafford
Clark	Leahy	Stevens
Culver	Lugar	Stone
Danforth	McClure	Thurmond
DeConcini	McGovern	Wallop
Eagleton	McIntyre	Weicker
		Young

NAYS—37

Brooke	Hathaway	Morgan
Burdick	Hayakawa	Moynihan
Byrd, Robert C.	Humphrey	Nelson
Case	Inouye	Pell
Cranston	Jackson	Percy
Curtis	Javits	Ribicoff
Dole	Johnston	Riegle
Durkin	Kennedy	Sarbanes
Glenn	Long	Schweiker
Gravel	Magnuson	Stevenson
Griffin	Mathias	Williams
Hatfield, Paul G.	Matsunaga	Zorinsky
	Melcher	

NOT VOTING—11

Abourezk	Haskell	Stennis
Allen	Hatch	Talmadge
Anderson	Huddleston	Tower
Domenici	Randolph	

So the amendment (No. 3808) was agreed to.

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

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 3686

(Purpose: Providing for cost-of-living adjustments in rate of tax, zero bracket amounts, and personal exemptions)

Mr. GRIFFIN. Mr. President, I send an amendment to the desk and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Michigan (Mr. GRIFFIN), for himself, Mr. HART, Mr. DOLE, and Mr. BROOKE, proposes an amendment numbered 3686.

Mr. GRIFFIN. Mr. President, I ask unanimous consent that further reading be dispensed with.

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

The amendment is as follows:

On page 18, after line 25, insert the following:

"SEC. 105. COST-OF-LIVING ADJUSTMENTS.

"(a) RATES OF TAX.—Section 1 (relating to tax imposed) is amended by adding at the end thereof the following new subsections:

"'(f) COST-OF-LIVING ADJUSTMENT.—

"'(1) CHANGES IN AMOUNT.—At the beginning of each calendar year as soon as the necessary data become available from the Bureau of Labor Statistics of the Department of Labor, the Secretary of Labor shall report to the Secretary the ratio which the price index for the preceding calendar year bears to the price index for the second preceding calendar year. Each dollar amount listed in the tables under subsections (a), (b), (c), (d), and (e) of this section under the heading "If the taxable income is:" shall be multiplied by such ratio and, as multiplied, shall, except as provided in subsection (f), be the amounts in effect under each such subsection for taxable years beginning in the calendar year in which such report is made.

"'(2) AMOUNT OF TAX.—The Secretary shall adjust each dollar amount in the tables under subsections (a), (b), (c), (d), and (e) of this section under the heading "The tax is:" to reflect the changes made under paragraph (1).

"'(3) DEFINITION.—For purposes of paragraph (1), the term "price index" means the average over a calendar year of the Consumer Price Index (all items—United States city average) published monthly by the Bureau of Labor Statistics.

"'(g) ADJUSTMENTS FOR CHANGES IN ZERO BRACKET AMOUNTS.—The Secretary shall, after adjusting each dollar amount under subsection (f), adjust each such dollar amount to reflect any adjustment in any zero bracket amount under section 63(i) and each such amount, as adjusted, shall be the amount in effect for taxable years beginning in the calendar year in which the adjustment is made.'.

"(b) ZERO BRACKET AMOUNTS.—Section 63 (relating to the definition of taxable income) is amended by adding at the end thereof the following new subsection:

"'(i) COST-OF-LIVING ADJUSTMENT.—Upon receipt of the report with respect to the price index ratio by the Secretary under section 1(f), the Secretary shall multiply each dollar amount listed in subsection (d) of this section by such ratio and, as multiplied, each such amount shall be the amount in effect under such subsection for taxable years beginning in the calendar year in which such adjustment is made.'.

"(c) PERSONAL EXEMPTIONS.—Section 151 (relating to allowance of deductions for personal exemptions) is amended by adding at the end thereof the following new subsection:

"'(f) COST-OF-LIVING ADJUSTMENT.—Upon receipt of the report with respect to the price index ratio by the Secretary under section 1(f), the Secretary shall multiply each dollar amount in subsections (b), (c), (d), and (e) of this section by such ratio and, as multiplied, each such dollar amount shall be the amounts in effect under each such subsection for taxable years beginning in the calendar year in which such adjustment is made.'.

"(d) TECHNICAL AND CONFORMING AMENDMENTS.—

"(1) Section 6012(a)(1) (relating to persons required to make returns of income) is amended by adding at the end thereof the following new subparagraph:

"'(D) Each time the Secretary makes a cost-of-living adjustment under sections 63(i) and 151(f), the Secretary shall adjust each dollar amount—

"'(i) under subparagraph (A) to correspond to the cost-of-living adjustments made under sections 63 and 151, and

"'(ii) under subparagraph (B) to correspond to the cost-of-living adjustments made under section 151,

and such amounts, as adjusted, shall be the amounts in effect under each such subparagraph for taxable years beginning in the calendar year in which the Secretary makes such adjustment.'

"(2) Subparagraph (A) of section 6013(b)(3) (relating to assessment and collection in the case of certain returns of husband and wife), as amended by section 102(b)(2) of this Act, is amended by adding at the end thereof the following new sentence: 'Each time an adjustment is made under section 151(f), the Secretary shall adjust the dollar amounts under clauses (ii) and (iii) to correspond to such adjustments.'.

"(3) Subsection (a) of section 3402 (relating to income tax collected at source), as amended by section 101(e) of this Act, is amended by inserting before the last sentence the following new sentence: 'Notwithstanding the preceding sentence, each calendar year the Secretary shall to the extent necessary modify the tables in effect under such sentences to reflect the full calendar year effect of the adjustments which the Secretary makes under section 1(f), 63(i), and 151(f) during such year and such tables, as modified, shall apply with respect to wages paid during the period which the Secretary determines to be necessary to reflect such full year effect.'.

"(4) Subparagraph (B) of section 3402(m)(1) (relating to withholding allowances based on itemized deductions), as amended by section 101(e)(2) of this Act is amended—

"(A) by striking out '$3,400' and inserting in lieu thereof 'the dollar amount in section 63(d)(1)'; and

"(B) by striking out '$2,300' and inserting in lieu thereof 'the dollar amount in section 63(d)(2)'.

"(5) Subparagraph (C) of section 402(e)(1) of the Internal Revenue Code of 1954 (relating to imposition of separate tax on lump sum distributions), as amended by section 101(d)(1) of this Act, is amended by striking out '$2,300' and inserting in lieu thereof 'the dollar amount in section 63(d)(2)'.

"(e) STUDY OF EFFECTS OF INDEXING.—

"(1) STUDY.—The Council on Wage and Price Stability, in cooperation with Department of the Treasury, shall—

"(A) conduct a study and investigation with respect to changes in the distribution of Federal individual income tax returns and income reported on such returns across marginal brackets during calendar years 1960 through the latest calendar year for which information is available before the completion of such study, including an estimate of the effects which making adjustments for cost-of-living increases would have had following the Revenue Act of 1964 on—

"(i) the gross national product,

"(ii) employment and unemployment,

"(iii) wages and the personal disposable income of individuals,

"(iv) individual income tax liability,

"(v) personal or individual savings,

"(vi) interest rates,

"(vii) prices,

"(viii) Federal revenues,

"(ix) tax shelters, and

"(x) such other economic statistics which the Council determines appropriate; and

"(B) conduct a study and investigation with respect to the estimated effect of the amendments made by the provisions of this section during the first 2 taxable years for which it is in effect on the items referred to in clauses (i) through (x) of subparagraph (A).

"(2) RECORDS.—The Council shall report to the Congress—

"(A) with respect to its findings under the study conducted under paragraph (1)(A) no later than January 1, 1982; and

"(B) with respect to its findings under the study conducted under paragraph (1)(B) no later than January 1, 1983.

"(f) EFFECTIVE DATES.—

"(1) Except as provided in paragraphs (2) and (3), the amendments made by this section shall apply to taxable years beginning after December 31, 1979, and before January 1, 1984.

"(2) The first report required to be made under sections 1, 63, and 151 of the Internal Revenue Code of 1954, as amended by this section, shall be made before February 1, 1980, and shall indicate the ratio which the price index for calendar year 1979 bears to the price index for 1978.

"(3) The amendments made by paragraphs (3) and (4) of subsection (d) shall apply with respect to remuneration paid after December 31, 1979, and before January 1, 1984.".

On page 19, line 1, strike out "105" and insert in lieu thereof "106".

On page 19, line 9, insert "106," after "102,".

Mr. GRIFFIN. Mr. President, I understand that Senator HART who will follow me, has some cosponsors to add, but I ask unanimous consent at this time that the following Senators be added as cosponsors: Mr. DANFORTH, Mr. PERCY, Mr. SCHMITT, Mr. GOLDWATER, Mr. DOMENICI, Mr. TOWER, Mr. HATCH, Mr. HAYAKAWA, Mr. HATFIELD of Oregon, Mr. LUGAR, Mr. Mr. MCCLURE, Mr. STEVENS, and Mr. ROTH.

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

Mr. GRIFFIN. It is time for the government to stop holding American taxpayers hostage to the unending spiral of raging inflation.

The best way to do that is to automatically adjust—or index—tax rates each year to offset increases in the cost of living. This will insulate taxpayers from the harsh tax impact of inflation and will eliminate the current system of nonlegislated, hidden tax increases.

That is precisely what this amendment is designed to do, and I am firmly convinced it is the single most valuable and important step we can take to provide meaningful—not artificial—tax relief for American taxpayers.

Mr. President, not more than 2 hours ago, the Senate went on record as saying that we must do more, $3.8 billion worth more to insulate middle-income taxpayers from the tax impact of inflation in 1979. That is the Kennedy amendment. This amendment would say that we should do the same thing beyond 1979. This amendment would index or automatically adjust the tax rates, beginning in 1980, for a 4-year period.

Last year, a similar amendment was offered by the senior Senator from Michigan and, in many respects, this is the same amendment, but it has several provisions that have been incorporated from bills that were offered by the Senator from Colorado (Mr. HART), the Senator from Massachusetts (Mr. BROOKE), and the Senator from Kansas (Mr. DOLE). Last year, this similar amendment was defeated by a vote of 24 to 64.

Of course, that was before the proposition 13 tidal wave from California began to sweep over the entire country. That was before the term "taxflation" became a widely used code word to cryptically describe the insidious and de-

moralizing process now built into our tax code that makes American wage earners poorer every year even though they get raises to keep up with the cost of living. And, perhaps equally important, it was offered at a time when it appeared that inflation had been brought under control.

Unhappily, the fires of inflation are raging once again. Just yesterday, we all received a note from President Carter asking us to help him control inflation; the wholesale price index for the month of September had jumped 0.9 percent—an annualized rate of 11.4 percent—an ominous foreboding for retail consumer prices.

Today, by this amendment, we are asking the Senate to take the Government's profit incentive out of inflation. Nobel Prize winning economist, Milton Friedman—who is widely regarded as the father of the tax indexing concept—estimates that when the cost of living rises 10 percent, Government revenues go up—not 10 percent, but 16.5 percent.

That is because so many people are pushed into higher and higher tax brackets. In other words, the greater the rate of inflation, the greater the Government's windfall.

To give those figures some life and illustrate what they mean to real people, let us consider what is happening to the average working man with a family, whose wages are tied to the cost of living. Let us assume this family had an income of $15,000 last year, in 1977. Let us be conservative—or, after yesterday's news, the better term is probably "optimistic"—and assume that we will have an 8-percent rate of inflation this year, 1978.

Now, the family that earned $15,000 in 1977 will have to have an increase in earnings of $1,200 in 1978 to keep even with 8 percent inflation.

But, although the family's purchasing power has not improved one iota over the year before, that wage earner is pushed up into a much higher tax bracket. His taxes will go up not 8 percent—but 19 percent.

He will be paying an additional $260 in taxes, $150 of which is inflation gravy for the Federal Treasury.

And the impact of taxflation becomes harsher and more pronounced as a wage earner climbs the economic ladder. A family that earned $30,000 in 1977 would have to earn $32,400 in 1978 to keep pace with 8 percent inflation. But, at $32,400, his tax bill will increase by $857—$420 of which can be appropriately described as the Government's windfall inflation profit. This is taxflation with a vengeance.

The tax indexation amendment now before the Senate is designed to take the American taxpayer off of the taxflation treadmill. Very simply, it would:

Adjust the personal income rates, the personal exemption, and the zero bracket amount—that is, the standard deduction—to reflect increases in the cost of living during the previous year as measured by the consumer price index, beginning with the taxable year 1980.

Provide for indexing to remain in effect through the taxable year ending December 31, 1983—that is, a 4-year period—at which point Congress will have the opportunity to review and determine whether to continue it.

Authorize a study to be conducted by the Council on Wage and Price Stability to focus on the impact of the indexation system on the GNP, employment, Federal revenues, inflation, savings, and other pertinent economic and social issues. The Council would be required to report its findings to Congress by January 1, 1983—as the program enters its final year—in order to allow sufficient time for thorough review.

We believe this amendment offers a moderate, cautious and responsible approach to providing meaningful tax relief from the impact of taxflation. The 4-year experience with indexation will allow us enough time to gage the impact of indexation on our economy. The study provided for in our amendment will give us the empirical data and information necessary to make an educated, well-informed decision at the end of the 4-year period as to whether the indexing approach merits continuation. Our amendment represents a logical and rational way to proceed.

Mr. President, before closing, I would like to point out that indexing is no longer a new or esoteric tax concept.

Indexing is being used successfully in a number of countries around the world, including Canada, France, Luxembourg, Denmark, Israel, Brazil, the Netherlands, and most recently, Australia.

Canada's experience with indexing—which began in 1974—has been particularly rewarding. The rate of increase in Canadian Government spending dropped from 15.9 percent in 1974, to 10.2 percent in 1975, to 2.7 percent in 1976, and to 2.1 percent in 1977.

The American people understand tax indexation and want it. A recent Roper public opinion poll disclosed that 60 percent of the American people would prefer an automatic annual adjustment of their income tax rates for inflation rather than waiting for tax cuts granted by Congress.

Finally, the Finance Committee has now had an opportunity to hold hearings on tax indexation, and a number of leading economists testified in favor of it.

Mr. President it is a cliche to say that tax indexation is an idea whose time has come. But cliches generally become cliches because there is much truth in them. I believe we all realize that any tax cut we enact this year will only provide temporary and partial relief for taxpayers before its impact is quickly eroded by inflation. To provide meaningful and lasting relief we must couple the tax cuts in this year's bill with indexation of tax rates in the following years.

This will neutralize the tax impact of future inflation and insulate taxpayers. We believe our amendment provides a "commonsense" approach to ending the current system of taxation without legislation.

It needs to be adopted, and I hope that this amendment will be adopted by the Senate at this time.

Mr. President, I will yield to the Senator from Colorado.

Mr. NELSON. Will the Senator yield for the purpose of a unanimous-consent request?

Mr. GRIFFIN. I am glad to.

Mr. NELSON. Mr. President, I ask unanimous consent that Larry Gage and Judy Robinson be granted privilege of the floor during consideration of the pending legislation and the votes thereon.

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

The Chair recognizes the Senator from Colorado.

Mr. HART. Mr. President, I ask unanimous consent that the Senator from Minnesota (Mr. ANDERSON), the Senator from New Hampshire (Mr. MCINTYRE), and the Senator from Arizona (Mr. DECONCINI) be added as cosponsors to this amendment.

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

Mr. HART. Mr. President, we have today a hidden system of taxation without legislation. I join with Senators GRIFFIN, DOLE, BROOKE, and others, in submitting an amendment to insulate taxpayers from the tax impact of inflation by automatically adjusting tax rates to reflect increases in the cost of living. This Congress will fail to enact a truly meaningful tax measure if we do not provide relief from the cruelest of all taxes, the hidden, perverse, inflation tax.

Inflation continues to push people into higher and higher tax brackets, even though they may have no increase in their real income. Their average tax rate rises, that is, their tax burden grows faster than the rate of inflation. The result is that they have less to spend, and even worse, less to save and invest. The most effective way to remedy this situation is to adjust the tax code for inflation. Inflation adjustments, or indexing as this procedure is sometimes called, automatically correct the income tax system to prevent inflation from pushing taxpayers into higher and higher tax brackets.

Ironically, the big winner in times of high inflation is the Government. The Government has a vested interest in maintaining inflation, since the current system permits the Goverment windfall tax revenue of about $6 billion a year. Indexing would end Washington's inflation bonus.

More importantly, it would encourage fiscal responsibility since an indexed tax system would require Congress to reduce and control spending or take the necessary action to acquire additional funds. The question, quite simply, is one of accountability. The question is whether Congress should continue to use the unlegislated tax of inflation to subsidize new legislative initiatives. I believe it is fundamentally wrong for the U.S. Treasury to be reaping a windfall in increased revenues each year, without the Congress ever having to enact a tax bill that the President must sign. The Federal Government will continue to take advantage

of this unfair economic phenomenon unless Congress acts now.

Mr. President, the mechanics of our amendment are straightforward. It would adjust the personal income tax rates, the zero bracket deduction and the personal exemption, to reflect increases in the cost of living as measured by the Consumer Price Index, beginning with the taxable year 1980. The proposal provides for indexing to remain in effect through 1983 at which point Congress will have an opportunity to review and determine whether it should be continued. Our amendment also authorizes a study to be conducted by the Council on Wage and Price Stability to focus on the effects of indexing on our tax structure and economy.

Mr. President, opponents of this proposal argue that indexing is inflationary or that it is at least giving in to inflation.

Past experience in other countries has shown that indexing is neither the cause nor the cure of inflation. However, without indexing, the worker whose wage increase just makes up for the rate of inflation is pushed up into a higher tax bracket. Just to keep him even, his wages must rise faster than the cost of living. The inflation penalty inherent in the present tax structure is one of the basic causes for inflationary wage demands, since workers must receive inflationary wage increases in excess of the cost-of-living increase simply to maintain the actual value of their take-home pay. Indexing is a critical step toward reducing the burden of inflation on taxpayers, but it cannot be considered an inflation cure. Congress must also seriously consider a total economic package such as the one I proposed earlier in this debate, which includes restraints on the Federal budget.

Mr. President, I must emphasize that indexing personal income taxes is not intended to be a correction for all the inequities of the current income tax law, nor need it be the final determining factor about the size of income tax revenues. Adoption of tax indexing does not preclude any other changes the President wishes to propose or the Congress wishes to enact. With indexation, the Congress could, of course, still change the degree of income tax progression or the amount of income tax collections. Income tax indexation simply guarantees that taxpayers will not be subject to nonlegislated tax increases.

Mr. President, the issues of tax reduction and tax reform raise some of the most complex and frustrating questions facing this Congress. As Thomas Jefferson remarked,

> Taxation is in fact the most difficult function of government—and that against which their citizens are apt to be refractory. The general aim is therefore to adopt the mode most consonant with the circumstances and sentiments of the country.

I think it is clear that our present system of taxation is far from "consonant with the circumstances and sentiments of the country." Indexing the tax code may be one of the most sound and equitable ways to make it so.

Although the idea of indexing is not a new one, its application in this country has not yet been tried. It has been successfully employed in other nations, but the dynamics of every country's economy are different. It seems logical, therefore, that we begin by establishing a simple, modest approach which will offer both Congress and the American people an opportunity to evaluate indexing on its merits. It is for this reason that our proposal focuses on taking the first step of indexing the personal income tax rates.

Mr. President, my State of Colorado has enacted an indexing proposal, much as it was the leader nationally in demonstrating the benefits of sunshine legislation several years ago.

I should like to quote the Denver Post of June 27, 1978, in this regard:

> In this inflation wracked era, indexing of income taxes may be an idea whose time has come. . . . Congress has passed a series of ballyhooed "tax cuts" since 1963—but they have done little more than offset the automatic tax increases quietly levied by inflation. Obviously some congressmen would rather raise taxes automatically and then cut them with a flourish before election time. Yet, such cynicism no longer fools the voters and only fans the tax revolt. . . . The ideological gulf is crossed by a common belief that government should face the public honestly if it needs a tax increase, not try to sneak one in on the sly.

Mr. President, I hope that the House and the Senate will follow the example which my State of Colorado already has adopted, and that is to adopt an indexing proposal such as we have put forward.

Mr. GOLDWATER. Mr. President, will the Senator from Michigan yield me a minute or two?

Mr. LONG. Mr. President, I would like to say a word or two on this matter, and then the other side can speak for the amendment.

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. LONG. Mr. President, this amendment should not be agreed to.

The way we have been doing business in Congress, confronted with inflation, is to look year by year to see what the erosion of inflation has been and to make such tax decreases as the fiscal integrity of government will permit, in order to provide as much tax relief as we can afford to relieve those who are adversely affected.

When we do that, Mr. President, invariably we tend to do more for those at the bottom end of the scale than we do for those at the top end of the scale. If you are going to make a straight across-the-board inflation adjustment, then you will do as much for those in the 70 percent bracket, percentagewise, as you will for those in the 14 percent bracket. So that when you look at what inflation is doing to people, the kind of legislation Congress votes is more in line with what the committee recommended and what the Senate voted for when it voted for the Kennedy amendment, to say that we will put more of the relief in the middle-income brackets and the low-income brackets.

By contrast, if you have this so-called automatic inflation adjustment, it would appear to be a better deal for the wealthy, for the people making $50,000 and more, because that way they get, percentagewise, the same tax cut that would be received by a middle-income person—a man with a wife and two children.

So, instead of everybody getting a 6-percent tax cut, what tends to happen is that the low-income people and the middle-income people, for the reason that inflation is making them suffer a lot more than those making $100,000 or more, would tend to get, in percentage terms, a better break. What is wrong with that? The person making $100,000 certainly is in a better position to stand the ravages of inflation than the person making only $10,000 a year, with a family of the same size.

That is how it works out when Congress looks at it. Congress studies it and Congress says, "Let us see who is getting the worst of it, who we can help, who has a problem."

I can understand that those who are in the top income brackets would like to say, "Make it all automatic." But if you did that, they would be disappointed with the way it would work out. It would wind up being a complete illusion and farce for them; because if you put the automatic tax adjustment into effect, you repeatedly are going to put the Government in the position that it has a big deficit.

So, rather than pass a tax cut bill, as we are trying to do now, we will have to pass a tax increase; and the millionaires, who think they are going to get a better tax break out of the automatic tax adjustment, will be fooled, because if we pass a tax increase, we will look at their situation and we will see that the man making $100,000 a year is in a better position to pay more taxes than the fellow making $10,000 a year who has a wife and two children.

So that would do exactly what the wealthy people hope they are going to prevent. That is how it would work out. But the big difference would be that instead of looking at what inflation is doing and giving a tax adjustment to try to take care of the effects of inflation on people, according to the best judgment of those in Congress, after we have looked at their problem, we would do it all in advance, without having looked, and we would wind up with a big deficit and a tax increase instead of a tax cut.

Mr. President, if Senators buy this approach and this Government is to survive at all, it means you are going to have a tax increase and a big one in every Congress. It means that the Government will constantly have far bigger deficits and far more fiscal problems than it has now.

We can talk about economy all we want, but the only way a government can survive is if the government has revenue to finance itself.

I do not have the slightest doubt that with this amendment in the bill, the President will not accept it. You will not have any bill. You never will get a tax cut. You will tell these affluent people who thought they were going to get the better of it by indexing, "It's too bad you don't get a tax cut, but we tried to do well by you. The President wouldn't go

along, or the House wouldn't agree to it," or something of that sort. But it means no tax cut.

We can either move for a tax cut or be foolhardy and load this bill down with something that cannot become law, and we will wind up having no tax cut at all.

Senators should know when they are well off. House Members should know when they are well off.

Here you have a situation in which, whether it is your fault or not, at least you will be able to vote for a tax cut; and if we cannot keep inflation from moving ahead, you can vote for a tax cut again in the next Congress. Instead, you put into operation a system whereby we will have to ask everybody to vote for a tax increase, and a big one, in every Congress; and if we cannot pass it, the Government will be so deep in debt that inflation will be beyond anybody's belief. If you think you have seen inflation up to now, you have no idea what you are in for.

Why do we want to do a useless thing? We would be far better off to look at our problems, analyze the problems of history, see what inflation has done to them, and vote for a tax cut we can afford, and distribute the money to those we think are the most deserving and have the best case for it, in the wisdom of Congress.

Otherwise, we will be doing something politicians are famous for doing—talking it out, making all these big promises, telling people all we have done for them, when we really have not done much of anything, and then winding up with the whole thing going down the drain, the bill failing to pass. Then we can go home and report to the people that, far from giving them the tax cut they were promised, they do not get the tax cut; they do not even get an adjustment for the social security tax. In fact, they get a tax increase, because the tax cut we passed last year is due to expire.

So, after we got through with all this talk about the tax cut the people are going to get, they would get a tax increase.

If we cannot do any better than that, Mr. President, we should just turn in our uniforms and say, "Well, somebody else will have to run this show for us."

I can understand that some of our friends on the Republican side of the aisle might say, "Fine. We know the President won't sign it. The Secretary of the Treasury is adamant against it. We know this is the one thing more than anything else that the President and the Treasury are opposed to. But that is all right—we are going to persevere and push ahead with it. Damn the torpedoes—full speed ahead. Send it to the President's desk to get it vetoed."

I suppose 100 percent of the Republicans could do that and go home and say:

> Look what a bunch of fakers those Democrats were. They talked about that tax you are going to get. You did not get your tax cut. All you got was a tax increase out of all that conversation.

How can we Democrats explain that?

Mr. President, it would be a very foolhardy thing to do. I hope very much the Senate will not agree to the amendment, so in due course I will move to table the amendment after others have had a chance to respond to my thoughts about this subject.

Mr. HART. Mr. President, the Senator from Kansas will want to make remarks as well as the Senator from Massachusetts. But I shall take a couple minutes.

The distinguished floor manager says that the Members of Congress do not know when they are well off, and the presumption is because the treasury is getting all this money that it has not legislated for we should just pretend it is a free gift and not ask any questions.

The only problem with that is that money comes from somewhere, and it is coming from our constituents and the taxpayers' pockets.

The other argument unfortunately the Senator makes presumes that the American people are stupid. The American people are smart enough to know that inflation is driving them into higher tax brackets and we are picking their pockets without ever having passed the bill.

The arguments the Senator makes are terrific, if the American people do not know what is going on. They know what is going on. That is their money that comes in here.

We are supposed to think we are better off because we did not have to pass a bill to get that money and not ask any questions because our constituents are not going to know what is going on anyway and we can legislate a tax break for them every year and they think we are terrific. They are wising up. My constituents know that inflation is taking money out of their paychecks and that I have not had to vote for the money. If they did not know that the Senator's argument might prevail.

He has made the best argument for our amendment, a brilliant argument, and that is if this amendment passes Congress will have to pass a tax increase and then will have to tax the rich people. That is exactly right. And that is exactly what this Congress should do.

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

Mr. HART. I yield.

Mr. LONG. Mr. President, the Senator made a statement that the Treasury is well off. I am not impressed that the Treasury is well off. Maybe someone down there is well off because he is receiving a salary to work for the Government.

But here is the Treasury speaking for this Government with $800 billion in debt. They have an annual deficit of $40 billion. They have a balance of payments deficit the like of which one can hardly imagine. One would wonder why on Earth anyone would trust our paper money around the world with the kind of deficits we are running.

I do not gain the impression that the Treasury is well off. It seems to me the Treasury needs a little aid. How can we even justify the big deficit we are running now? How can we justify the tax cut we are voting now? The only way we can justify it is because we have some people out of work and we are trying to get the economy into full steam and in the hopes of doing that we are going to run a deficit at least for another year and next year we will try to cut the deficit in half.

Mr. BROOKE. Mr. President, I have listened very attentively to the distinguished floor manager of the bill and the statement that he made had been made by the President, that this indexing bill has really helped in the higher brackets and not those in the lower brackets.

Mr. President, the narrower the brackets and the personal exemption is a larger percentage of income in the low brackets. So inflation pushes people up the bracket ladder faster in the lower brackets and hurts them the most. That is an economic fact of life. We have to recognize that.

I think that is why the Advisory Council on Intergovernmental Relations made that point when they endorsed indexing as a constant.

Mr. President, I am very pleased and very proud to introduce this indexing amendment to the Revenue Act of 1978, together with my distinguished colleagues from Michigan, Senator GRIFFIN, from Kansas, Senator DOLE, from Colorado, Senator HART, and there are other cosponsors. As I understand Senator PAUL G. HATFIELD of Montana is a cosponsor as well.

Obviously this indexing amendment has bipartisan support. We believe it is a concept whose time has arrived.

There are people across this country who are suffering from what we call "taxflation." They may not understand the definition of it, but they certainly know what happens to their income. When their income increases they are pushed up into a higher tax bracket and when they get up into that higher tax bracket they pay higher tax, and when they pay that higher tax in many instances they end up with a net loss rather than a net gain.

So it is more beneficial to them not to have had the income increase, because of the fact that they have been the victim of bracket creeping or "taxflation."

Mr. President, this is money which I believe the Federal Government has never been entitled to. They are not entitled to that money. What the income taxpayer should be paying taxes on is constant real dollars not inflated dollars. And they are suffering in this country, because they are being compelled to pay more taxes than they should pay in the first instance and more taxes than the Government should take in the second instance.

So here it is, the Government has billions of dollars which it receives annually because of taxflation which they look upon as theirs and which they spend. So that in turn fuels the inflationary fire.

That is what we are talking about, very simply, Mr. President. That is why Senator GRIFFIN, Senator DOLE, Senator HART, Senator PAUL G. HATFIELD, and I and many others felt it necessary to file this amendment to this bill.

The amendment is similar to bills that each of us introduced at other times in Congress. I introduced one which was called the Anti-Inflation Tax Relief and Reform Act. Senator GRIFFIN introduced another one. I do not recall the name of it. But he introduced another one. Sen-

ator DOLE introduced one. I think Senator HART introduced one.

The purpose was to relieve the burden that tax-inflation has played on the American taxpayer. That is all it is, pure and simple.

As we all know, our system of progressive tax rates was designed for a world of stable prices, but regrettably, although we have made attempts in recent years to stabilize prices, I do not think there is anyone in this Chamber or elsewhere in this country who would deny that we just have not reached that goal.

And during this period it is the American taxpayer who has suffered immensely from our inflationary problems. For as these prices have risen, as I have said, there has been a steady "bracket creep," as inflated nominal incomes move our taxpayers into these higher tax brackets. As a result, even when a family's income merely grows with the cost of living, the average rise in tax rates consumes or exceeds any real economic gain.

An illustration of this situation was pointed out by Mr. John Pierson of the Wall Street Journal. According to Mr. Pierson, the typical family of four that made $15,000 last year paid taxes of $1,335 or 9.2 percent of its income. Yet, even if this family receives a 7 percent pay increase to match this year's anticipated inflation rate, its taxes will go up faster in 1978 to $1,613 or 10 percent of income. Moreover, according to Mr. Pierson's calculations, after 10 years of illusory increases, the family's tax rate would climb to 17.8 percent, almost double what it was a decade earlier.

Mr. President, I suggest, and we, Senator GRIFFIN, Senator DOLE, Senator HATFIELD, Senator HART, and others suggest, in this amendment that this type of tax hike which occurs without congressional approval was not intended by the original designers of the American tax system. They never foresaw this, they never intended it, and it was never designed with this in mind.

Therefore, we propose that our legislation provide that beginning with the taxable year 1980—and the distinguished Senator from Louisiana, I think, was concerned about what might happen next year—but we are talking about beginning with the year 1980, personal income rates, the personal exemption, and the zero bracket amount will be adjusted to reflect increases in the cost of living during the previous year as measured by the Consumer Price Index.

In addition, the amendment would authorize a study to be conducted by the Council on Wage and Price Stability, and the study would focus on the impact of the indexation system on the GNP, employment, Federal revenues, inflation, savings, and other pertinent economic and social issues.

The Council would be required to report its findings to Congress by January 1, 1983. This would allow sufficient time for thorough, exhaustive review.

Finally, and this is very important, Mr. President, the amendment contains a 4-year sunset provision. Under our amendment, indexing would remain in effect through the taxable year ending December 31, 1983, whereupon Congress will have the opportunity to determine whether indexing should be continued. So you are not locked in. In short, if it does not work you can change it.

We have even provided that in this amendment.

I am aware that one of the arguments advanced against indexing is that inflation brings in more Government revenues and indexing will reduce these revenues. However, I would point out that indexing will assure that the Government will receive only those revenues to which the Government is entitled, and that is the way it ought to be. It also has been stated that indexing will remove the impetus for legislative review for the inequities that exist in our tax system.

To this I would respond that indexing is, and must be, an adjunct to legislative review.

Indeed, advocacy of this indexing plan should not in any way be interpreted as favoring an abdication of the continuing congressional responsibility to comprehensively reform our tax structure. I think every member of the Senate Committee on Finance ought to understand that, that our intent has never been to in any way abdicate that responsibility. On the contrary, I strongly believe that we in Congress have the same responsibility to review the distribution of the tax burden, and in cases where an inequity in the system is disclosed we should act expeditiously to correct these situations.

Mr. President, in conclusion I would like to point out that it is not uncommon for us to use an indexing mechanism to account for inflationary increases. In fact, it has been used by various segments of the economy. In other countries where indexing has been used, it has proved to be successful. So we already have precedents upon which we can draw.

Mr. President, this indexing amendment would simply provide a more equitable tax system for, in my opinion, an equitable taxing system takes real income, not nominal income, into account, and this is precisely what our indexing amendment will do.

Certainly this is something our taxpayers deserve and, therefore, Mr. President, I urge my colleagues to expeditiously pass this important and necessary legislation.

In the waning hours of this 95th Congress I hope we will not go home and leave the American taxpayer in the unenviable and intolerable position that he and she find themselves in today with this taxflation over which he or she has absolutely no control whatsoever. The only way, the only sensible, the only efficient and effective way, to combat it is by adopting an indexing provision, which is the amendment Senators GRIFFIN, DOLE, HART, HATFIELD, and I, and others have presented to this Senate.

I urge its adoption. I thank the Chair.

Mr. GOLDWATER. Mr. President, I am very happy and proud to be a cosponsor of this amendment, and I do not intend to speak at great length on it.

I firmly believe that unless we adopt indexing—and I personally would make it a permanent part of tax legislation, not just until 1984—but while I hate to say this, I do not think any person in this room will see the end of inflation in this country, because we are not attacking it, and we are not going at it, in the right way.

Now, indexing might provide a way of telling the Federal Government, "Look, you are only going to get so much money, and that is all you are going to get, so start cutting your sails out of the cloth that we are providing you and not cut it out of illusory income that comes from nonindexed taxes, taxes that go up every year, because people's income goes up."

Of course, I have gotten used on this floor to hearing time after time that indexing is only going to help the affluent, will help the rich.

I argue against that vehemently. I think I am right in saying that less than 1½ percent of our people can be classed as millionaires, and when you want to get into the less affluent and say those making over $100,000, I do not know the figures, but I have a feeling that the total we are talking about would be less than 4 percent.

Now, who is always taking the big load of taxation in this country? It has been the so-called little man, on up to the middle class. Some 80 or 85 percent of all the money raised in this country comes from those people. In fact, if we desired to, and passed a law and took all the income from people making over $100,000 a year, I think it would run the Government about 2 weeks, maybe a little less.

So, Mr. President, I think this is a very worthwhile amendment, contrary to what the floor leader of the bill says. I have great respect for him, and generally vote 100 percent with him on these tax measures and am guided by his judgment; but on this particular issue I think he is wrong, and I think the time has come for us to provide the American people with some kind of idea of what taxes are going to be like.

I happen to come from the State that has the second largest number of retired people living in it per capita, and I watch what those people are going through. People who retired on very nice incomes, either provided by themselves plus social security, or provided by company plans or union plans, people who came out there to retire 5 or 10 or 15 years ago, are now frankly not able to cut it—only because they do not know what taxes are going to be, and they have no additional income. Every year their taxes creep up and creep up and creep up. In fact, in my State we are attempting to put indexing in our Tax Code, not just for income, but for land and everything else that is sold.

I do not think it is fair for the Federal Government, which is totally responsible for the inflation in this country—totally responsible—to say to the American wage earner, "Look, you are going to have to pay for this inflation." Some day we are going to have a Congress with enough guts to start saying "No" to the ridiculous spending that goes on in this country. Some day some President, and I hope it is President Carter will have the courage to balance the

budget. In fact, I told him when I first saw him after the inauguration:

If you can balance the budget in 4 years, I am going to ask the Democratic Party to let me renominate you at their convention.

I felt rather safe. I still feel safe. But I hope he does well in his efforts, and really puts some muscle into it, and not just talk.

We are never going to solve our inflation problem, Mr. President, if we just keep on doing what we are doing today; and we are not going to solve inflation unless we provide a small modicum of relief for the small income taxpayer.

I am very happy to be a cosponsor of this amendment, and I urge my fellow Senators to vote for it.

Mr. DOLE. Mr. President, the No. 1 problem in our tax system is inflation. During periods of inflation, the net effect of the current tax system is to push low- and middle-income taxpayers into higher tax brackets, without any corresponding increase in the real purchasing power.

DOUBLE DIGIT INFLATION

Mr. President, it is certainly no secret that we are in the midst of an inflation crisis. During the last two quarters, the inflation rate in this country has been at double-digit levels. Yesterday, the administration announced that the wholesale price index increased at nine-tenths of 1 percent, which means we can expect more inflation in future months. The inflation rate for 1978 will be substantially higher than that over the previous year. In fact, the inflation rate under the Carter administration is almost twice as high as it was in the last year of the Ford administration.

TAXFLATION

Mr. President, taxflation is a cruel tax. As an individual earns more money to keep up with the continuing rise in the cost of living, he is pushed into a higher tax bracket. Although he receives an increase in his gross income, there is actually a decrease in his real purchasing power, because he must pay a greater percentage of his income in Federal taxes. Let me give you an example how tax inflation works. A taxpayer who earns $15,000 in 1978 will have to earn $16,200 in 1979 just to maintain his purchasing power with our 8 percent inflation rate. However, the taxpayer's real tax liability will be increased $260. An individual earning $30,000 will have to increase his income up to $32,400 just to stay even with inflation, but his tax bill will rise by $850. Taxflation is easy to understand and the Senator from Kansas believes it is easy to stop.

FINANCE COMMITTEE AMENDMENT

During the markup on the Revenue Act of 1978, I introduced a program to make periodic inflation adjustments in our tax system. My proposal, which is similar to the amendment pending today, called for an inflation adjustment for 2 years, effective 1980, to the personal exemption, the tax brackets, and the zero bracket amount Unfortunately, the proposal was narrowly defeated.

INDEXING

Mr. President, periodic inflation adjustments to the tax system—indexing—would help neutralize the tax impact of inflation by maintaining the effective rate of taxation for any given income level at the rate originally legislated. The bill reported by the Finance Committee does not adequately protect taxpayers against tax increases caused by inflation.

UNLEGISLATED TAX HIKE

Taxflation is an automatic, unlegislated and unsigned tax hike that cheats the American worker. Government revenues increase at a greater rate than inflation. A report by the Joint Committee on Taxation estimated that a 10-percent inflation rate will increase Government revenues by 12.5 percent. Other economists have said that the windfall profit for the Government is even greater. Dr. Emil Sunley of the Department of the Treasury has stated that tax receipts increase by 1½ times as fast as the rate of inflation. According to the Congressional Budget Office, tax inflation will take as much as $45 billion in 1983 from the American taxpayer. We must put a stop to the effects of tax inflation. I believe that the appropriate vehicle is to adopt the amendment providing for an annual tax inflation adjustment.

INDEXING IS FAIR

Mr. President, there is no tax reform that is more important to the American taxpayer than the tax equalization amendment. Periodic inflation adjustment is fair. It is equitable. It is simple. It is an idea whose time has come.

TREASURY OPPOSITION

The Treasury Department told the Finance Committee in a hearing last April on a proposal which I introduced, S. 2738, the Tax Indexation Act of 1978, that there is no need to index the tax system, because Congress periodically reduces taxes. However, I say that the need for indexing has been underlined by congressional action that has enacted yearly tax cuts for the last 3 years. Now, we have another major tax bill before us. It is true that Congress has tried to keep tax inflation under control by periodically cutting taxes. However, this system has not worked. Furthermore, periodic reduction is deceiving. When the economy becomes too distorted by inflation and taxes are rising too rapidly, Congress tells the American taxpayer that it is going to reduce his taxes.

Congress pats itself on the back and gives itself credit for this "enlightened action." However, the taxpayer is usually in no better condition than if the taxflation were eliminated. The Senator from Kansas does not believe that we are fooling the American taxpayer.

NOT A TAX CUT

Mr. President, the legislation before the Senate is not a tax cut. This legislation is before the Senate, because tax inflation has put an onerous burden on the American taxpayer. In effect, past tax reduction by Congress in the bill before the Senate is nothing more than a repeal of the automatic tax increases caused by inflation.

Mr. President, there are those in this Chamber who would say that indexing the tax system would be the acceptance of inflation. This, of course, is not true. The fact is, the Federal Government is the benefactor of tax inflation. It is the Federal Government that receives the yearly windfall bonus of tax inflation. Each year, the Government receives billions and billions of dollars in new revenue. I believe that this vested interest should stop.

Mr. President, indexing does not mean that Congress will not have the authority to reform the tax laws or to provide for real tax cuts. Indexing would mean that Congress would have to muster the political courage to raise the money to front new spending programs. Indexing would bring discipline back to the Federal budget process.

I might say this is an idea that has been around for some time. It is one Milton Friedman advanced some years ago. It was first called to my attention by our former distinguished colleague from New York, Senator Buckley. I remember going to a breakfast meeting with Milton Friedman and Senator Buckley some 4 years ago or more. One of the leaders in that effort was Senator Bob Taft, of Ohio. Senator Taft and Senator Buckley are no longer in this body, but other leaders have taken their places; and one who has been very active over the years has been the Senator from Michigan (Mr. GRIFFIN). It has been his efforts and initiative, and the efforts and initiative of the distinguished Senator from Massachusetts (Mr. BROOKE) and the distinguished Senator from Colorado (Mr. HART) that have kept the idea alive.

I think it is fair to predict—it may not happen today, but I would wager that within the next 4 or 5 or 6 years we are going to have indexing, because as more and more States adopt indexing, there will be more and more pressure upon the Members of Congress to do the same thing.

We have indexing in California, in a modified way. The distinguished Senator from Colorado has pointed out how well it is accepted in the State of Colorado. We have indexing in the State of Arizona. It is being considered by a number of other legislative leaders across the country.

It seems to me that one thing the American people understand—they know that taxes may be necessary, they know that inflation may not be desirable, but sometimes it happens, but it is pretty hard to understand or explain to the taxpayer why that taxpayer, man or woman or both, must pay taxes on inflation.

All we are suggesting is that starting in 1980—it does not affect this tax bill; we just suggest that starting in 1980, for a period of 4 years, we are going to index just three areas—not everything, but three areas.

For example, if we have a $1,000 personal exemption, as we will if this bill passes, as I assume it will, and the inflation rate should be 6 percent in 1979, then we would increase that personal exemption by $60. That is just how

simple it is. I repeat, there have been a lot of examples given about what happens to the wage earner if he is making $15,000, with 8 percent inflation. The wage earner gets the cost-of-living increase and his income goes up to $16,200, but that is not all that goes up. The taxes go up. He does not have any more earning power, no more real dollars, but he gets a tax increase of 19 percent, and pays $260 more in taxes.

It just seems to me that, when we look at taxflation costing the American people $9 billion a year—we heard the distinguished Senator from Massachusetts this morning, in discussing his good amendment, say that we were not addressing the problem of inflation; we have heard our distinguished chairman on the floor indicate that we are probably going to take care of inflation and the increased social security costs and that is about all; we have heard our distinguished colleague from Delaware, the author of the so-called Roth-Kemp bill, discuss inflation and the need for substantial tax reduction—but I would just suggest that though this particular approach to tax relief has not gotten as much publicity and probably has not been talked about as much as other proposals, it has a great deal of merit. The American people understand it. There are not any curves. We are just saying, "You don't pay taxes on inflation."

As the Senator from Massachusetts pointed out, those who suffer the most are those at the lower end of the economic scale, and they will benefit most from this proposal, the Griffin-Brooke-Hart proposal.

So it seems to me that we have a real opportunity. We have a bipartisan opportunity. This matter was raised in a Republican administration, the Ford administration. We lost. We could not get the support of those who now tell us they cannot support it in the Treasury Department. They have not changed. The same people there make the basic decisions. They were there in the last administration, and they are there in this administration.

But now we have some precedents for indexing, because of an outstanding Member of Congress on the House side, Representative BILL ARCHER, from Texas. He offered an indexing proposal on capital gains, and it was adopted by a vote of almost 2 to 1 in the House of Representatives. So I suggest that Members of Congress understand indexing, and the American taxpayer understands inflation. The American taxpayer does not understand why he has to pay taxes on inflation, and all we say is, "You just take out inflation and pay taxes on the rest."

For those who say that indexing takes away discipline, it does not take away the discipline. If we are going to have inflation, it is still going to inflate the cost of everything you buy. We just say that when it comes to paying taxes for the Federal Government, we are going to try to keep you whole.

It is going to be automatic. We are not going to have the ritual every year or every 2 years of Congress saying, "We are going to cut your taxes" when we do not cut your taxes. As I say, though we call this measure before us a tax cut bill, it is not a tax cut bill. Anybody who might be under the impression that he is going to get a tax cut, if he will just add up the total of what inflation will cost, along with the increase in social security costs next year, when you add that up and compare it with what you are going to get in a tax cut next year, if you break even you are lucky.

That is some help. I do not suggest that it is not a help, but it is not a generous act of the Government, because it is the taxpayers' money. But it will be of some help to the taxpayers.

I think it is time that we stopped the endless cycle of illusory tax cuts. We have had tax cuts for each of the past 3 years. If we could have a system of indexing, and we indexed the personal exemption, we indexed the tax brackets to take care of that so-called bracket creep, and we indexed the zero bracket, it seems to me that if we would do that we would address the problem.

Let me suggest that this is not a narrow position. It is not an effort to offend the President of the United States. It is not an effort to offend anyone on this floor. It has a number of cosponsors, including the Senator from Arizona who has just spoken (Mr. GOLDWATER), the Senator from Idaho (Mr. MCCLURE), the Senator from California (Mr. HAYAKAWA), the Senator from Missouri (Mr. DANFORTH), the Senator from New Mexico (Mr. SCHMITT), the Senator from Alaska (Mr. STEVENS), the Senator from Texas (Mr. TOWER), the Senator from New Mexico (Mr. DOMENICI), the Senator from Minnesota (Mr. ANDERSON), the Senator from New Hampshire (Mr. MCINTYRE), the Senator from Indiana (Mr. LUGAR), the Senator from Illinois (Mr. PERCY), the Senator from Delaware (Mr. ROTH), the Senator from Arizona (Mr. DECONCINI), and the Senator from Oregon (Mr. MARK O. HATFIELD).

That is a rather broad-based group of Senators of different philosophical approaches, from different parts of the country, all concerned about taxes, all concerned about the proper way to address the problem.

Let me also add this, and then I will yield to the distinguished Senator from Wyoming.

Indexing is not a new concept. Sixty-three percent of all Federal expenditures are indexed, as are some of the current provisions in the Tax Code. Indexing takes place in the food stamp program, social security program, SSI, civil service salaries. Current pension tax laws are indexed, as is the excise tax on the use of oil and natural gas, currently pending in the tax conference, which may or may not become law. Indexing does help keep down Federal expenditures.

Canada, since adopting tax indexing, has experienced a decline in the real rate of Government spending. In Canada real growth in Federal spending declined from 15.9 percent in 1974 to 2.7 percent in 1976.

Indexing is simple. It does not complicate the tax laws. It applies to all taxpayers. All taxpayers suffer from inflation, so all taxpayers benefit from indexing.

Mr. President, I ask unanimous consent to have printed in the RECORD a very eloquent statement delivered by former Senator Jim Buckley in which he outlines his long-held views on indexing. The statement he made at the time is somewhat broader than the proposal before us, but I believe it indicates another former outstanding Member of this body who was known for his conscience of conservatism, a conscience regarding responsible spending, concern about a way to approach taxes and tax cuts with proper adjustments. I believe the statement might be of interest. I ask unanimous consent that it be made part of the RECORD following my remarks.

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

(See exhibit 1.)

Mr. DOLE. As far as this Senator is concerned all the points have been covered. I would just reemphasize that indexing is not complicated. It would help the taxpayers cope with some of the problems of inflation. It would eliminate the annual ritual in the Congress. It would end the congressional vested interest in the yearly taxflation windfall profits. Somebody has to pay when we have inflation and it is always the taxpayer. It is not the Government. The Government is the beneficiary. The chief beneficiary of inflation is the U.S. Government. I would hope that we would indicate by our vote that there is broad support for this concept.

EXHIBIT 1

STATEMENT OF JAMES L. BUCKLEY

I am pleased to have this opportunity to address the Finance Committee on a subject which I advocated for a great many years. While in the Senate, I was actively involved in the efforts to introduce indexing into the tax system. I continue to be committed to that objective.

S. 2738, the Tax Indexation Act of 1978, is similar to legislation that I proposed in the 94th Congress. Senator Dole has expanded the concept and made some improvements which I would like to discuss later. What needs to be addressed first is the major inequities that tax inflation introduces into the tax system.

During periods of inflation, the net effect of the current system of taxation is to push low and middle-income taxpayers into higher tax brackets without any corresponding increase in their real purchasing power. Tying the Federal income tax to the cost-of-living index would help neutralize the tax impact of inflation by maintaining the effective rate of taxation for any given level of income at the rate originally legislated.

An example will illustrate the point. Suppose an individual is earning $10,000 per year in 1978 and that inflation averaged 7 percent per year for the next ten years. If that taxpayer receives cost-of-living pay increases which keep pace with inflation, his income would be $20,000 in 1988. Yet, that $10,000 increase in income would not be able to buy any more than his lower salaries. In fact, his income would have less purchasing power because of the increase in Federal tax rates.

Assuming the taxpayer is the head of a typical family of four, he would be required to pay approximately 6 percent of his 1978 earnings in Federal income tax. How-

ever, because inflation would have the effect of lifting this same individual into ever higher tax brackets, by 1988 he would be required to pay over 13 percent of his earnings to the Federal Government. Thus, although his real income in terms of purchasing power remains unchanged, his increase in "money" income will cause him to pay more than twice as much in taxes leaving him poorer in 1988 despite a doubling of his dollar income.

Another point to make is that tax inflation has the most adverse effect on those in low and middle income tax brackets. An individual whose $100,000 is doubled to $200,000 in ten years would only have his taxes increased from 43 percent to 54 percent.

I believe that Congress should enact appropriate legislation to protect the individual taxpayer from the consequences of inflation. The Government is principally responsible for inflation, yet, it is the only one whose income is not hurt by that inflation.

Indexing the tax system would eliminate this windfall profit for the U.S. Treasury. If Congress wants to spend more money in real terms, it should have to make the decision to tax people at higher rates to pay for the increased spending. The tax benefits from inflation in the present system are a disincentive for Congress to control inflation.

The most indefensible inequity of inflation is that the Government profits from the inflation it causes. Tax indexation would require Congress to show the political courage to vote for tax increases if new Government revenues are desired. Hopefully, this situation would make Congress less eager to spend the public's money.

Some have argued that indexing is in itself inflationary. Indexing does not in any way affect inflation nor does it imply a willingness to "live with" inflation. To lower inflation, other monetary and fiscal remedies should be pursued. What indexing can do is to reduce the adverse consequences of inflation for individuals and business while other anti-inflation efforts are put into effect. If indexing acts as a curb on congressional spending habits, that is an extra bonus that can only help in the fight against inflation.

The need for indexation has been underlined by congressional action in enacting yearly tax reductions for the past three years. Passage of indexing legislation would bring stability to our tax system. Taxpayers, both individual and corporate, would not have to wait for Congress to act to offset the bigger bite of inflation. No more would American taxpayers be bounced up and down by the yearly game of tax increase/tax reduction.

The need for indexing is emphasized by the administration's tax program. President Carter's tax proposal has been billed as an offset for higher social security taxes and inflation. However, the President failed to tell us that his tax cut would only keep many Americans even and then only for a short time.

The Congressional Budget Office has predicted that tax inflation will swell the U.S. Treasury by $45 billion in 1983. The President's tax cut will barely make a dent in that figure. Even if adopted in its present form, the President's package would leave the vast majority of Americans paying more taxes than they are now.

S. 2738 is an excellent first step to take in adoption of indexing for our tax system. The bill indexes the most important sections of the tax code. Under S. 2738, the zero bracket amount, the tax rate tables, the personal exemption, the corporate surtax exemption, individual retirement accounts and Keogh contributions, the gift exclusion, the unified estate credit, the general tax credit, the earned income tax credit, the tax credit for the elderly, the child care tax credit, the limitations on investment tax credit, the minimum tax threshold, the current exempt amount for the exchange of personal residences by individuals over age 65 and the basis of assets would all be adjusted.

Many of these sections have substantial impacts on the most vulnerable group in our society to inflation, the elderly. Those on fixed incomes do not even receive the advantage of cost-of-living increases as do many workers. Therefore, indexing such items as the tax credit for the elderly and the exempt amount on home sales are particularly important in restoring tax equity for this group.

The bill provides for increases in allowable contributions to IRA's and Keogh plans. I believe that it is important for the government to provide the proper incentive for individuals to plan for their own retirements. If inflation continues at present rates for 20 years, the present limit on IRA contributions will certainly be inadequate to meet future living expenses.

The earned income credit was added to the code to eliminate any work disincentives that receiving welfare payments might have for low income individuals. Yet, as welfare payments have increased with inflation, the earned income credit has not kept pace. Indexing this credit will ensure that having a job will always be more profitable than taking welfare.

The Dole bill also acknowledges the importance of the business community in establishing a stable, non-inflationary growth in the economy. Corporate tax rates will not be indexed but several tax sections important to businesses will. Small business will benefit from indexing of the corporate surtax. The surtax amount has been raised in the past but never in an orderly fashion that reflects the changing needs of business.

The other business provisions that are indexed are the limitation on investment tax credit and the basis of assests. The investment tax credit is particularly important in promoting the capital expansion which is needed for future business expansion. This bill would also adjust the cost basis of an asset to reflect changes in the purchasing power of the dollar. Thus an individual would pay capital gains tax on the sale of a capital asset only on the real increase in value and not on a fictitious inflationary gain. Adjustments to basis for inflation would benefit individuals who dispose of their assets as well as businesses.

Indexing has worked well in other countries. Canada is an excellent example of the benefits derived from indexing the tax system. Yet, indexing has not been tried in a tax system and economy as complicated as ours. While I believe that indexing will be successful, Senator Dole has taken a cautious approach in his bill.

The inflation adjustment in S. 2738 would only be equal to two-thirds of the increase in the consumer price index. This percentage is large to curb tax inflation. Yet, by being less than the rate of inflation, no charges that indexing is itself inflationary can be made.

The indexing authority will automatically expire after 5 years. Thus, the Congress can review the success of the program. The increases will be made only once a year, which is no more often than recent major tax legislation.

The adjustments will be automatically put into effect each year. There is another safeguard built into the bill at this point. The President could, by executive order, stop the increase for any year. That decision would be subject to a one-House veto by Congress.

This legislation is an important reform for every taxpayer. No longer would Congress be able to hide tax increases behind the mask of inflation. Since tax indexing was first proposed, the principle has gained increasing support from business as well as academic quarters. In the two years since I left Congress, I have found evidences of that support from many different sources. I am certain that the country would benefit from indexation of taxes and the Dole bill, S. 2738, is a good place to start.

Mr. GRIFFIN. Will the Senator yield for a point right there, on the fact that it is the Government which profits, which is the beneficiary of inflation?

Mr. DOLE. I yield.

Mr. GRIFFIN. Going back to the point that when the cost of living goes up 10 percent, it would be understandable if the revenues going to the Federal Treasury went up 10 percent. If we adopt this indexing provision, that is how much the Federal Government revenues would increase. But at the present time under our present system, the revenues going to the Federal Treasury go up not 10 percent, but 16 percent. There is a bonus that the Federal Government gets by promoting inflation. It seems to me that if we want to do something about inflation we ought to take away the incentive that there is now built into the system to promote inflation.

Right now we have a built-in incentive to promote policies and programs that generate inflation, because the Federal Government can increase taxes that way without the Congress voting for it. It seems to me this is unconscionable.

Mr. BROOKE. And because they have moneys to which they are not entitled, they spend money which they really have not earned, or not justifiably earned.

Mr. DOLE. I will yield the floor. I believe the Senator from Wyoming was waiting.

Mr. DANFORTH. Will the Senator yield?

Mr. HANSEN. I yield.

Mr. DANFORTH. The only argument I have heard against inflation is that the reasons for holding down inflation would be lost.

I am sorry. The only arguments I have heard against inflation is that the argument is made if we index tax brackets somehow we will lose our will to fight inflation and, therefore, we will do a poor job of containing inflation.

I would just raise the point that it does not seem to me that we have been doing a very good job of fighting inflation without indexing. As a matter of fact, the points that the Senator from Michigan and the Senator from Kansas have made are exactly right, that when you are trying to finance a Federal deficit, the best thing that can be done insofar as the Government is concerned is to have a high rate of inflation which will put people into higher brackets.

As a matter of fact, the percent of the gross national product consumed by taxes has persistently gone up over the last two decades. What the administration is banking on, I am afraid, is the tax increase caused not by what Congress does but what inflation does, by putting people into higher and higher brackets. How does the President hope to have a balanced budget by 1981 or 1982 or 1983, whenever he wants his balanced budget? The way that he is going to accomplish it is very simple. He says he wants to hold down spending, but he also wants to increase revenues, to squeeze the deficit. The way he increases revenues very simply is to rely on infla-

tion putting people into higher and higher brackets.

So, really, there has been no disincentive to inflation. It has helped the Federal Government in that it has helped to raise revenues. It has helped to squeeze the deficit that we keep trying to increase by our spending policies. The people who will suffer as a result of inflation and tax policy are the taxpayers themselves.

I believe the Senator from Michigan is to be commended for his leadership on indexing. As a matter of fact, I remember last year when we had the tax bill the Senator from Michigan was the one then who raised the question on indexing.

During the discussions in the Senate Finance Committee on the question of indexing, the Senator from Kansas repeatedly made the point that the Senator from Michigan (Mr. GRIFFIN) was the one who had so consistently pressed this question.

I might just point out one other question. The Senator brought it up in connection with the tax bill in 1977. We did have a tax bill in 1977 and we also had one in 1976. We had one in 1974, in 1975, in 1972, and in 1969. In all those years we had tax bills. Why do we have to have tax bills every year? Why do we have to spend so much time fussing around with the Internal Revenue Code? Almost every year we have to have a tax bill which creates so much uncertainty for the economy. Why? Because we desperately have to adjust the tax rates in order to hold people at least a little bit harmless from the effect of inflation.

So the whole instability in the economy, the unpredictability of the Internal Revenue Code, the fact that we keep changing the rules on the American people, flows in part, because we always have to have a tax bill, because we do not have indexing. We always have to have these ad hoc adjustments that we make to the tax tables.

Mr. HANSEN. Mr. President, it does not make me particularly happy to have to take issue with so many colleagues whom I hold in such high regard, but I must say that I am not only disturbed but I am perplexed by what my friends are saying.

It seems strange indeed that anyone would consider advocating a course of action by the Government of the United States that flies in the face of facts as directly as this proposal does.

Ask people in Canada how indexing is working. Ask people in Brazil how it is working. Ask anybody with a savings account how it is working, or anyone who is living on a pension. They can all tell you that if you index, you are going to relieve the pain a little bit for those people whose major concern is simply taxes, but you do not solve the problem at all. It is like telling your son, who comes home every night drunk and wakes up the next morning with a great big headache, "We will get a bigger bottle of Alka Seltzer for you."

That is what we are doing when we are talking about indexing. We are not telling him what is wrong with his mode of life. We are not telling him that what he needs to do in order to get over those headaches in the morning is to stop drinking. Instead, we are saying, "Take one of these aspirin, or take some Alka Seltzer and you are going to feel better."

That is all indexing does. It does not solve any problems at all. I think my colleagues know that as well as I know it.

It is true that Congressman ARCHER introduced an indexing proposal for capital gains. I oppose it, and submit this: Wages and earned income, to which most Federal taxes apply, reflect the increases of inflation. It is certainly true that the Government takes a bigger bite. So long as we fail to recognize the good sense of the proposal that was made by the distinguished senior Senator from Virginia, to balance the budget, we are going to have this problem. He told us what we can do about it: Balance the budget and nothing else. All of the rhetoric is not going to get at the problem. The very first day we get a handle on the Federal budget and stop spending money that the Federal Government has not earned or has not collected, we shall start to address the problem.

As far as capital gains go, it is true that if a person has held an asset for 10 or 15 or 20 years and he sells it, he can very well wind up with less purchasing power than was represented by the cost of that article in the first place. I was one who felt that there should be and could very properly be some indexing of capital gains by means of a sliding scale on the gain, rather than by changing the cost basis of that property.

There is a better chance of wages keeping up to reflect inflation than there is for an asset that has been held for a long time. I simply wanted to make that point, Mr. President, in order that colleagues might understand that I oppose the indexing proposal offered by Congressman BILL ARCHER of Texas.

What we are proposing here sounds good. This is the day when everyone is concerned about taxes. If a politican can get up on the floor of the Senate and say, "I am going to bring you some relief" it sounds good. I grant that the typical American has little confidence that we are going to take the steps that we need to take, that we are, in essence, going to stop drinking every Saturday night and try, one weekend, to stay sober. As quickly as we do "stay sober," we shall have made a major breakthrough in getting at the root cause of our problem.

Some say that inflation helps the Government. Well, it really does not help the Government. We are dishonest with ourselves and we are dishonest with the people when we attempt to justify in any way a program that thrusts the burden of inflation ever more heavily upon our shoulders. I do not expect that, because of what I say or because of what Senator BYRD has said that we are going to come up with a balanced budget very quickly. But I do say that that is the only real relief.

I think that one of the reasons we ought not to take the step that is, this afternoon, being proposed is that it does tend to be the kind of palliative that will encourage some people to believe that inflation is not a real, serious problem. In fact, inflation is our worst problem. I hope that we will not index, because it could incline the people of this country who do not examine the problem in its entirety, to conclude that we have taken a step that really is going to do away with the bad effects of inflation.

Mr. HART. Will the Senator yield?

Mr. HANSEN. I am happy to yield.

Mr. HART. The Senator said this proposal is offered as a palliative, a remedy, to make the American taxpayers feel good; therefore, it is misdirected and will not cause people to face up to the real problems. Speaking only as one cosponsor and as a Senator who offered an indexing amendment very similar to this 6 months ago, that is not the issue. That is not the purpose, at least for this Senator's support for this measure. The issue is fairness.

The issue is not to make people feel good or to make our constituents happy. The issue is what is fair.

Inflation is stealing from people and putting their money in the Federal Treasury when Congress has not acted. I do not support this measure because my constituents are going to be happier or think that we have done something for them. I support this measure because it is fair.

The system we have now is unfair. That is the issue.

Mr. HANSEN. No, if the Senator from Colorado will let me take the floor again, let me say this: When somebody is stealing from you, the issue is not what is fair, the issue is what is honest. Honesty is what is at stake here, it is not fairness.

If the Senator wants to say, let us be fair and see that every pickpocket gets his fair share and that you do not have more taken out of your pockets than anybody else, I admit there could be validity to the argument of my friend from Colorado. But that is not the issue. The issue is what is right and what is honest. This proposal really does not have any merit when it is tested on that score.

Mr. HART. If the Senator will yield, does the Senator suggest that this amendment is dishonest and the present system is honest? I do not agree with the Senator from Wyoming. It is dishonest to take money from the American people under a nonlegislated system, which is what this is. It is dishonest.

Mr. HANSEN. What is dishonest, I say to my friend, is for Congress to spend, time after time, more money than has been collected in taxes. That is the basic dishonesty. That is the burden that falls heavily upon everyone and particularly upon those who have tried to do the right thing by their families, tried to be self-supporting, tried to be self-sufficient, to assume the responsibilities that good citizens ought to assume. That is where the basic fault lies.

I say that simply to increase the aspirin dosage is not going to strike at that at all. In the short run, it may be contended that people will suffer less who, for one reason or another are going to be suffering from inflation. But basically, we are taking the wrong approach. We need to see not how fair we can be, but, rather, how honest we can be.

I do not accuse the Senator from Col-

orado of dishonesty and he took me out of context if he infers that I did.

All I am saying is that this approach is not an honest approach to the problem. An honest approach to the problem is to stop inflation. It is not to try to ease up the burden a little bit.

The people who are not relieved, are those who cannot be indexed by the Federal Government through this tax gimmick and who are going to suffer no matter what we do in the way of taxes. There are a lot of those out there. There are a lot of those who would be getting into enterprises and expanding jobs and increasing productivity and fighting inflation, who would do so if we were honest with our tax laws and addressed the problem for what it really is.

Mr. HART. If the Senator will yield, I will just repeat what I said in my remarks and I think the cosponsors have said.

No one who offered this amendment suggested that this is being offered as a solution to the problem of inflation. It is not.

Mr. HANSEN. Then I do not think it should be considered.

Mr. HART. It is being considered because it is fair.

Mr. HANSEN. Let us go in the right direction instead of trying to fight a rear guard action to see why the bad guys are catching up with us. What we ought to be doing is facing the enemy of inflation immediately instead of running away from it, or letting it take a bite out.

Mr. HART. The Senator from Wyoming and the Senator from Colorado are missing in the night.

This is not offered as a solution to inflation. There are other solutions to that which some of us will debate, and offer——

Mr. HANSEN. There is one real solution, offered by the Senator from Virginia: balance the budget. It is very simple. It will work. It works every time it has ever been tried.

We do not have the courage, because what we like to do is get up on this floor and pontificate and tell people how we are taking care of them and yielding to their demands to spend money we do not have, to appropriate funds that have not been collected by this Government. That is basic to the problem of inflation. That is all I am saying.

Indexing provides a bigger bottle of aspirin. But what we ought to be doing is saying, "Let's drink a little bit less Saturday night."

Mr. HART. What the Senator says is, "Don't do what is fair, honest, and just" in this specific instance because we want to keep people paying under an unfair system as we go so they will take some other remedy the Senator believes in.

They are totally separate.

Mr. HANSEN. No; I say to my friend from Colorado, this is not fair, honest, and just because it only addresses the problem for part of the people.

Now, if we want to be fair, honest, and just; I say we have got to be that way with every last human being in the United States.

All the Senator is doing with this proposal is selecting out those persons who feel the crunch of inflation in a higher tax bracket. It does follow that after wages are raised, people get into a higher tax bracket. This is only part of the problem addressed by the amendment.

I say we ought to strike at inflation at its roots. That means balancing the budget. It means not starting out on a bunch of harebrained schemes and proposals, that try to do everything for everybody, try to relieve each individual citizen of his responsibilities; try to convince Americans to believe that our Government is wealthy enough and omniscient enough to provide his every need.

So I say, simply, that until we meet the test of being honest and fair and just with everybody, we ought not take the step that is proposed here this afternoon.

Mr. HART. That is a wonderful argument for saying, "Don't do anything until you do what I think ought to be done."

This is not offered as a solution to inflation. It is offered as a corrective to a fundamental injustice and inequity in the tax laws. We can do that.

Mr. HANSEN. The problem is not the fundamental inequity in the tax laws. The problem is the fundamental inequity of inflation. It is spending money we do not have. If we get our spending house in order, we do not need to worry about tax rates, for they will take care of themselves.

Indexing attempts only to relieve a bit of the burden that inflation places upon individuals when they get into a higher tax bracket and have to pay out more in taxes.

It is not a sound approach.

Mr. HART. Nothing in the world prevents this body from correcting that injustice, and attempting to do what the Senator from Wyoming is suggesting, which I do not particularly agree with, but that is another debate.

Mr. DOLE addressed the Chair.

The PRESIDING OFFICER. The Senator from Kansas.

Mr. DOLE. Mr. President, this is not a new idea. It is one that was suggested by the distinguished Senator from Michigan in 1977, and at that time the distinguished Senator from Wyoming voted for it. This amendment is not any different than the amendment in 1977.

I do not suggest that the amendment is the answer to inflation. It is trying to ease inflation as far as the taxpayers are concerned. It is not the answer to a balanced budget. As far as the Senator from Kansas knows, we are not considering an amendment to balance the budget. I would vote for such an amendment if it were offered on the tax bill.

Many of us concerned who have offered the amendment, do not believe that it is a tax scheme. We think it has a great deal of merit.

If it is fair to index capital gains, why not earned income.

Mr. HANSEN. Will the Senator yield on that point?

Mr. DOLE. Yes.

Mr. HANSEN. I can give one very basic, fundamental, good reason for not doing that.

I think the Senator from Kansas would agree with me that wages have gone up, not regularly and uniformly, but sporadically. They have been rising in response to increased inflation and a higher cost of living. Adjustments have been made, if not annually, then every 3 or 4 years.

But I read what George Meany said and I am sure the Senator from Kansas and the Senator from Michigan have, and wages do go up. But, with one basic difference.

I am surprised my friend from Kansas would get himself into this kind of situation, to give me the opportunity to explain the difference, because I think he knows very well.

If we have a farm in Kansas that we bought 35 years ago, the cost of that farm has not risen every year, or every 3 or 4 years.

That is the basic difference, and I ask my friend from Kansas if he does not agree with me.

Mr. DOLE. I agree. However I can show just about the same effect on wages.

Mr. HANSEN. Does my friend from Kansas suggest that he can show me instances where wages have not risen, the cost of a farm purchased 25 years ago has not risen, is that the point he is trying to make?

Mr. DOLE. Let me give an example. I am not trying to make any particular point, but only suggesting that the amendment has as much merit as other amendments. Just as much merit as it had last year when the Senator from Wyoming voted for it.

Mr. HANSEN. The Senator from Wyoming is older and smarter now.

Mr. DOLE. Let us take a family of four, earning $15,000 in 1955, who increases their income to match inflation.

That same family, just to take care of inflation, would be earning $32,900 in 1976, or a 120-percent gain.

Yet, the same family has moved from the 22-percent tax bracket to the 36-percent tax bracket, and the family tax bill has increased from $1,540 in 1955 to $6,600 in 1976, for an increase of 330 percent. The fact is the family, because of Federal tax policy, in real terms, is 11 percent worse off in 1976 than it was in 1955.

I agree with the Senator from Wyoming that we should index capital gains. In fact, I offered the Archer amendment and got three votes for indexing capital gains. I made the effort to index capital gains. It is still part of the House bill, and I hope it ends up as part of the law. As the Senator knows, there is strong opposition in the administration to indexing.

I think it is fair to say that all we want to do with this amendment is to try to keep people whole on an automatic basis and not wait for the tax ritual every year in Congress.

Mr. HANSEN. I think the Senator from Kansas failed to make the point I thought he was seeking to establish.

My statement was that the cost of a farm or any property that would be subject to a capital gains tax has not changed.

The instances that the Senator from Kansas cited, so far as wages are con-

cerned, I think reflected that fact that despite the increase in wages, they have not kept up with inflation. I could not agree with him more. He is absolutely right. That is why the fundamental problem is inflation, not anything else.

I would be happy to forget all about capital gains tax changes insofar as indexing is concerned, and I would be happy to forget all the other concerns we have, if the Government, from this day forward, would come up with a balanced budget. We would bring inflation under control almost overnight.

I agree with the Senator from Kansas that wages have not kept even, but that is precisely the point why we should not be supplying larger doses of aspirin to Americans, encouraging them to believe we have solved the problem. We have not solved any problem. All we have done is to make them think their heads are not as big Monday morning as they really are.

Mr. DOLE. I do not think we have any basic difference. I believe it is a question of whether the matter before us has as much merit as some other matter we probably are not going to have in this bill; namely, the indexing of capital gains.

Mr. President, according to Bureau of Labor Statistics, the real after-tax pay of the average worker has not increased in 13 years, not since 1965. It is clear we are not going to solve the inflation problem with this amendment. However, if inflation goes down, indexing goes down. If inflation goes down to 1 percent or below, then the amendment costs nothing. That is fine. We are all for it. In the meantime, why make the taxpayer pay taxes on inflation?

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

Mr. DOLE. I yield.

Mr. GRIFFIN. I say, with all due respect to my friend from Wyoming, for whom I have great and genuine affection, that I do not think he quite understands what we are trying to do here. He talks about the wage earner perhaps not getting wage increases that are adequate to keep pace with the cost of living. Suppose he does get a pay raise that keeps pace with the cost of living. The point is that he has gained nothing in purchasing power. He has more dollars that are worth less; and in terms of purchasing power, he is in exactly the same position as before.

The question is, should he then pay a higher rate of taxation on his pay? The point of this amendment is that he should not. The Senator from Wyoming seems to go along with the indexing of capital gains.

Mr. HANSEN. No. As a matter of fact, I voted against it.

Mr. GRIFFIN. On capital assets. I thought the Senator went along with that.

Mr. HANSEN. No.

Mr. GRIFFIN. I am sorry. I thought he was for the amendment offered by Representative ARCHER.

If you have a house and you paid $10,000 for it and then so many years later you sold it for $15,000, if in the interim the cost of living has gone up 50 percent, obviously you have not really gained anything, and you should not have to pay a capital gain; and under the Archer provision, you would not have to.

If you are a wage earner and you get a pay raise, I would say it depends on how much of a pay raise you get as to whether your taxes should go up. If your pay raise is only enough to keep even with the cost of living, you should not have to pay a higher percentage. Obviously, if your pay raise takes you above the increase in the cost of living, you should go into a higher tax bracket and you should pay a higher percentage of your income.

It seems to me that the same principle that applies to capital gains surely should apply in the case of wages, just to be equitable, just to be fair. I am not against the application of it for capital gains, but it seems to me that it has a higher priority when it comes to wages for the average wage earner.

Mr. DOLE. The point is indexing applies to all taxpayers, and indexing is not complicated.

In fact, Mr. Roper came before the Finance Committee in June. We talked about indexing, and we talked about fairness, the very thing which the Senator from Colorado pointed out. People are concerned about fairness. The Roper poll released to the Finance Committee showed that 60 percent of the American people preferred indexing to the periodic tax cuts now legislated by Congress.

That is all we suggest. That does not mean that we will not make other changes in the tax laws. It just says that, so far as tax brackets are concerned and exemptions are concerned and standard deductions are concerned, they are going to be indexed.

It seems to me that that would be a pretty easy product to sell. We probably will not be successful and may lose by a vote or two today—perhaps one or two more than that. I doubt that, if we consider this on its merits. I do not think the chairman is prepared to accept the amendment. Is that the right assumption?

Mr. TALMADGE. Yes.

Mr. DOLE. I have already given the merits three times.

Mr. President, I think the Senator from Illinois wanted to make a brief statement, and then we will be ready to vote.

Mr. PERCY. Mr. President, I have listened to the colloquy in the last few minutes with great interest.

I do not know of any principle of taxation that people understand better than the problems that we are trying to solve through indexation.

While going up in an elevator in a downtown building in Chicago last week, a young man said:

> I'm a secretary. After a year, I have gotten a hundred-dollar-a-month increase in wages. I was overjoyed when I received it, until I realized that 32 percent of that is going to be taxed away.

In estimating a top-level salary for a secretary, I think she probably has another shock coming to her when she realizes that social security and the State income tax will also come out, and she probably is going to pay 40 percent of that wage increase in taxation.

I do not think anyone would say that is fair; or that she should not feel disillusioned as a result of waiting a long time for a wage increase that now is going to be taxed away at a level she thought never should apply to a person in her income level.

The bill that the Senate Finance Committee has reported is a far better bill than I envisioned we would have when I listened to the proposals of the administration and when I reviewed the House bill. It has gone a long way toward recognizing some of the very fundamental problems we have in this country with respect to capital formation. We must create incentives for that capital to be invested in capital equipment which will be backing up jobs. This eventually will allow us to produce goods at a noninflationary level and absorb wage increases, and not pass those wage increases on in the form of price increases. But it is going to take a while to do that.

I believe we can go further than we have in the committee bill in the area of recognizing the problem that this young secretary faces and everyone else faces who receives a wage increase.

As has been said on the floor already, for every 10-percent increase in inflation, the United States Government reaps a 16.5-percent increase in revenues. There is something wrong with that.

The bill reported by the Financing Committee provides only a 1-year partial protection against inflation. It provides additional rate reductions intended to offset the impact of higher social security taxes next year only.

Unless tax rates are adjusted each year to reflect increases in inflation, the effect of any tax cut bill passed this year will be eroded quickly.

I think that is what the amendment offered by the distinguished Senator from Michigan (Mr. GRIFFIN) is designed to do, to arrest tax increases created by inflation. As we all know confidence in the economy depends upon the ability of people to foresee they are going to have a certain amount of income in the future.

This is why I opposed the $50 rebate. People getting a $50 bill back are not going to go out and buy an automobile made in Detroit, but if they see that they are going to get steady recognition over a period of years of the inflationary impact on their wage increases they will anticipate purchases that can be made with confidence.

That will stimulate the economy and will get the economy moving again in the right direction.

So for that reason I fully support this amendment and I am proud to be a cosponsor of it.

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

Mr. TALMADGE. I yield to the distinguished Senator from Michigan.

UP AMENDMENT NO. 1999

Mr. GRIFFIN. Mr. President, I send to the desk a technical modification of the amendment just to make it conform

with the fact that we are not dealing with the original House bill.

The PRESIDING OFFICER. The Senator has a right to modify his amendment.

The modification is as follows:

On page 1, line 1, of amendment No. 3686, strike "18" and insert "159".

On page 1, line 1, strike "26" and insert "15".

On page 1, line 2, strike "Sec. 105" and insert "Sec. 108".

Mr. TALMADGE. Mr. President, I shall shortly move to table the amendment, and I ask that attachés of the Senate to tell Senators in adjoining rooms and cloakrooms to come to the Chamber so we can have a sufficient number of Senators to order a table motion.

I think everything on this issue has been said that can be said.

I particularly commend the distinguished senior Senator from Wyoming for the argument that I heard him make, and also the distinguished chairman of the Committee on Finance.

If this amendment is agreed to it will reduce revenues of the Federal Government by $1.4 billion for every percentage point of inflation.

Assume the inflation rate this year will be 8 percent. That would mean we would have $10 billion shortfall in revenue next year.

What is the problem with inflation now? It is primarily a shortfall in Federal revenue, running the Government with printing press money, so that to my mind would be fighting inflation in a similar manner as trying to fight a fire with gasoline. It would do just exactly the opposite of what it is intended to do.

Mr. President, I move to table the amendment, and I ask for the yeas and nays.

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

The yeas and nays were ordered.

The PRESIDING OFFICER (PAUL G. HATFIELD). The question is on agreeing to the motion to lay on the table the amendment as modified, of the Senator from Michigan.

On this question, 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 Colorado (Mr. HASKELL), the Senator from Kentucky (Mr. HUDDLESTON), the Senator from West Virginia (Mr. RANDOLPH), and the Senator from Alabama (Mr. SPARKMAN) are necessarily absent.

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

Mr. STEVENS. I announce that the Senator from New Mexico (Mr. DOMENICI), the Senator from Utah (Mr. HATCH), and the Senator from Texas (Mr. TOWER) are necessarily absent.

I further announce that, if present and voting, the Senator from TEXAS (Mr. TOWER) would vote "nay."

The PRESIDING OFFICER. Are there any Senators in the Chamber who have not voted?

The result was announced—yeas 53, nays 37, as follows:

[Rollcall Vote No. 455 Leg.]

YEAS—53

Bayh	Glenn	Morgan
Bellmon	Gravel	Moynihan
Bentsen	Hansen	Muskie
Bumpers	Hathaway	Nelson
Burdick	Hodges	Nunn
Byrd, Harry F., Jr.	Hollings	Pell
	Humphrey	Ribicoff
Byrd, Robert C.	Inouye	Riegle
Cannon	Javits	Sarbanes
Case	Johnston	Sasser
Chafee	Kennedy	Stafford
Chiles	Leahy	Stennis
Clark	Long	Stevenson
Cranston	Mathias	Stone
Culver	Matsunaga	Talmadge
Eagleton	McGovern	Weicker
Eastland	Melcher	Williams
Ford	Metzenbaum	Zorinsky

NAYS—37

Baker	Hart	McIntyre
Bartlett	Hatfield, Mark O.	Packwood
Biden		Pearson
Brooke	Hatfield, Paul G.	Percy
Church		Proxmire
Curtis	Hayakawa	Roth
Danforth	Heinz	Schmitt
DeConcini	Helms	Schweiker
Dole	Jackson	Scott
Durkin	Laxalt	Stevens
Garn	Lugar	Thurmond
Goldwater	Magnuson	Wallop
Griffin	McClure	Young

NOT VOTING—10

Abourezk	Haskell	Sparkman
Allen	Hatch	Tower
Anderson	Huddleston	
Domenici	Randolph	

So the motion to lay on the table was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the motion was agreed to.

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

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Maine.

AMENDMENT NO. 3849

Mr. MUSKIE. Mr. President, I call up my amendment No. 3849, and ask that it be reported.

The PRESIDING OFFICER. The amendment will be stated.

The second assistant legislative clerk read as follows:

The Senator from Maine (Mr. MUSKIE) proposes an amendment numbered 3849.

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

Mr. CURTIS. Mr. President, reserving the right to object, is the amendment printed?

Mr. MUSKIE. Yes, the amendment is printed.

The PRESIDING OFFICER. The amendment is printed, but it has not arrived.

Mr. CURTIS. Mr. President, I object.

The PRESIDING OFFICER. Objection is heard.

Mr. BUMPERS. Mr. President, I do not want to intervene, but if the Senator from Maine is withdrawing his amendment——

AMENDMENT NO. 3678 (AS MODIFIED)

(Purpose: To add an additional title)

Mr. MUSKIE. Mr. President, I ask that my amendment No. 3678 be called up. It is identical to the other one. This one was offered to the Import-Export Bank Act legislation. I simply modified the opening lines to conform to this measure. It has been available for several days, so I call up that one.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Maine (Mr. MUSKIE) on behalf of himself, Mr. ROTH and Mr. GLENN, proposes an amendment numbered 3678, as modified.

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

Mr. CURTIS. I object.

The PRESIDING OFFICER. Objection is heard. The clerk will read the amendment.

CLOTURE MOTION

Mr. ROBERT C. BYRD. Mr. President, I send to the desk a cloture motion.

The PRESIDING OFFICER. The Senator has that right.

A cloture motion having been presented under rule XXII, the Chair, without objection, directs the clerk to read the motion.

The legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of Rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on H.R. 13511, a bill to amend the Internal Revenue Code of 1954 to reduce income taxes, and for other purposes.

Robert C. Byrd, Gaylord Nelson, Muriel Humphrey, Harrison A. Williams, Jr., Spark M. Matsunaga, Donald W. Riegle, Jr., Alan Cranston, Russell B. Long, Abraham Ribicoff, Robert Dole, Howard H. Baker, Jr., Jacob K. Javits, Clifford P. Hansen, Howard M. Metzenbaum, Barry Goldwater, Carl T. Curtis, James B. Pearson, Lowell P. Weicker, Jr., Richard S. Schweiker, and Paul Laxalt.

The PRESIDING OFFICER. The clerk will resume the reading of the amendment.

The legislative clerk read as follows:

"TITLE VII—SUNSET ACT OF 1978

"PART A—GENERAL PROVISIONS

"SEC. 701. This title may be cited as the 'Sunset Act of 1978'.

"SEC. 702. The purposes of this title are—

"(1) to require that most Government programs be reauthorized according to a schedule at least once every ten years;

"(2) to limit the length of time for which Government programs can be authorized to ten years;

"(3) to bar the expenditure of funds for Government programs which have not been provided for by a law enacted during the ten-year sunset reauthorization cycle; and

"(4) to encourage the reexamination of selected Government programs each Congress.

"SEC. 703. (a) For purposes of this title:

"(1) The term 'budget authority' has the meaning given to it by section 3(2) of the Congressional Budget Act of 1974.

"(2) The term 'permanent budget authority' means budget authority provided for an indefinite period of time or an unspecified number of fiscal years which does not require recurring action by the Congress, but does not include budget authority provided for a specified fiscal year which is available

for obligation or expenditure in one or more succeeding fiscal years.

"(3) The term 'Comptroller General' means the Comptroller General of the United States.

"(4) The term 'agency' means an executive agency as defined in section 105 of title 5, United States Code, except that such term includes the United States Postal Service and the Postal Rate Commission but does not include the General Accounting Office.

"(5) The term 'sunset reauthorization cycle' means the period of five Congresses beginning with the Ninety-seventh Congress and with each sixth Congress following the Ninety-seventh Congress.

"(b) For purposes of this title, each program (including any program exempted by provisions of law from inclusion in the Budget of the United States) shall be assigned to the functional and subfunctional categories to which it is assigned in the Budget of the United States Government, fiscal year 1979. Each committee of the Senate or the House of Representatives which reports any bill or resolution which authorizes the enactment of new budget authority for a program not included in the fiscal year 1979 budget shall include, in the committee report accompanying such bill or resolution (and, where appropriate, the conferees shall include in their joint statement on such bill or resolution), a statement as to the functional and subfunctional category to which such program is to be assigned.

"(c) For purposes of parts B, C, D, and F of this title, the reauthorization date applicable to a program is the date specified for such program under section 711(b).

"PART B—REAUTHORIZATIONS OF GOVERNMENT PROGRAMS

"SEC. 711. (a) Each Government program (except those listed in section 713) shall be reauthorized at least once during each sunset reauthorization cycle during the Congress in which the reauthorization date applicable to such program (pursuant to subsection (b)) occurs.

"(b) The first reauthorization date applicable to a Government program is the date specified in the following table, and each subsequent reauthorization date applicable to a program is the date ten years following the preceding reauthorization date:

Programs included within subfunctional category and first reauthorization date:

254 Space, Science, Applications and Technology.
272 Energy Conservation.
301 Water Resources.
352 Agriculture and Research Services.
371 Mortgage Credit and Thrift Insurance.
376 Other Advancement and Regulation of Commerce.
501 Elementary, Secondary, and Vocational Education.
601 General Retirement and Disability Insurance.
602 Federal Employment Retirement and Disability.
703 Hospital and Medical Care for Veterans.
806 Other General Government.
851 General Revenue Sharing, September 30, 1982.
051 Department of Defense—Military.
053 Atomic Energy Defense Activities.
154 Foreign Information and Exchange Act.
251 General Science and Basic Research.
306 Other Natural Resources.
351 Farm Income Stabilization.
401 Ground Transportation.
502 Higher Education.
553 Education and Training of Health Care Work Force.
701 Income Security for Veterans.
752 Federal Litigative and Judicial Activities.
802 Executive Director and Management.

Programs included within subfunctional category and first reauthorization date.

803 Central Fiscal Operations, September 30, 1984.
054 Defense Related Activities.
152 Military Assistance.
155 International Financial Programs.
253 Space Flight.
255 Supporting Space Activities.
274 Emergency Energy Preparedness.
302 Conservation and Land Management.
304 Pollution Control and Abatement.
407 Other Transportation.
504 Training and Employment.
506 Social Services.
554 Consumer and Occupational Health and Safety.
704 Veterans Housing.
751 Federal Law Enforcement Activities.
801 Legislative Functions.
852 Other General Purpose Fiscal Assistance, September 30, 1986.
153 Conduct of Foreign Affairs.
271 Energy Supply.
303 Recreational Resources.
402 Air Transpotation.
505 Other Labor Services.
551 Health Care Services.
604 Public Assistance and Other Income Supplements.
702 Veterans Education, Training, and Rehabilitation.
753 Federal Correctional Activities.
805 Central Personnel Management.
902 Other Interest, September 30, 1988.
151 Foreign Economic and Financial Assistance.
276 Energy Information, Policy, and Regulation.
372 Postal Service.
403 Water Transportation.
451 Community Development.
452 Area and Regional Development.
453 Disaster Relief and Insurance.
503 Research and General Education Aids.
552 Health Research.
603 Unemployment compensation.
705 Other Veterans Benefits and Services.
754 Criminal Justice Assistance.
804 General Property and Record Management.
901 Interest on the Public Debt, September 30, 1990.

"(c)(1) It shall not be in order in either the Senate or the House of Representatives to consider any bill or resolution, or amendment thereto, which authorizes the enactment of new budget authority for a program for a period of more than ten fiscal years, for an indefinite period, or (except during the Congress in which such next reauthorization date occurs) for any fiscal year beginning after the next reauthorization date applicable to such program. Notwithstanding the preceding sentence, it shall be in order to consider a bill or resolution for the purpose of considering an amendment to the bill or resolution which would make the authorization period conform to the requirement of such sentence.

"(2)(A) It shall not be in order in either the Senate or the House of Representatives to consider any bill or resolution, or amendment thereto, which provides new budget authority for a program for any fiscal year beginning after the first (or any subsequent) reauthorization date applicable to such program under paragraph (b), unless the provision of such new budget authority is specifically authorized by a law which constitutes a required authorization for such program.

"(B) For the purposes of this subsection, the term 'required authorization' means a law authorizing the enactment of new budget authority for a program, which complies with the provisions of paragraph (1) and is enacted during the Congress in which the reauthorization date for such program occurs, or during a Congress after such date and prior to the Congress in which the next reauthorization date for such program occurs.

"(3) No new budget authority may be obligated or expended for a program for a fiscal year beginning after the last fiscal year in a sunset reauthorization cycle unless a provision of law providing for the continuation of such program has been enacted during such sunset reauthorization cycle.

"(4) Any provision of law providing permanent budget authority for a program shall cease to be effective (for the purpose of providing such budget authority) on the first reauthorization date applicable to such program.

"(5) It shall not be in order in either the Senate or the House of Representatives to consider any bill or resolution, or amendment thereto, which provides new budget authority for a program unless the bill or resolution, or amendment thereto, (or the report which accompanies such bill or resolution) includes a specific reference to the provision of law which constitutes a required authorization for such program. Notwithstanding the preceding sentence, it shall be in order to consider a bill or resolution for the purpose of considering an amendment which provides such reference to the appropriate provision of law.

"SEC. 712. (a) It shall not be in order in either the Senate or the House of Representatives to consider any bill or resolution, or amendment thereto, which has been reported by a committee and which authorizes the enactment of new budget authority for a program for a fiscal year beginning after the next reauthorization date applicable to such program, unless a reauthorization review (to the extent the committee or committees having jurisdiction deem appropriate) of such program has been completed during the Congress in which the reauthorization date for such program occurs (or during a subsequent Congress when such required authorization is considered), and the report accompanying such bill or resolution includes a separate section entitled 'Reauthorization Review' recommending, based on such review, whether the program or the laws affecting such program should be continued without change, continued with modifications, or terminated, and also includes, to the extent the committee or committees having jurisdiction deem appropriate, each of the following matters:

"(1) Information and analysis on the organization, operation, costs, results, accomplishments, and effectiveness of the program.

"(2) An identification of any other programs having similar objectives, and a justification of the need for the proposed program in comparison with those other programs which may be potentially conflicting or duplicative.

"(3) An identification of the objectives intended for the program, and the problems or needs which the program is intended to address, including an analysis of the performance expected to be achieved, based on the bill or resolution as reported.

"(4) A comparison of the amount of new budget authority which was authorized for the program in each of the previous four fiscal years and the amount of new budget authority provided in each such year.

"(b) It shall not be in order in either the Senate or the House of Representatives to consider a bill or resolution, or amendment thereto, which authorizes the enactment of new budget authority for a program for which there previously has been no such authorization unless the report accompanying such bill or resolution sets forth, to the extent that the committee or committees having jurisdiction deem appropriate, the information specified in subsection (a) (2) and (3).

"(c) Each committee having legislative ju-

risdiction over a program included in section 713 shall conduct a review of such program of the type described in subsection (a) at least once during each sunset reauthorization cycle, during the Congress in which the reauthorization date applicable to such program occurs, and shall submit to the Senate or the House of Representatives, as the case may be, a report containing its recommendations and other information of the type described in subsection (a) to the extent that the committee deems appropriate. It shall not be in order to consider a bill or resolution reported by the committee having legislative jurisdiction which authorizes the enactment of new budget authority for such program unless such report accompanies such bill or resolution, or has been submitted during the Congress in which the reauthorization date for such program occurred as provided in section 711(b), whichever first occurs.

"SEC. 713. (a) Section 711(c) shall not apply to the following:

"(1) Programs included within functional category 900 (Interest).

"(2) Any Federal programs or activities to enforce civil rights guaranteed by the Constitution of the United States or to enforce antidiscrimination laws of the United States, including but not limited to the investigation of violations of civil rights, civil or criminal litigation or the implementation or enforcement of judgments resulting from such litigation, and administrative activities in support of the foregoing.

"(3) Programs which are related to the administration of the Federal judiciary and which are classified in the fiscal year 1979 budget under subfunctional category 752 (Federal litigative and judicial activities).

"(4) Payments of refunds of internal revenue collections as provided in title I of the Supplemental Treasury and Post Office Departments Appropriation Act of 1949 (62 Stat. 561), but not to include refunds to persons in excess of their tax payments.

"(5) Programs included in the fiscal year 1979 budget in subfunctional categories 701 (Income security for veterans). 702 (Veterans education, training, and rehabilitation), 704 (Veterans housing), and programs for providing health care which are included in such budget in subfunctional category 703 (Hospital and medical care for veterans).

"(6) The following social security and Federal employee retirement programs:

"(A) Programs funded through trust funds which are included with subfunctional categories 551 (Health care services), 601 (General retirement and disability insurance), or 602 (Federal employee retirement and disability).

"(B) Retirement pay and retired pay of military personnel on the retired lists of the Army, Navy, Marine Corps, and the Air Force, including the Reserve components thereof, retainer pay for personnel of the Inactive Fleet Reserve; and payments under section 4 of Public Law 92-425 and chapter 73 of title 10, United States Code (survivor's benefits), classified in the fiscal year 1979 budget in subfunctional category 051 (Department of Defense—military).

"(C) Retirement pay and medical benefits for retired commissioned officers of the Coast Guard, the Public Health Service Commissioned Corps,, and the National Oceanic and Atmospheric Commissioned Corps and their survivors and dependents, classified in the fiscal year 1979 budget in subfunctional category 551 (Health care services) or in subfunctional category 306 (Other natural resources).

"(D) Retired pay of military personnel of the Coast Guard and Coast Guard Reserve, members of the former Lighthouse Service, and for annuities payable to beneficiaries of retired military personnel under the retired serviceman's family protection plan (10 U.S.C. 1431-1446) and survivor benefit plan (10 U.S.C. 1447-1455), classified in the fiscal year 1979 budget in subfunctional category 403 (Water transportation).

"(E) Payments to the Central Intelligence Agency Retirement and Disability Fund, classified in the fiscal year 1979 budget in subfunctional category 054 (Defense-related activities).

"(F) Payments to the Civil Service Retirement and Disability Fund for financing unfunded liabilities, classified in the fiscal year 1979 budget in subfunctional category 805 (Central personnel management).

"(G) Payments to the Foreign Service Retirement and Disability Fund, classified in the fiscal year 1979 budget in subfunctional category 153 (Conduct of foreign affairs).

"(H) Payments to the Federal Old-Age and Survivors Insurance and the Federal Disability Insurance Trust Funds, classified in the fiscal year 1979 budget in various subfunctional categories.

"(I) Administration of the retirement and disability programs set forth in this section.

"(b) If a question is raised in the Senate with respect to the application of any paragraph of subsection (a) to any bill, resolution, or amendment, or to any provision of law, the Presiding Officer shall submit the question to the Senate for decision.

"SEC. 714. (a) It is the sense of the Congress that all programs should be considered and reauthorized in program categories which constitute major areas of legislative policy. Such authorizations should be for sufficient periods of time to enhance oversight and the review and evaluation of Government programs.

"(b) The reauthorization schedule contained in section 711(b) may be changed by concurrent resolution of the two Houses of the Congress (except that changes in the schedule affecting permanent appropriations may be made only by law).

"(c) All messages, petitions, memorials, concurrent resolutions, and bills proposing changes in section 711(b) and all bills proposing changes in section 713(a), shall be referred first to the committee with legislative jurisdiction over any program affected by the proposal and sequentially to the Committee on Rules in the House of Representatives or to the Committee on Rules and Administration in the Senate as provided for in subsection (d).

"(d) Except as provided in subsection (f), the Committee on Rules in the House of Representatives or the Committee on Rules and Administration in the Senate shall report any concurrent resolution or bill referred to it under the provisions of subsection (c) and which previously has been reported favorably by a committee of legislative jurisdiction within thirty days (not counting any day on which the Senate or the House of Representatives is not in session), beginning with the day following the day on which such resolution or bill is so referred, with its recommendations.

"(e) The recommendations of the Committee on Rules or the Committee on Rules and Administration pursuant to subsection (d) or (f) shall include a statement on each of the following matters:

"(1) The effect the proposed change would have on the sunset reauthorization schedule.

"(2) The effect the proposed change would have on the jurisdictional and reauthorization responsibilities and workloads of the authorizing committees of Congress.

"(3) Any suggested grouping of similar programs which would further the goals of this title to make more effective comparisons between programs having like objective.

"(f) Any concurrent resolution or bill proposing a change in section 711(b) or 713(a) which has been reported by a committee before June 1, 1980, shall be referred in the House to the Committee on Rules and in the Senate to the Committee on Rules and Administration. Such committee shall report an omnibus concurrent resolution or bill containing its recommendations regarding the proposed changes by July 1, 1980, and consideration of such bill or resolution shall be highly privileged in the House of Representatives and privileged in the Senate. The provisions of subsections (c) and (d) of section 1017 of the Impoundment Control Act of 1974, insofar as they relate to consideration of rescission bills, shall apply to the consideration of concurrent resolutions and bills proposing changes reported pursuant to this subsection, amendments thereto, motions and appeals with respect thereto, and conference reports thereon.

"(g) It shall not be in order in the Senate or the House of Representatives to consider a bill or resolution reported pursuant to subsection (b), (c), (d), or (f) which proposes a reauthorization date for a program beyond the final reauthorization date of the sunset reauthorization cycle then in progress. Notwithstanding the preceding sentence, it shall be in order to consider a bill or resolution for the purpose of considering an amendment which meets the requirements of this subsection.

"PART C—PROGRAM INVENTORY

"SEC. 721. (a) The Comptroller General and the Director of the Congressional Budget Office, in cooperation with the Director of the Congressional Research Service, shall prepare an inventory of Federal programs (hereafter in this part referred to as the 'program inventory').

"(b) The purpose of the program inventory is to advise and assist the Congress in carrying out the requirements of parts B and D. Such inventory shall not in any way bind the committees of the Senate or the House of Representatives with respect to their responsibilities under such parts and shall not infringe on the legislative and oversight responsibilities of such committees. The Comptroller General shall compile and maintain the inventory, and the Director of the Congressional Budget Office shall provide budgetary information for inclusion in the inventory.

"(c) Not later than July 1, 1979, the Comptroller General, after consultation with the Director of the Congressional Budget Office and the Director of the Congressional Research Service, shall submit the program inventory to the Senate and House of Representatives.

"(d) In the report submitted under this section, the Comptroller General, after consultation and in cooperation with and consideration of the views and recommendations of the Director of the Congressional Budget Office, shall group programs into program areas appropriate for the exercise of the review and reexamination requirements of this title. Such groupings shall identify program areas in a manner which classifies each program in only one functional and only one subfunctional category and which is consistent with the structure of national needs, agency missions, and basic programs developed pursuant to section 201(i) of the Budget and Accounting Act, 1921.

"(e) The program inventory shall set forth for each program each of the following matters:

"(1) The specific provision(s) of law authorizing the program.

"(2) The Committees of the Senate and the House of Representatives which have legislative or oversight jurisdiction over the program.

"(3) A brief statement of the purpose or purposes to be achieved by the program.

"(4) The committees which have jurisdiction over legislation providing new budget authority for the program, including the ap-

propriate subcommittees of the Committees on Appropriations of the Senate and the House of Representatives.

"(5) The agency and, if applicable, the subdivision thereof responsible for administering the program.

"(6) The grants-in-aid, if any, provided by such program to State and local governments.

"(7) The next reauthorization date for the program.

"(8) A unique identification number which links the program and functional category structure.

"(9) The year in which the program was originally established and, where applicable, the year in which the program expires.

"(10) Where applicable, the year in which new budget authority for the program was last authorized and the year in which current authorizations of new budget authority expire.

"(f) The inventory shall contain a separate tabular listing of programs which are not required to be reauthorized pursuant to section 711(c).

"(g) The report also shall set forth for each program whether the new budget authority provided for such programs is—

"(1) authorized for a definite period of time;

"(2) authorized in a specific dollar amount but without limit of time;

"(3) authorized without limit of time or dollar amounts;

"(4) not specifically authorized; or

"(5) permanently provided,

as determined by the Director of the Congressional Budget Office.

"(h) For each program or group of programs, the program inventory also shall include information prepared by the Director of the Congressional Budget Office indicating each of the following matters:

"(1) The amounts of new budget authority authorized and provided for the program for each of the preceding four fiscal years and, where applicable, the four succeeding fiscal years.

"(2) The functional and subfunctional category in which the program is presently classified and was classified under the fiscal year 1979 budget.

"(3) The identification code and title of the appropriation account in which budget authority is provided for the program.

"SEC. 722. The General Accounting Office, the Congressional Research Service, and the Congressional Budget Office shall permit the mutual exchange of available information in their possession which would aid in the compilation of the program inventory.

"SEC. 723. The Office of Management and Budget, and the executive agencies and the subdivisions thereof shall, to the extent necessary and possible, provide the General Accounting Office with assistance requested by the Comptroller General in the compilation of the program inventory.

"SEC. 724. Each committee of the Senate and the House of Representatives, the Congressional Budget Office, and the Congressional Research Service shall review the program inventory as submitted under section 721 and not later than October 1, 1979, each shall advise the Comptroller General of any revisions in the composition or identification of programs and groups of programs which it recommends. After full consideration of the reports of all such committees and officials, the Comptroller General in consultation with the committees of the Senate and the House of Representatives shall report, not later than December 31, 1979, a revised program inventory to the Senate and the House of Representatives.

"SEC. 725. (a) The Comptroller General, after the close of each session of the Congress, shall revise the program inventory and report the revisions to the Senate and the House of Representatives.

"(b) After the close of each session of the Congress, the Director of the Congressional Budget Office shall prepare a report, for inclusion in the revised inventory, with respect to each program included in the program inventory and each program established by law during such session, which includes the amount of the new budget authority authorized and the amount of new budget authority provided for the current fiscal year and each of the five succeeding fiscal years. If new budget authority is not authorized or provided or is authorized or provided for an indefinite amount for any of such five succeeding fiscal years with respect to any program, the Director shall make projections of the amounts of such new budget authority necessary to be authorized or provided for any such fiscal year to maintain a current level of services.

"(c) Not later than one year after the first or any subsequent reauthorization date, the Director of the Congressional Budget Office, in consultation with the Comptroller General and the Director of the Congressional Research Service, shall compile a list of the provisions of law related to all programs subject to such reauthorization date for which new budget authority was not authorized. The Director of the Congressional Budget Office shall include such a list in the report required by subsection (b). The committees with legislative jurisdiction over the affected programs shall study the affected provisions and make any recommendations they deem to be appropriate with regard to such provisions to the Senate and the House of Representatives.

"SEC. 726. The Comptroller General and the Director of the Congressional Budget Office shall include in their respective reports to the Congress pursuant to sections 202(f) and 702(e) of the Congressional Budget Act of 1974 an assessment of the adequacy of the functional and subfunctional categories contained in section 211(b) for grouping programs of like missions or objectives.

"SEC. 727. (a) The Director of the Congressional Budget Office shall tabulate and issue an annual report on the progress of congressional action on bills and resolutions reported by a committee of either House or passed by either House which authorize the enactment of new budget authority for programs.

"(b) The report shall include an up-to-date tabulation for the fiscal year beginning October 1 and the succeeding four fiscal years of the amounts of budget authority (1) authorized by law or proposed to be authorized in any bill or resolution reported by any committee of the Senate or the House of Representatives, or (2) if budget authority is not authorized or proposed to be authorized for any of the five fiscal years, the amounts necessary to maintain a current level of services for programs in the inventory.

"(c) The Director of the Congressional Budget Office shall issue periodic reports on the programs and the provisions of laws which are scheduled for reauthorization in each Congress pursuant to the reauthorization schedule in section 711(b). In these reports, the Director shall identify each provision of law which authorizes the enactment of new budget authority for programs scheduled for reauthorization and the title of the appropriation bill, or part thereof, which would provide new budget authority pursuant to each authorization.

"PART D—PROGRAM REEXAMINATION

"SEC. 731. (a) Each committee of the Senate and the House of Representatives periodically shall provide through the procedures established in section 732, for the conduct of a comprehensive reexamination of selected programs or groups of programs over which it has jurisdiction.

"(b) In selecting programs and groups of programs for reexamination, each committee shall consider each of the following matters:

"(1) The extent to which substantial time has passed since the program or group of programs has been in effect.

"(2) The extent to which a program or group of programs appears to require significant change.

"(3) The resources of the committee with a view toward undertaking reexaminations across a broad range of programs.

"(4) The desirability of examining related programs concurrently.

"SEC. 232. (a)(1) The funding resolution first reported by each committee of the Senate in 1980, and thereafter for the first session of each Congress, shall include a section setting forth the committee's plan for reexamination of programs under this part. Such plan shall include each of the following matters:

"(A) The programs to be reexamined and the reasons for their selection.

"(B) The scheduled completion date for each program reexamination: *Provided*, That such date shall not be later than the end of the Congress preceding the Congress in which the reauthorization date applicable to a program occurs as provided in section 711(b), unless the committee explains in a statement in the report accompanying its proposed funding resolution the reasons for a later completion date, except that reports on programs scheduled for reauthorization during the 97th Congress and selected for reexamination in a committee's plan adopted in 1980 may be submitted at any time until February 15, 1982.

"(C) The estimated cost for each reexamination.

"(2) The report accompanying the funding resolution reported by each committee in 1980 and thereafter for the first session of each Congress, shall with respect to each reexamination include in its plan both the following matters:

"(A) A description of the components of the reexamination.

"(B) A statement of whether the reexamination is to be conducted (i) by the committee, or (ii) at the request and under the direction of or under contract with, the committee, as the case may be, by one or more instrumentalities of the legislative branch, one or more instrumentalities of the executive branch, or one or more nongovernmental organizations, or (iii) by a combination of the foregoing.

"(3) It shall not be in order to consider a funding resolution reported by a committee of the Senate in 1980, and thereafter for the first session of a Congress unless—

"(A) such resolution includes a section containing the information described in paragraph (1) and the report accompanying such resolution contains the information described in paragraph (2); and

"(B) the report required by subsection (c) with respect to each program reexamination scheduled for completion during the preceding Congress by such committee has been submitted for printing.

"(4) It shall not be in order to consider an amendment to the section of a funding resolution described in paragraph (1) reported by a committee for a year—

"(A) if such amendment would require reexamination of a program which has been reexamined by such committee under this section during any of the five preceding years;

"(B) if such amendment would cause such section not to contain the information described in paragraph (1) with respect to each program to be reexamined by such committee; or

"(C) if notice in writing of intention to propose such amendment has not been given to such committee and the Committee on Rules and Administration in the Senate not later than January 20 of the calendar year in which such year begins or the first day

of the session of the Congress in which such year begins, whichever is later. The notice required by this subparagraph shall include the substance of the amendment intended to be proposed and, if such amendment would add one or more programs to be reexamined, shall include the information described in paragraphs (1) and (2) with respect to each such program. This subparagraph shall not apply to amendments proposed by such committee or by the Committee on Rules and Administration, as the case may be.

"(b) In order to achieve coordination of program reexamination each committee shall, in preparing each reexamination plan required by subsection (a), consult with appropriate committees of the Senate or appropriate committees of the House of Representatives, as the case may be, and shall inform itself of related activities of and support or assistance that may be provided by (1) the General Accounting Office, the Congressional Budget Office, the Congressional Research Service, and the Office of Technology Assessment, and (2) appropriate instrumentalities in the executive and judicial branches.

"(c) Each committee shall prepare and have printed a report with respect to each reexamination completed under this part. Each such report shall be delivered to the Secretary of the Senate not later than the date specified in the resolution and printed as a Senate document. To the extent permitted by law or regulation, such number of additional copies as the committee may order shall be printed for the use of the committee. If two or more committees have legislative jurisdiction over the same program or portions of the same program, such committees may reexamine such program jointly and submit a joint report with respect to such reexamination.

"(d) The report pursuant to subsection (c) shall set forth the findings, recommendations, and justfications with respect to the program, and shall include to the extent the committee deems appropirate, each of the following matters:

"(1) An identification of the objectives intended for the program and the problem it was intended to address.

"(2) An identification of any other program having potentially conflicting or duplicative objectives.

"(3) A statement of the number and types of beneficiaries or persons served by the program.

"(4) An assessment of the effectiveness of the program and the degrees to which the original objectives of the program or group of programs have been achieved.

"(5) An assessment of the relative merits of alternative methods which could be considered to achieve the purposes of the program.

"(6) Information on the regulatory, privacy, and paperwork impacts of the program.

"(e) A report submitted pursuant to this section shall be deemed to satisfy the reauthorization review requirements of part B.

"SEC. 733. Each department or agency of the executive branch which is responsible for the administration of a program selected for reexamination pursuant to this part, shall, not later than six months before the completion date specified for reexamination reports pursuant to section 732(a)(1)(B), submit to the Office of Management and Budget and to the appropriate committee(s) of the Senate and the House of Representatives a report of its findings, recommendations, and justifications with respect to each of the matters set forth in section 732(d), and the Office of Management and Budget shall submit to such committee(s) such comments as it deems appropriate.

"SEC. 734. For the purposes of this part:

"(1) The term 'funding resolution' means, with respect to each committee of the Senate, the first authorization resolution reported by such committee for a year under section 133(g) of the Legislative Reorganization Act of 1946, or any action taken in lieu of such funding resolution, which in any event shall occur not later than May 15.

"(2) An amendment to a funding resolution includes a resolution of the Senate which amends such funding resolution.

"PART E—CITIZENS' COMMISSION ON THE ORGANIZATION AND OPERATION OF GOVERNMENT

"SEC. 741. There is authorized to be established, as an independent instrumentality of the United States, the Citizens' Commission on the Organization and Operation of Government (hereinafter in this part referred to as the 'Commission').

"SEC. 742. It is hereby declared to be the policy of the Congress to promote economy, efficiency, and improved service in the transaction of the public business in the departments, agencies, independent instrumentalities, and other authorities of the executive branch of the Government.

"SEC. 743. (a) The Commission shall conduct a nonpartisan study and investigation of the organization and methods of operation of all departments, agencies, independent instrumentalities, and authorities of the executive branch of the Government in the following major policy areas:

"(1) International affairs and defense.
"Functions:
"050—National defense.
"150—International affairs.
"(2) Resources and technology:
"Functions:
"250—General Science, space, and technology.
"270—Energy.
"300—Natural resources and environment.
"(3) Economic development.
"Functions:
"350—Agriculture.
"370—Commerce and housing credit.
"400—Transportation.
"450—Community and regional development.
"(4) Human resources.
"Functions:
"500—Education, training, employment, and social services.
"550—Health.
"600—Income security.
"700—Veterans benefits and services.
"(5) General Government.
"Functions:
"750—Administration of justice.
"800—General Government.
"850—General purpose fiscal assistance.
"900—Interest.

The Commission shall make such recommendation as it determines necessary to—

"(1) increase the effectiveness of Government services, programs, and activities by changing the structure and execution of administrative responsibilities;

"(2) improve delivery of services through elimination of needless duplication or overlap, consolidation of similar services, programs, activities, and functions, and termination of such services, programs, and activities which have outlived their intended purposes;

"(3) maintain expenditures at levels consistent with the efficient performance of essential services, programs, activities, and functions;

"(4) simplify and eliminate overlaps in agency regulatory functions by review of the laws, regulations, and administrative reports and precedures; and

"(5) determine the appropriate responsibilities of each level of government, the manner and alternative means for each level of government to finance such responsibilities, the forms and extent of intergovernmental aid and assistance, and the organization required for proper balance and division of respective Federal, State, and local government roles, responsibilities, and authorities.

"(b) The Commission shall submit to the President, the Committee on Governmental Affairs of the Senate, and the Committee on Government Operations of the House of Representatives such interim reports as it deems advisable, and, not later than four years after the appointment and qualification of a majority of the Commission Members, a final report setting forth the Commission's findings and recommendations. The final report of the Commission shall include the comments of the appropriate congressional committees.

"(c) At least once every year for two years after the submission of the final report, the Comptroller General shall report to the Congress on the status of actions taken on the Commission's final report.

"SEC. 744. (a) The Commission shall be composed of fifteen members appointed from among individuals with extensive experience in or knowledge of United States Government as follows:

"(1) Five members appointed by the President by and with the advice and consent of the Senate.

"(2) Five members appointed by the President pro tempore of the Senate, three upon recommendation of the majority leader and two upon recommendation of the minority leader of the Senate.

"(3) Five members appointed by the Speaker of the House of Representatives, three upon recommendation of the majority leader and two upon recommendation of the minority leader of the House.

"(b)(1) Two members appointed under subsection (a)(1) shall be appointed to serve as Chairman and Vice Chairman (as provided in paragraph (2) of this subsection) and shall not engage in any other business, vocation, or employment. Such two members shall not be of the same political affiliation.

"(2) The member described in paragraph (1) who is, when appointed, not of the same political affiliation as the President shall serve as Chairman of the Commission and the other such member shall serve as Vice Chairman of the Commission.

"(c) Of the members appointed and qualified under subsection (a)(1) other than the members to whom subsection (b) applies, not more than two shall be of the same political affiliation.

"(d) Any vacancy in the Commission shall not affect its powers, but shall be filled in the same manner in which the original appointment was made.

"(e) Eight members of the Commission shall constitute a quorum, but the Commission may establish a lesser number to constitute a quorum for the purpose of holding hearings.

"SEC. 745. (a) The Commission or, on the authorization of the Commission, any subcommittee or member thereof, may, for the purpose of carrying out the provisions of this part, hold such hearings and sit and act at such times and places, administer such oaths, and require, by subpena or otherwise, the attendance and testimony of such witnesses and the production of such books, records, correspondence, memoranda, papers, and documents as the Commission or such subcommittee or member may deem advisable.

"(b)(1) Subpenas shall be issued under the signature of the Chairman or any member of the Commission designated by him and shall be served by any person designated by the Chairman or such member. Any member of the Commission may administer oaths or affirmation to witnesses appearing before the Commission.

"(2) The provisions of section 1821 of title 28, United States Code, shall apply to witnesses summoned to appear at any such hearing. The per diem and mileage allowances to witnesses summoned under authority conferred by this section shall be paid from funds appropriated to the Commission.

"(3) Any person who willfully neglects or refuses to appear, or refuses to qualify as a witness, or to testify, or to produce any evidence in obedience to any subpena duly issued under the authority of this section shall be fined not more than $500, or imprisoned for not more than six months, or both. Upon the certification by the Chairmen of the Commission of the facts concerning any such willful disobedience by any person to the United States attorney for any judicial district in which such person resides or is found, such attorney may proceed by information for the prosecution of such person for such offense.

"(c) The Commission is authorized to secure directly from the head of any department, agency, independent instrumentality, or other authority of the executive branch of the Government, available information which the Commission deems useful in the discharge of tis duties. All departments, agencies, independent instrumentalities, and other authorities of the executive branch of the Government shall cooperate with the Commission and furnish all information requested by the Commission in accordance with existing law.

"SEC. 746. (a) Subject to such rules and regulations as may be adopted by the Commission, the Commission shall have the power—

"(1) to appoint and fix the compensation of an Executive Director and such additional staff personnel as it deems necessary in accordance with the provisions of title 5, United States Code, governing appointments in the competitive service, and chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, and—

"(A) in the case of the Executive Director, at a rate equal to that of level V of the Executive Schedule under section 5316 of title 5, United States Code; and

"(B) in the case of not more than three additional staff members, at rates not in excess of the maximum rate for GS–18 of the General Schedule under section 5332 of such title; and

"(2) to procure temporary and intermittent services to the same extent as is authorized by section 3109 of title 5, United States Code.

"(b) The Commission is authorized to enter into agreements with the General Services Administration for procurement of necessary financial and administrative services, for which payment shall be made by reimbursement from funds of the Commission in such amounts as may be agreed upon by the Chairman and the Administrator of the General Services Administration.

"SEC. 747. (a) The Chairman of the Commission shall receive compensation at a rate equal to the rate prescribed for level III of the Executive Schedule under section 5314 of title 5, United States Code, and the Vice Chairman shall receive compensation at a rate equal to the rate prescribed for level IV of the Executive Schedule under section 5315 of title 5, United States Code.

"(b) All other members of the Commission who are not officers or employees of the Federal Government shall receive compensation at the rate of $200 for each day such member is engaged in the performance of the duties vested in the Commission.

"(c) Members of the Commission shall be reimbursed for travel, subsistence, and other necessary expenses incurred in connection with their activities as members of the Commission.

"SEC. 748. The Commission shall cease to exist ninety days after the submission of its final report.

"SEC. 749. There is authorized to be appropriated until September 30, 1983, without fiscal year limitations, the sum of $4,000,000 to carry out the provisions of this part.

"SEC. 750. The Commission shall be subject to the Federal Advisory Committee Act.

"PART F—MISCELLANEOUS

"SEC. 751. Section 206 of the Budget and Accounting Act, 1921 (31 U.S.C. 15), is amended by inserting immediately before the period a comma and 'or at the request of a committee of either House of Congress presented after the day on which the President transmits the budget to the Congress under section 201 of this Act for the fiscal year'.

"SEC. 752. Nothing in this Act shall require the public disclosure of matters that are specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive order, or which are otherwise specifically protected by law. In addition nothing in this Act shall require any committee of the Senate to disclose publicly information the disclosure of which is governed by Senate Resolution 400, Ninety-fourth Congress, or any other rule of the Senate.

"SEC. 753. (a) The provisions of this section and sections 711(a), 711(b), 711(c)(1), 711(c)(2), 711(c)(5), 712, 713(b), 714(a), 714(c), 714(d), 714(e), 714(f), 714(g), part D (except section 733) section 755, and section 756 of this title are enacted by the Congress.

"(1) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such they shall be considered as part of the rules of each House, respectively, or of that House to which they specifically apply, and such rules shall supersede other rules only to the extent that they are inconsistent therewith; and

"(2) with full recognition of the constitutional right of either House to change such rules (so far as relating to such House) at any time, in the same manner, and to the same extent as in the case of any other rule of such House.

"(b) In the Senate, paragraphs (2) and (5) of section 711(c) shall also be treated as amendments to rule XVI of the Standing Rules of the Senate.

"(c) Any provision of this Act which is enacted as an exercise of the rulemaking power of the Senate may be waived or suspended in the Senate by a majority vote of the Members voting.

"SEC. 754. (a) To assist in the review or reexamination of a program, the head of an agency which administers such program and the head of any other agency, when requested, shall provide to each committee of the Senate and the House of Representatives which has legislative jurisdiction over such program such studies, information, analyses, reports, and assistance as the committee may request.

"(b) Not later than six months prior to the first reauthorization date specified for a program in section 711(b) the head of the agency which administers such program or the head of any other agency, when requested by a committee of the Senate or House of Representatives, shall conduct a review of those regulations currently promulgated and in use by that agency which the committee specifically has requested be reviewed and submit a report to the Senate or the House of Representatives as the case may be, setting forth the regulations that agency intends to retain, eliminate, or modify if the program is reauthorized and stating the basis for its decision.

"(c) On or before October 1 of the year preceding the Congress in which occurs the reauthorization date for a program, the Comptroller General shall furnish to each committee of the Senate and the House of Representatives which has legislative jurisdiction over such program a listing of the prior audits and reviews of such program completed during the preceding six years.

"(d) Consistent with the discharge of the duties and functions imposed by law on them or their respective Offices or Service, the Comptroller General, the Director of the Congressional Budget Office, the Director of the Office of Technology Assessment, and the Director of the Congressional Research Service shall furnish to each committee of the Senate and the House of Representatives such information, analyses, and reports as the committee may request to assist it in conducting reviews or evaluations of programs.

"SEC. 755. (a) For purposes of this section and part B, the term 'required authorization waiver resolution' means only a resolution of the Senate or the House of Representatives—

"(1) which is introduced by the chairman of a committee pursuant to subsection (b);

"(2) which waives the provisions of subsection 711(c)(2) of this title for the purpose of allowing consideration of a bill or resolution providing new budget authority for a program for not more than one fiscal year in an amount which does not exceed the amount of new budget authority required to maintain the current level of services being provided during the fiscal year preceding the fiscal year for which new budget authority would be provided; and for purposes of this section, such current level of services shall be determined initially from the report submitted to the Congress pursuant to section 605 of the Congressional Budget Act of 1974 and shall be certified by the Director of the Congressional Budget Office; and

"(3) the matter after the resolving clause of which is as follows: 'That it is in order in the Senate (House of Representatives) to consider a bill (resolution) providing new budget authority for ——— for the fiscal year ——— in an amount not to exceed $———.' (with the first blank space being filled with identification of the program; the second blank space being filled with the fiscal year for which the new budget authority would be provided; and the third blank space being filled with the amount of new budget authority necessary to maintain the current level of services for such program for the fiscal year preceding the fiscal year for which such new budget authority would be provided).

"(b) The chairman of the committee of the Senate or the House of Representatives having legislative jurisdiction over a program or programs shall introduce a required authorization waiver resolution for such program or programs not later than the fifth day (not counting any day on which the Senate or the House, as the case may be, is not in session) following the occurrence of either of the following:

"(1) A bill authorizing the enactment of new budget authority for the same program or programs has been under consideration for not less than fifteen hours, including debate on the motion to consider the authorization bill, and no limitation of debate has been agreed to; or

"(2) A bill authorizing the enactment of new budget authority for the same program or programs has been vetoed by the President and such veto has been sustained by either the Senate or the House of Representatives.

"(c) A required authorization waiver resolution relating to a program introduced in, or received by, the Senate or the House of Representatives shall be referred to the appropriate committee of the Senate or the House of Representatives, as the case may be; except that any resolution introduced, received after September 1 of the second session of a Congress shall immediately be placed on the appropriate calendar. With respect to any resolution still pending before a committee on September 1, of the second session of a Congress, the committee shall

be automatically discharged and the resolution placed on the appropriate calendar.

"(d) The provisions of section 912 of title 5, United States Code, relating to the consideration of resolutions of disapproval of reorganization plans shall apply in the House of Representatives and the Senate to the consideration of required authorization waiver resolutions.

"SEC. 756. The Committees on Governmental Affairs and on Rules and Administration of the Senate and the Committees on Government Operations and on Rules of the House of Representatives shall review the operation of the procedures established by this title, and shall submit a report not later than December 31, 1986, and each five years thereafter, setting forth their findings and recommendations. Such reviews and reports may be conducted jointly.

"SEC. 757. There are hereby authorized to be appropriated through fiscal year 1990 such sums as may be necessary to carry out the review requirement of parts B and D and the requirements for the compilation of the inventory of Federal programs as set forth in part C.".

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. GLENN. Mr. President, I was seeking recognition before the Senator from Virginia.

Mr. HARRY F. BYRD, JR. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. HARRY F. BYRD, JR. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. MUSKIE addressed the Chair.

The PRESIDING OFFICER. The Senator from Maine.

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

Mr. HARRY F. BYRD, JR. I object.

Mr. MUSKIE. Mr. President, I move that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Objection is heard.

The clerk will continue to call the roll.

Mr. MUSKIE. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The roll-call is in progress. A parliamentary inquiry is not in order.

The second assistant legislative clerk resumed calling the roll.

Mr. ROBERT C. BYRD. Mr. President. I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. GLENN addressed the Chair.

The PRESIDING OFFICER. The Senator from Ohio.

AMENDMENT NO. 3681, AS MODIFIED

Mr. GLENN. Mr. President, I call up my amendment No. 3681, as modified, to amendment No. 3678, as modified, to H.R. 13511.

The PRESIDING OFFICER. The amendment will be stated.

The second assistant legislative clerk read as follows:

The Senator from Ohio (Mr. GLENN), for himself and others, proposes an amendment numbered 3681.

Mr. GLENN. 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, as modified, is as follows:

PART G—TAX EXPENDITURES

SEC. 761. (a) For purposes of this part—

(1) The term "tax expenditure provision" means any provision of Federal law which allows a special exclusion, exemption, or deduction in determining liability for any tax or which provides a special credit against any tax, a preferential rate of tax, or a deferral of tax liability.

(2) The term "Committee on Ways and Means" means the Committee on Ways and Means of the House of Representatives.

(3) The term "Committee on Finance" means the Committee on Finance of the Senate.

(4) The term "Joint Tax Committee" means the Joint Committee on Taxation of the Congress.

SEC. 762. (a) Not later than July 1, 1979, the Director of the Congressional Budget Office after consultation with the Joint Tax Committee shall prepare an inventory of tax expenditures provisions (hereafter in this part referred to as the "tax inventory") and submit a report thereon to the Committee on Ways and Means and the Committee on Finance. The report shall include for each tax expenditure provision—

(1) the statute, regulation, ruling, or other circumstance which is the basis for the tax expenditure provision;

(2) an identification of the tax against which the tax expenditure provision allows a special exclusion, exemption, or deduction in determining liability or provides a special credit, a preferential rate of tax, or a deferral of tax liability;

(3) a brief statement of the purpose or purposes to be achieved by the tax expenditure provision;

(4) the period of time, if any, for which the tax expenditure provision has been in effect;

(5) the estimated revenue loss from the tax expenditure provision for the preceding 4 fiscal years;

(6) an analysis of the distributional impact of the tax expenditure provision; and

(7) the functional and subfunctional category of the budget in which the tax expenditure provision is classified.

(b) The General Accounting Office, the Congressional Research Service, and the Office of Technology Assessment shall provide the Congressional Budget Office and the Joint Tax Committee with information requested which would aid in the compilation of the tax inventory.

(c) The Department of the Treasury, the Office of Management and Budget, and the other agencies shall, to the extent necessary and possible, provide the Congressional Budget Office and the Joint Tax Committee with any assistance requested for the preparation of the tax inventory.

SEC. 763. The Committee on Ways and Means and the Committee on Finance shall review the tax inventory submitted as provided in section 262 and, not later than October 1, 1979, shall advise the Director of the Congressional Budget Office of any proposed revisions in the composition or identification of tax expenditure provisions in the tax inventory. After considering the advice of such committees, such Director, in consultation with the Joint Tax Committee, shall report, not later than December 1, 1979, a revised tax inventory to the House and the Senate.

SEC. 764. (a) The Director of the Congressional Budget Office, after the close of each session of the Congress, shall revise the tax inventory after consultation with the Joint Tax Committee and issue a report on the revisions thereto to the Senate and House of Representatives. Such report shall indicate, with respect to each tax-expenditure provision established during such session, the revenue loss which will result in the current fiscal year and the 5 succeeding fiscal years.

(b) The Director of the Congressional Budget Office shall tabulate and issue periodic reports to the Senate and the House of Representatives on the progress of congressional action on bills and resolutions reported by the Committee on Ways and Means or the Committee on Finance or passed by either House which affect tax expenditure provisions and each new tax expenditure provision proposed to be enacted by any bill or resolution reported, with respect to the amount of revenue loss which would result in the next fiscal year and each of the 4 succeeding fiscal years.

SEC. 765. (a) During the Ninety-sixth Congress, the Committee on Ways and Means and the Committee on Finance shall report, and the Congress shall complete action on, a bill prescribing a schedule of reauthorization dates, with such modifications as may be necessary to take into account the considerations set forth in section 266 for all tax expenditure provisions (other than those specifically exempted in the bill) in the tax inventory, or, if not in such inventory, which are in effect on the date of the enactment of such bill or which have been enacted or otherwise established as of such date will become effective after such date. Under such schedule there shall be 5 first reauthorization dates for tax expenditure provisions beginning with September 30, 1982, and continuing on September 30 of each of the following 4 even-numbered years, and each subsequent reauthorization date applicable to a tax expenditure provision shall be the date 10 years following the preceding reauthorization date.

(b) Upon enactment of the bill described in subsection (a), and subject to the exemptions and modifications provided pursuant to subsection (a) and (d), each tax expenditure provision shall cease to be effective on January 1 of the year following the first (or subsequent) reauthorization date provided in the schedule adopted pursuant to subsection (a) and the bills, resolution, or amendments thereto enacted pursuant to the subsection (d), unless it would otherwise cease to be effective at an earlier date, or unless it is reauthorized by a law enacted after the date of enactment of this Act and during or subsequent to the Congress in which it is scheduled for reauthorization.

(c) It shall not be in order in either the Senate or House of Representatives to consider a bill or resolution, or amendment thereto, which provides for the reauthorization of all or part of a tax expenditure provision which is in the schedule adopted pursuant to subsection (a) or which was enacted pursuant to subsection (d) (i) for an indefinite period of time, (ii) for a period exceeding 10 taxable years, or (iii) (except during the Congress in which the next reauthorization date for such provision occurs) for any taxable year beginning after the next reauthorization date applicable to such tax expenditure provision.

(d) After the enactment of the bill described in subsection (a), it shall not be in order in either the Senate or the House of Representatives to consider any bill, resolution, or amendment thereto which proposes the enactment of a tax expenditure provision which does not constitute a reauthorization under subsection (c) that does not have a

reauthorization date (and subsequent reauthorization dates) which conform with the schedule provided in subsection (a): *Provided*, That any such bill, resolution, or amendment thereto may be specifically exempted from the requirements of this subsection: *And provided further*, That such modifications as may be necessary to take into account the consideration set forth in section 266 may be prescribed in any such bill, resolution, or amendment thereto.

(e) Reauthorization dates shall be prescribed under subsections (a) and (d) so as to provide for a review of tax expenditure provisions during the same Congress as the review under part B of programs having similar objectives, consistent with providing an even distribution of the work of reviewing tax expenditure provisions during each Congress and taking into consideration the economic impact of the review process and the interest of avoiding adverse impact on previously acquired assets.

SEC. 766. In carrying out the requirements of section 265 the Committee on Ways and Means, the Committee on Finance, and the Congress may prescribe such transition rules, conforming and technical changes, and substitute provisions to to minimize unfairness, to mitigate any adverse effect which might result for taxpayers who have relied on a tax expenditure provision, or to provide for an orderly end of the effectiveness of any such provision.

SEC. 767. It shall not be in order in either the Senate or the House of Representatives to consider a bill, resolution, or amendment thereto which proposes a reauthorization date for a tax expenditure provision beyond the final reauthorization date of the current sunset reauthorization cycle.

SEC. 768. (a) It shall not be in order in either the Senate or the House of Representatives to consider any bill, resolution, or amendment thereto, which provides for the reauthorization of a tax expenditure provision for a taxable year beginning after the next reauthorization date applicable to such provision, unless a reauthorization review of such provision has been completed during the Congress in which the reauthorization date for such provision occurs, and the report accompanying such bill or resolution includes a recommendation as to whether the tax expenditure provision should be continued without change, continued with modifications, or terminated, and includes, in the scope and detail the Committee on Ways and Means and the Committee on Finance deem appropriate, the following:

(1) information and analysis on the operation, costs, results, accomplishments, and effectiveness of the tax expenditure provision;

(2) an identification of any other tax expenditure provisions or any other programs having similar objectives, and a justification of the need for the proposed tax expenditure in comparison with those tax expenditure provisions or programs which may be potentially conflicting or duplicative; and

(3) an identification of the objectives intended for the tax expenditure provision, and the problems or needs which the tax expenditure provision is intended to address, including an analysis of the performance expected to be achieved, based on the bill or resolution as reported.

(b) It shall not be in order in either the Senate or the House of Representatives to consider any bill, resolution, or amendment thereto, which proposes the enactment of a new tax expenditure provision unless the bill, resolution, or amendment thereto is accompanied by a report which sets forth, in the scope and detail the Committee on Ways and Means and the Committee on Finance, as they deem appropriate, the information specified in subsections (a)(2) and (a)(3) of this section.

Mr. GLENN. Mr. President, I yield to the Senator from Maine.

The PRESIDING OFFICER. The Senator from Maine.

Mr. MUSKIE. Mr. President, we could have saved some time, some valuable time, in the discussion of these issues if we had followed the normal practice with respect to the calling up of amendments.

I cannot recall many occasions on which the offerer of an amendment was cut off from discussing his own amendment. If the intention was to discourage me from discussing my amendment, I assure the Senator who was responsible that it did not discourage me.

I say to the leadership—I see the distinguished minority leader on the floor—that if it is the desire of the leadership to dispose of this matter as expeditiously as possible without taking time away from the Senate, we could agree, Senator GLENN and I, on a time agreement of an hour and a half for discussion of the amendment and action on it. I suspect that is not what the opposition wishes, but I want to make that offer, so that the leadership will fully understand that we are not the Senators who wish to delay the Senate.

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

Mr. MUSKIE. I yield to my good friend, the minority leader.

Mr. BAKER. I thank the distinguished Senator from Maine and the distinguished Senator from Ohio.

As they may know, there is a conference in progress at this time in the majority leader's office, in an attempt to see whether there is some basis for arranging a time agreement that would cover not only the matter that the Senator from Maine is interested in but also the entire tax bill and the several amendments to it.

In doing an inventory on this side of the aisle I find that there are between 22 and 27 amendments yet to be disposed of, and probably a similar number on the other side. So we have a great deal of work yet to do.

I must say that I am not sure that this is the best place for this measure, although certainly the distinguished Senator from Maine and the distinguished Senator from Ohio are entitled to offer their amendments to this bill.

For the moment at least, if such a unanimous-consent request is propounded—that is, to limit time on this amendment—in deference to the negotiations that are underway now and in consideration of the amendments we have yet to deal with, some germane and some not germane, I would find it necessary to object.

I wanted to pass that information along to the Senator from Maine, so that he would understand the circumstances.

Mr. MUSKIE. I understand. I say to the Senator that I could not agree more. I would rather have a different place to offer this legislation, but I have been working on it 3 years, trying to find what everybody would agree is the right place.

I have all kinds of cosponsors. I have more than a majority of the Senate to cosponsor it. It has been reported out of the Governmental Affairs Committee twice in 3 years, referred to the Rules Committee twice in 3 years, reported to the Senate floor four times. In addition, it has been scrutinized and examined closely by the majority leader and by the majority whip, in order to refine it further.

I have been urged to be patient. I have been reassured that we would find a place and a time. Yet, that place and time never seem to occur.

So, earlier this week, I indicated an intention to put the amendment on the Export-Import Bank bill. What happened? Even before I offered it, a filibuster was begun, a filibuster against a nonexistent amendment, so far as the parliamentary situation was concerned, by my good friend the floor manager of this bill, Senator CURTIS; I think Senator BYRD joined at one point, and I think Senator TALMADGE joined at one point. It was made very clear to me that extended debate was going to be engaged in if I sought to be so presumptuous as to offer it on the Export-Import Bank bill.

Today is Friday. The object is to adjourn by next Saturday. Well, the opportunities for getting consideration are fast disappearing. I am not one who normally seeks to encumber tax bills with a lot of irrelevant or nongermane amendments, and the Senator knows that. But the leadership, the exigencies of the floor, the pressures of other legislation have put the Senator from Maine in a corner, out of which he seeks to escape.

So I called up the amendment here tonight, and I am willing to have a vote on my amendment without any debate at all, because I am certain every Senator on this floor knows what this bill is.

This is the sunset bill, which a substantial majority of the Senate have cosponsored, and either that cosponsorship meant they would support it or not. I am willing to take my chances without any debate, so that we can dispose of it in the next 15 minutes.

No one knows what the Byrd amendment is all about. That would not require a great deal of time. It might take more time because its real intentions have been somewhat obfuscated by the quality of the debate that took place before it was even offered.

I simply assure the leadership that I use this occasion to transmit the message, not with any expectation that the minority leader will respond immediately, but simply to transmit the message that I do not really need much debate, although I have considerable material. All I want is simply a vote. I do not even want to read the first sentence of this speech. I am sure my good friend understands.

Mr. BAKER. I assure the Senator that, at least by this part of this leadership, his message is heard and understood.

The Senator will recall that I am a cosponsor of the bill, or I was, and I would support this. I must confess that I have different views and a different attitude toward the amendment from the attitude and views of the Senator from Ohio.

I am sure the distinguished Senator from Maine understands that in suggest-

ing that it would be necessary to object if the unanimous-consent request were propounded at this time, I am not acting according to my own position, necessarily, but rather to protect what I conceive to be the views of a number of Senators on this side of the aisle and, I suspect, on the other side as well.

Mr. MUSKIE. I understand.

Mr. President, I shall take a few minutes simply to get into the subject of the sunset bill and then be happy to yield to my good friend from Ohio so that he might spend some time disabusing the Senate of misinterpretations of his amendment which have had currency in the last few days.

(Mr. EAGLETON assumed the Chair.)

Mr. MUSKIE. Mr. President, I call up my amendment with great awareness of the many demands on our legislative schedule in the days that lie ahead, and I am cognizant of the fact that sunset, as accompanied by the Glenn amendment, is a complex piece of legislation.

Nevertheless, I can think of few more important acts this body can take, in the waning days of the 95th Congress, than to demonstrate a solid commitment to curbing inflation by bringing Federal spending under control—and to respond in a thoughtful, reasoned way to the public concern that Government today is not working as well as it should.

And that, as I see it, is what sunset is all about.

It is a most important idea, with great potential for positive change. It is not new to public debate. Indeed, we have been talking about sunset for nearly 3 years.

Mr. President, the amendment I am offering today is identical in substance to the sunset amendment I introduced earlier this week with Senators ROTH, GLENN, the distinguished majority leader (Mr. ROBERT C. BYRD), the distinguished majority whip (Mr. CRANSTON), and 46 other of my colleagues.

This amendment represents the latest of many refinements in this sunset legislation, as we attempt to fashion the best and most workable bill possible to bring to the Senate floor.

The sunset legislation has gone through 13 days of hearings in the Governmental Affairs Committee, with more than 50 witnesses commenting on its every provision. It has twice been favorably reported by that committee. It has twice been considered by the Rules Committee, and just 2 months ago was favorably reported by that committee as well. Virtually every committee of the Senate has been consulted as this bill has moved along.

From the very beginning, the sunset bill has been well received. It is cosponsored by more than half the Members of this body, and by well over a hundred Members of the House. Groups as diverse as Common Cause and the Chamber of Commerce support it as an essential step in further strengthening congressional spending control.

After almost 3 years of debate, I believe the public now deserves a decision on this promising idea. And the Senate needs to make that decision without any further delay.

Obviously, I hope my colleagues will decide to give sunset a try. The reasons for doing so are numerous and sound.

When I first introduced sunset legislation almost 3 years ago, I was moved by three principal concerns.

First, as chairman of the Budget Committee, I was concerned that budget reform notwithstanding, the Federal budget was increasingly beyond firm congressional control. Indeed, in 1975, we had a much smaller portion of the budget at our discretion than we did a decade before. In 1965, almost half of all Federal spending was controllable, through the regular reauthorization and appropriations processes. By 1975, that figure had shrunk to only 25 percent.

Second, I was troubled by growing evidence that we had created an array of programs so complex they were unable to do the job. GAO report after GAO report documented waste of the taxpayers' money, simple because one arm of the Governmnt did not know what all the others were doing. And with fragmented agency and committee jurisdiction, Congress had no established mechanism for addressing the kinds of problems the GAO reports highlighted so well.

And third, I was concerned that poll after poll showed public confidence in Government going steadily down. More and more Americans seemed to feel that Government was not working well.

Three years ago, sunset seemed a reasonable and imaginative response to these concerns.

In its provision for the regular reauthorization of virtually all Federal programs, sunset offered a way to bring the Federal budget back under systematic congressional control.

By requiring the review of similar programs at the same time, sunset provided an opportunity to consider all of Federal policy in one area at once—with an eye toward eliminating wasted resources which could be put to better use.

And by demonstrating a firm commitment to the difficult task of making Government more effective, sunset seemed an excellent way to demonstrate to the public that we in Congress are doing our job.

Today, these arguments for sunset are stronger than ever.

In 1978, although the proportion of uncontrollable spending in the budget has stabilized, it has not declined. We seriously debate national priorities each year, with only a fraction of the budget at our command. Three quarters of Federal spending decisions are made whether Congress acts or not.

In 1978, we have made little, if any, progress in streamlining and simplifying the many programs on the books. Committee reform helped. But we still have overlapping programs scattered all over downtown and Capitol Hill.

State and local governments continue to cite excessive program fragmentation and redtape as a major obstacle to effective policy. And the GAO continues to churn out evidence of wasted dollars, because of a program structure which has grown needlessly complex.

And in 1978, public concern over ineffective Government reached a new high, proposition 13 and its offspring in other States.

Three years ago, I was convinced that these conditions argued persuasively for the kind of change sunset would entail. I am even more convinced today.

But Mr. President, today, there is an additional argument for sunset, more compelling than all the rest. The argument is the resurgence of inflation—public enemy No. 1—viewed by 80 percent of the public as the most serious problem our Nation faces.

What has sunset to do with inflation? In the public's view, clearly a great deal. According to the latest Harris survey, 76 percent of the American people view Federal spending as the principal cause of inflation. And a look at the projections for future budgets argues the case for the public's concern.

As part of its 5-year projections for the first budget resolution for fiscal year 1979, the Budget Committee calculated the potential cost of 31 new programmatic initiatives likely to come before Congress between now and 1983. The list was by no means exhaustive. But it did include such major items as national health insurance and additional defense expeditures which would result from a failure of the SALT talks.

The committee found that between 1980 and 1983, these 31 initiatives could cost as much as $416 billion in new spending. The committee also found, as did CBO, that with a moderate rate of growth between now and then, we could expect only about $120 billion in additional revenues to pay for these new demands.

These numbers pose a very sobering dilemma.

Many of the initiatives the committee studied are programs we need—and the public wants to have. And there will undoubtedly be others before the next decade is out. After all, the agenda for our Nation is far from being complete.

Yet with the economy approaching full capacity—and with inflation on the rise—spending increases of the magnitude projected by the committee are clearly out of the question. For under today's economic conditions, massive Federal deficits like we have known in recent years will succeed only in making inflation worse.

Bringing Government spending under control, eliminating wasteful and low-priority spending, reducing the burdens on the taxpayers, making room for new priorities—the numbers tell us we can afford new programs in only one of four ways: By running massive deficits and sending inflation through the roof; by raising taxes substantially to pay for new demands; by across-the-board cuts in spending, as many have proposed; or by selective cuts in programs we now have but which we may not need.

The first two of these options would be both economic and political suicide.

The third option would make room in the budget—but in an irresponsible and indiscriminate way.

The final option would be difficult,

but doable. And, in my view, it is the most responsible of the four.

It would require a commitment from every one of us to put our favorite programs to the test—to see if they are still needed, or if they are working well. This is not a prospect likely to warm a politician's heart. But given our other options, I suggest we have no choice.

And whether we like it or not, the initiative must come first from us.

It is the Congress which sets national policy, through the programs we enact. If those programs have grown unresponsive and ineffective, it is we who must bear much of the blame. For it is our job not just to initiate new programs—but also to insure that the old programs are working as well as they should.

More importantly, it is the Congress which has ultimate control over Federal spending, through our power of the purse. If that power is substantially eroded by decisions made in the past, we have an obligation to reassess those decisions so that new initiatives can be pursued.

Today, I think we are failing to meet our responsibility on both counts. And that is why an idea like sunset is so important at this time.

Mr. President, I want there to be no misunderstanding of my motives on this matter. I take a back seat to no one in support of the many worthy goals we have sought to achieve through Federal initiatives in recent years. And I believe that Congress must continue to take the lead in shaping Government as a positive force in our society.

But I am concerned that we in Congress are increasingly unable to do an effective job of legislating for the future, because our hands are so bound by the past.

As a result, we are limiting both present and future budgets—and the priorities they define.

We are denying our constituents an effective return on the tax dollars they pay.

And, in 1978, we are inviting the specter of Government spending driving inflation out of sight.

For all these reasons, I have been pushing sunset legislation for the last 3 years. For all these reasons, I urge Senate passage of sunset now.

Sunset offers us a unique opportunity to provide the extra spending discipline that we need.

It will not do so overnight, nor in a very exciting way.

But over the long haul, it is the only responsible vehicle I see which can help free up scarce resources to direct to new problems as they arise and to give the taxpayers relief.

For the life of me I cannot see why any Member of this body should resist working to that objective toward a program of this kind.

And given the dwindling budget options available to us, I can think of few more positive steps we can take. For the needs of our Nation are not set in concrete. And the Nation is not well served by a Government which is.

At the outset of my remarks, Mr. President, I noted that sunset, although untried, is not new to public debate. Nevertheless, there remains much confusion as to precisely what it is.

In its most general sense, a sunset law is one which states that certain specified activities of Government will come to an end—the sun will set—unless specifically continued by the legislative branch of Government. Within this broad definition, however, the term "sunset" can take many different shapes. Sunset laws have been adopted in several States to date, in widely differing forms.

The sunset bill I have proposed is keyed very specifically to the way Congress works. It seeks to remedy a congressional problem by building upon existing congressional processes—and to use those processes more fully to help us do a better job.

Mr. ROTH addressed the Chair.

Mr. MUSKIE. I am not finished, may I say to the Senator.

In spite of the mystique of sunset, the approach taken in the bill now before us is very simple indeed.

Title I sets out a 10-year, five-Congress schedule for the review and reauthorization of all Federal programs, with only a few exceptions. Within this schedule, programs are grouped by budget function and subfunction, in order to encourage review of programs with related purposes during the same period of time.

The bill requires that all programs, save the few exceptions—including those now permanent—be specifically reauthorized in accordance with the schedule. To enforce this requirement, title I also provides that a point of order will lie against consideration of an appropriation for any program not so reauthorized.

These two provisions—the reauthorization requirement and the schedule for review—are, taken together, the essence of the sunset bill. Either provision without the other would leave the process incomplete. Reauthorization without a schedule of orderly groupings of programs would require Congress to make a decision—but offers no guarantee that such decision will be made with a view of the forest as a whole. Without the reauthorization requirement, there is no guarantee that the decision will be made at all.

Mr. President, there is obviously a great deal more in this bill than the two provisions I have just described. But by and large, the rest of the bill is aimed at supporting Congress and its committees in meeting the procedures of title I. The program inventory in title II, for example, is intended to give Congress the best possible information on what all the programs are. The waiver provision in title V is provided to insure that the reauthorization requirements of sunset are not used to frustrate the majority will.

In formulating this legislation, Mr. President, we had two very simple goals in mind. We wanted to force a regular congressional decision on all programs on the books. And we wanted those decisions to be made in a broader context than that in which they are made today.

To promote these goals, we sought a process as flexible as possible—a framework in which Congress could continue to do what it does best—to make political judgments and decisions about public policy.

We worked from the assumption that no reform, no matter how well intentioned or conceived, will work unless Congress wants it to—that better decisionmaking cannot be legislated, it can only be encouraged and facilitated.

In the amendment now before us, we have a bill which meets this test. It establishes a limited, explicit process. But beyond a minimal threshold it does not dictate how that process should be carried out.

I stress this point, Mr. President, because of concerns I have heard that sunset is too heavy-handed an approach. Many people seem to think that sunset seeks to accomplish many things which it, in fact, does not.

For example, sunset does not suggest that future spending priorities be changed. It is completely neutral where specific areas of spending are concerned.

Nor is sunset a disguised version of the old meat-axe approach. Program termination is not a stated goal. The so-called termination mechanism—the reauthorization requirement—is a means to an end, not an end itself. Its sole purpose is to force a decision on the continuation of each program, at least once every 10 years.

On this point, I would like to emphasize, Mr. President, that the sunset mechanism is not radical or new. It is nothing more than the reauthorization process we now use every day of our legislative lives.

Precisely because this mechanism is not new, the sponsors of sunset have rejected the idea of a sunset pilot test. Congress does not need to test the reauthorization process—we already know how it works. What we do need is to apply that process more comprehensively. And that is what sunset would do.

Finally, this bill does not dictate how programs should be reviewed. Contrary to widespread opinion, this is not an evaluation bill. To be sure, title III is specifically concerned with the comprehensive reexamination of a few programs every year. This provision is an important complement to the basic reauthorization requirements of title I. But it is, in my view, largely incidental to the basic sunset process.

Mr. President, there is probably more confusion on this one issue than on any other aspect of the legislation. I ask unanimous consent that a lengthy but enlightening quotation from the Governmental Affairs Committee report on S. 2 be printed in the RECORD at this point in my remarks.

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

EXCERPT

Sometimes it will decide to extend a program without any change whatsoever. It will be satisfied that the program is doing the job for which it was established. Sometimes, however, Congress will want to consider major changes in an existing program. In its search for program improvements, Congress will take its cues and clues from a variety of sources.

It might look to the ballot box and its constituency for political guidance. It might examine budgetary data for information on the cost of the program. It might conduct hearings to enable those affected by the program to tell their side of the story. It might commission a large-scale evaluation by its own staff or by outside experts. But Congress alone will decide on the scope and type of review to be undertaken. Sunset thus opens to Congress a full range of options, only one of which is the formal evaluation of programs.

Evaluation ought never to be more than one of a number of methods available to Congress when it reconsiders programs. Letters from back home, newspaper editorials, testimony at hearings, on-site visits, and cost-benefits analyses—all are grist for the legislative mill.

Even when it applies evaluative findings to programs under review, Congress is much more the consumer than the doer of evaluations. . . . In the division of labor between the legislative and executive branches, most program evaluations are conducted by the executive. Evaluation has become a billion-dollar industry in the United States, with thousands of evaluations completed each year by Government agencies, think tanks, and private organizations. . . .

When it reconsiders programs, Congress can dip into the pool of available evaluations and apply the findings to the authorization decisions it must make. Congress does not have to evaluate de novo, as if nothing of value has been done by others. Sometimes, however, Congress will take a fresh look, either because other evaluations are not available or because it wants to apply different criteria to the decision at hand. In such circumstances, title III of the bill provides for Congress to formally select some programs for evaluation.

The basic purpose of sunset is to compel Congress to reconsider its past program enactments. All that sunset requires is that Congress take positive action to reauthorize the programs which it wishes to continue. The thrust in sunset is reconsideration, not reevaluation. Nothing in the sunset concept would require Congress to embark on a wholesale evaluation of all programs scheduled for termination. When it reconsiders an expiring program, Congress can decide on the most appropriate course of action.

Mr. MUSKIE. This is a lengthy quotation, but it makes an important point—relevant not just to the evaluation question but to the entire tone of this bill.

It is not the purpose of sunset to impose an arbitrary discipline to tell Congress what to do.

It is very much the intent of sunset that Congress and its committees be in charge—but at the same time, have greater opportunities to do a better job.

Under the bill now before us, opportunities would be available which I think we badly need: A chance to look back at all the baggage we have accumulated through the years; a chance to renew and strengthen our commitment to those past efforts which continue to fill a need; and a chance to shift resources and energy away from those which have lost their usefulness, in order to free up resources for needs which lie ahead.

These opportunities exist today—but only where one quarter of the budget is concerned. If nothing else, sunset promises to close that gap, and make our options more complete.

Mr. President, there is one other issue in the sunset debate which has prompted widespread concern. That issue is the additional workload which sunset would entail.

The workload issue is the most persistent and difficult we have faced in working on this bill. The legislation has been revised and refined in countless ways to respond to this very real concern.

Among other changes, we lengthened the review cycle from 4 years in the original proposal to 10 in the current amendment. We dropped the cumbersome program review guidelines, and left virtually all decisions about the scope and depth of review to the authorizing committees themselves.

In the context of the workload debate, it is important to keep in mind a point I made earlier—that sunset is not a program evaluation bill. To require Congress to evaluate, in depth, one-fifth of all programs every 2 years would clearly be an undoable task. But that task is not even contemplated in the provisions of this bill.

This is not to say that the requirements of sunset will not add to our work. Obviously, they will. For example, programs which are now permanent would have to be reviewed and reauthorized at least once every 10 years. On the other hand, programs now reauthorized at more frequent intervals may be stretched out to a longer lifespan.

On the whole, sunset, in its present form, would involve what I believe is a manageable workload. But for those who would like a precise answer to this question, there is no way I can oblige.

Trying to project workload is a very difficult thing to do. What one committee considers a single program, another committee considers only a part.

Moreover, we have no way of knowing how future Congresses will act. For example, there is evidence of a growing trend toward omnibus authorization bills. Whether this trend will continue, we have no idea today.

My own response to the workload argument is that a great many people have labored on this bill to make it as workable as we could. Having done so, I would argue that whatever the workload demands of sunset, there is a job that needs to be done. To suggest that we cannot review the entire Federal budget in a space of 10 years is to say that a process like sunset is long overdue.

Mr. President, many other questions have been raised about sunset over the course of the bill's 3-year life. I have commented on those which I feel are most important. I urge my colleagues to raise any other concerns they may have, so that we can discuss them here today.

Before going on to discuss the specific provisions of the bill, I would like to make one remaining point.

The legislation now before us has come a long way in the past 3 years. Those of us who have worked on it have learned a great deal about the nature of the Federal program structure. Through this learning process, many who were once skeptical have been convinced that the need for sunset is real.

In an important way, this increased awareness is what sunset is all about—having at our disposal the knowledge to make informed decisions concerning legislation we enact.

This is no mean accomplishment, as we know from budget reform. Whatever specific fiscal impact the budget process has had, its greatest contribution has been in increased awareness of how the daily decisions we make affect the budget as a whole.

Sunset offers us the same kind of opportunity. It is an opportunity we dare not let slip away.

Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. MUSKIE. Who has the floor?

The PRESIDING OFFICER. The Senator from Ohio has the floor.

Mr. MUSKIE. Mr. President, I have completed my preliminary statement. I thank the distinguished Senator from Ohio for yielding to me for making it.

I would like to express the hope that he would also yield to the distinguished Senator from Delaware (Mr. ROTH), who is the original cosponsor of this legislation, and who I see is ready to make a statement on it, as well as the distinguished Senator from Delaware (Mr. BIDEN), who has been early and faithful in support of this proposition.

Mr. HANSEN. Mr. President, will the distinguished Senator from Ohio give me about a 30-second opportunity, out of order, to correct the RECORD?

Mr. GLENN. Mr. President, I will yield for such purpose, but first I yield to the Senator from Delaware.

Mr. BIDEN. Mr. President, I rise today to support the adoption of the sunset proposal before us. I am a long-time advocate and supporter.

I first started working on this idea in the fall of 1974. I introduced my sunset bill in the 94th Congress. My friend from Maine introduced a different version in that same Congress. Now we have joined forces with one proposal which I believe has great merit.

When adopted, it will provide Congress with an essential tool for reviewing the need for Federal programs; controlling the growth of Federal spending; alleviating the overkill of regulatory activity; and restraining the sprawling Federal bureaucracy. I know that is a lot to claim for one proposal. But I have been working on this idea for years—as has my friend and colleague from Maine—and I am convinced it can lead to more effective and responsible congressional control over our Government, without sacrificing a single essential Government service. In fact, it should enhance the provision of truly necessary Government services.

This is a great moment for me. It is one I have looked forward to for years. It is also a moment I have feared might never come. The fact that this amendment is before us today is testimony to the perserverence of my distinguished chairman on the Budget Committee and colleague here in the Senate, Senator MUSKIE. He has sought the passage of sunset, or spending control legislation for years now. He has most effectively used

his chairmanship of the Subcommittee on Intergovernmental Relations to research the need for such legislation and to demonstrate that need to the Senate.

He has argued persuasively for such legislation long before the Nation ever heard of Proposition 13. During my tenure in the Senate, I have seen him secure passage of many bills of importance to the welfare of the Nation over heavy opposition. I think he is about to do it here again today. It has been my pleasure to stand with him during this fight and to work toward the common goal we have sought for years.

I want to focus my remarks on several of the questions that are so often asked about sunset legislation:

What is this proposal—what will it require and how will it work?

Is this not a radical proposal that will threaten essential Government services?

Do we know enough about how sunset will work? Do we not need more study?

Why is it important that we consider this now—in the last minute jam of a session?

Is this really important? Is it not just another set of rules and procedures that Congress will ignore?

How does this tie in with the congressional budget process? Is that process not enough to control Federal spending?

The distinguished Senator from Maine has described the pending proposal in some detail. I need not do it again. Simply stated the bill would terminate most Federal spending programs automatically on a regular schedule. Then, after a careful review by the appropriate Senate committee, the Senate and the Congress would decide whether to continue the program—or modify it—or terminate it. The two parts go together—the possibility of termination forces a review—and the review assures that the decision to continue or not continue the program will be a rational one. It is really a very simple mechanism—like all good mechanisms: It is also good because it builds on the existing practice of reauthorization.

The congressional budget process has shown what a good procedure can do. It has held down the total budget—billions of dollars below what the aggregate proposals of all committees would have been. It has sorted out national priorities. But by its nature it deals in setting those major priorities. It cannot and should not examine programs in detail. Thus it can determine that there is need for allocating additional national resources for defense. But it cannot examine all the ingredients of an effective national defense. This sunset proposal builds on the budget process to be certain that when Congress allocates money for an important national objective like defense, that money will be well used to meet the objectives. Waste makes no useful contribution to defense or any other function.

Mr. President, in listing the subjects that I wanted to review today, I suggested that we should discuss the need for sunset legislation. Actually, I do not really think we should have to discuss it.

However, starting with the most important reason first, we need legislation of this kind because the American people know we are not doing our job of stemming the tide of Government growth in this country. They know we are not doing our best to provide effective programs to meet their needs, but are choosing the easy way of trying to overwhelm problems with a multitude of duplicative programs. This is clear from my constituent mail. I think the perenially low performance ratings that Congress gets shows this. So I have felt for a long time that Congress should act to control government before the electorate forces action upon us.

In this connection, there appeared on August 24 a lead story in the Wall Street Journal headlined "Proposals To Restrict Expenditures or Taxes Are Picking up Steam." Well they certainly are and I could not be happier. As I indicated, both my chairman and I proposed bills to control Federal spending before it became a popular national issue. And for that reason I was particularly interested in the comment by John Shannon of the Advisory Commission on Intergovernmental Relations that "They are all realizing that the fat boy on the block is Uncle Sam." The article then goes on to state that in a recent poll "* * * 62 percent of the respondents said the biggest waster of their tax money was the Federal Government."

I am sure this does not come as a surprise to the distinguished Senator from Maine nor is it a surprise to me. We have both been seeking responsible solutions to Federal waste for many years. The need is to pass responsible, workable solutions like those before us today before we are forced to take drastic, perhaps unwise, action. I hope my colleagues will recognize the need to put our own house in order. The real need for this legislation lies in the citizens demand for it.

Mr. President, there were a number of other important points in the Journal article and I ask unanimous consent that it be printed in full at this point in the RECORD for the information of my colleagues.

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

PROPOSAL TO RESTRICT EXPENDITURES OR TAXES IS PICKING UP STEAM

(By James M. Perry)

SEATTLE.—State Rep. Ellen Craswell works her way down the port side of the Walla Walla, a ferryboat making the 5:15 rush-hour run from Seattle to Winslow, and collects signatures for Initiative 62.

"Would you sign our petition to limit the growth of state government?" Mrs. Craswell asks an elderly, gray-haired woman who is seated alone reading a Gothic novel. "I will," the woman says, "but I'll tell you this: Your proposal doesn't go far enough."

Mrs. Craswell, an enthusiastic Ronald Reagan Republican, shakes her head in mock despair. A year ago, in her first year in the legislature, she introduced a bill similar to Initiative 62, which would slow the rate of spending by the state. And her colleagues laughed at her. Too "radical," she was told. Now she is a "moderate."

But if the legislators wouldn't listen a year ago, the people certainly are listening now. Mrs. Craswell and the co-chairman of her group, State Rep. Ron Dunlap, expect to collect more than 700,000 signatures for Initiative 62. That would be a record for the State of Washington, eclipsing the 699,600 signatures that were picked up a few years ago on petitions to roll back salary increases that members of the legislature had voted for themselves. That one went on to a smashing victory in a general election. Most people think Initiative 62 will do the same, although it wouldn't go on the ballot until November 1979.

A NATIONAL MOVEMENT

"I've been in a lot of campaigns," Mr. Dunlap says, "but I've never seen anything like this. This is the most significant policy question before our state—maybe ever. And it's becoming the most significant policy question before the whole country."

Indeed, all across the country from Washington to Maine, people like Ellen Craswell and Ron Dunlap are buttonholing citizens with their petitions and collecting signatures by the thousands for various kinds of initiatives, propositions and constitutional amendments that would limit state taxes and spending. The clipboard has become the political symbol for 1978.

The success they have achieved at the state level is whetting their appetite for the ultimate battle—constitutional or statutory restrictions on spending by the federal government.

This so-called tax rebellion is personified by three people: Howard Jarvis, the father of California's famous Proposition 13; Lewis Uhler, president of the National Tax Limitation Committee; and John Shannon, an assistant director of the Advisory Commission on Intergovernmental Relations in Washington, D.C.

AVOIDING THE "MEAT AX"

It was Mr. Jarvis, with his tax-cutting Proposition 13, who turned Ellen Craswell from a "radical" to a "moderate."

Proposition 13, Mrs. Craswell says, disapprovingly, "is a meat ax. We tell people you can have a meat ax or you can have the moderate, reasonable solution we believe Initiative 62 to be."

Proposition 13, passed overwhelmingly by California voters June 6, says property can't be taxed at more than 1% of its estimated 1976 market value, that assessments can't be increased by more than 2% in any year unless the property is sold, and that no taxes can be increased and no new taxes added without the approval of two-thirds of the voters.

Mrs. Craswell's Initiative 62 says the growth rate of general state tax revenues (including the sales tax and property taxes collected by the state) cannot exceed the average growth rate of total state personal income over the three preceding years. "In other words," Mrs. Craswell explains, "state taxes won't increase faster than our pocketbooks."

JARVIS AND UHLER

Mrs. Craswell's patron is Mr. Uhler, former chairman of Ronald Reagan's tax-reduction task force and now president of the National Tax Limitation Committee. Mr. Uhler's group is seeking to put initiatives like 62 on the ballot in dozens of states.

The crusty Mr. Jarvis is contemptuous of Mr. Uhler's efforts. "Those expenditure limitations," he says, "don't cut spending, they give in to it. We aren't interested in slowing the rate of growth; we want government to operate with less money."

The lines will be drawn this fall between Mr. Jarvis's proposal and Mr. Uhler's.

Initiatives like Proposition 13 almost surely will be on the ballot Nov. 7 in four states—Michigan, Oregon, Nevada and Idaho.

"It's the best we could do," Mr. Jarvis says "We only had two months to put this together. I don't think getting on the ballot in four states is bad. This thing isn't like instant coffee. It's taken 15 long, lousy years to get where we are today."

Initiatives like Washington's 62 will be on the ballot this fall in at least four states also—in Michigan, cheek by jowl with a Proposition 13, and in Colorado, Texas and Arizona. Maine and Hawaii are possibilities.

A similar initiative was proposed in California but wasn't approved by the state legislature in time to be placed on the November ballot. The proposal was supported by Gov. Edmund G. Brown Jr. as a supplement to Proposition 13. The same Gov. Brown who once said Proposition 13 would be disastrous now says it gives Californians "a once-in-a-lifetime opportunity to reduce government growth."

"Wow!" says Mr. Jarvis. "Did you ever see a U-turn like that?"

"The transformation in public opinion over the last five years has been incredible," Mr. Uhler says. "People were satisfied with the way things were then. Now they are issuing demands for cuts. The result is that we have emerged as moderate and responsible people, supported by most of the politicians."

Mr. Shannon and his colleagues at the Advisory Commission on Intergovernmental Relations, an agency created by Congress 20 years ago to monitor the operation of the American federal system, continue to preach moderation. In a way, they are what is left of the "liberal" solution.

END OF THE "BULL MARKET?"

"For 30 years," Mr. Shannon says, "state and local finance has been a bull market. But now there is clear evidence that an increasing number of citizens no longer want the state-local sector to keep growing at a faster clip than the growth in their own income."

Even before Proposition 13, he says, some states had been making strides in cutting the growth in spending. At least 14 states had placed restrictions on the power of local officials to raise property taxes. At least five states had taken steps to control the rate of growth in state spending. And most states had turned to special tax exemptions and tax deferrals to help overburdened homeowners.

Reluctantly, Mr. Shannon accepts constitutional amendments that restrict state spending increases to real growth in the state's economy. He also favors indexing personal income taxes to prevent inflation from pushing taxpayers into higher brackets. (With indexing, adjustments are made to relieve people of having to pay taxes on that part of their income that reflects higher prices rather than increased purchasing power.) And he backs various measures to strengthen political accountability for the public officials responsible for new spending programs and higher taxes.

Colorado, he notes, already has indexed personal income taxes. Arizona passed a law indexing its deductions, credits and exemptions, and Gov. Brown, riding the crest of the taxpayers' rebellion, has proposed indexing in California.

But to "hard fiscal conservatives," Mr. Shannon concedes, all of this is "weak tea." "There is blood on their teeth," Mr. Shannon says, and he suspects the focus of the tax rebellion is switching from the states to the federal government. "They are all realizing that the fat boy on the block is Uncle Sam."

AN EYE ON THE "FAT BOY"

The results of a number of recent polls suggest that Americans are beginning to look at the "fat boy." In polls commissioned by Mr. Shannon's agency prior to the adoption of Proposition 13, respondents said they got the most for their tax money from the federal government. But in polls taken by Gallup, NBC and CBS after Proposition 13, the federal government dropped all the way from first to last. And in one of the polls, 62% of the respondents said the biggest waster of their tax money was the federal government.

So Mr. Jarvis and Mr. Uhler are switching targets right now. A committee of Mr. Uhler's National Tax Limitation Committee met July 26 to begin drafting an amendment to the U.S. Constitution that would put a squeeze on federal spending. "The time is ripe for it," Mr. Uhler says. "We have the momentum."

The amendment that the committee will draft will be more detailed than an amendment Rep. Philip Crane, an Illinois Republican and announced presidential candidate, already has introduced. The Crane amendment would limit total outlays by the federal government to one-third of the average national income for the three prior calendar years, with escape provisions for wars and national emergencies.

Mr. Jarvis isn't impressed. "It would take 20 years to pass a constitutional amendment," he says. "The country don't have that long. We'd all be in our graves."

So, he says, he will push for a national Proposition 13. Last week in Fort Worth, Texas, he announced a "freedom-for-taxpayers" plan that calls for Congress to cut federal taxes by $50 billion; this would be accomplished by reducing income taxes 20% across the board and by eliminating capital-gains taxes. The plan, which also would require that federal spending be slashed by $100 billion over a four-year period, is designed to limit the amount of money that the government collects.

"If they can't collect it," he says, "they can't spend it."

Mr. BIDEN. Whenever sunset legislation is discussed around the Senate, the question of whether there really is a problem comes up. After all, it is said, congressional committees conduct oversight hearings on programs all the time. Many programs are reauthorized periodically and receive annual appropriations and can be reviewed then. So why do we need a new review process?

That issue was well addressed by Harry Havens of the General Accounting Office in his testimony before the Rules Committee on June 8 of this year. He listed four broad deficiencies that were cited as the need for sunset reform proposals of some kind. These were:

Incomplete coverage of the reauthorization process;

Inadequate attention to broad policy subjects;

Incomplete review coverage of Federal programs and activities; and

Lack of clarity and specificity in statements of the objectives of programs and activities.

In other words, we do not know what programs are supposed to do; our reviews of programs are incomplete; and we cannot see the forest for the trees, as the saying goes.

Of course, the GAO has been pushing for effective program review for a long time.

What did the staff working group on S. 2 and S. 1244 have to say about need? Stated clearly in one sentence on page 1 of its report the group said:

. . . the staff working group concluded that . . . improvements in the program authorization and review process were desirable . . .

I could not say it more clearly myself. Admittedly the group differed on the mechanism to achieve the goal.

One problem in demonstrating the need for better review of Federal spending is that there are so many programs, managed by so many agencies that it is an overwhelming job just to master the data and present a comprehensible statement of the problem. I think the best job I have seen is that done by the Government Operations Committee in studying sunset in 1976. Its findings, presented in August 1976, are so definitive that as far as I know no one else has tried it since. Yet we have had this information before us for 2 years and only now are ready to act on it.

I ask unanimous consent that excerpts from the 1976 report of the Committee on Government Operations be printed in the RECORD to fully document the need for legislation of this kind.

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

EXCERPTS

THE PROLIFERATION OF FEDERAL PROGRAMS

The 1976 Catalog of Federal Domestic Assistance lists 1030 programs administered by 52 Federal agencies. In Fiscal Year 1976, these programs provided an estimated $59.8 billion to the 50 states and nearly 80,000 units of local government, for a total of almost 25 percent of Federal domestic outlays and an estimated 25.2 percent of all State and local government expenditures.

In the health field alone, there are 302 different programs, administered by 11 separate Federal agencies. Under the broad category of community development, there are 259.

(NOTE.—The numbers in this section are taken from the Catalog of Federal Domestic Assistance and, therefore, are based on different assumptions than the numbers used elsewhere in the report that were compiled from GAO or CBO data.)

As the program category is narrowed, the number of programs is no less bewildering. The 1976 Federal Catalog lists 39 different programs under the Veterans category, with another 28 under the heading Veterans Medical Facilities and Services. Under the category of Vocational Education, there are 27 different programs listed. The reader is referred to the Job Training Subcategory of the Employment, Labor and Training Category for other programs in this area. Under the heading of Transportation, there are 45 separate entries.

A GAO study on health services in outpatient health centers in the District of Columbia, found seven different programs—administered by HEW and OEO. Coordination was so lacking, the GAO found, that one neighborhood had eight clinics, several of which were badly underutilized.

Another GAO study of the use of military maintenance facilities found extensive duplication and underutilization of these facilities because of the emphasis each service placed on developing its own facilities rather than sharing existing facilities of other services. The study concluded that substantial long-range savings could be realized through greater inter-service maintenance, but that despite repeated encouragement from the Department of Defense, the individual services had continued to circumvent both the spirit and intent of such policy.

An HEW study found over 50 Federal programs providing some type of service to handicapped youth. Most of these programs were administered by HEW—by 14 separate units within that department. A GAO study of the HEW study found no point within

HEW at which all these efforts were coordinated.

Finally, a study by the Joint Economic Committee found 62 separate programs involved in providing aid to the needy and social insurance, at a projected cost in fiscal year 1975 of $142 billion.

Note: Since 1966 the importance of categorical programs in the total Federal aid picture has lessened. In 1966, categoricals comprised 98 percent of total Federal aid. By 1975, they comprised about 75 percent, with block grants and general support aid (revenue sharing, e.g.) accounting for the difference.

THE GROWTH OF PERMANENT PROGRAMS

Side-by-side with the growth in the number of Federal programs over the last 10 years has been a dramatic increase in the amount of Federal funds spent on programs with permanent appropriations—funds spent without any review by Congress. From 1966 to 1976, these programs have become the fastest growing component of the Federal budget, tripling from $55 billion in 1966 to $165 billion in 1976.

In a different category, but representing a similar problem are the very large number of programs with permanent authorizations—programs enacted with authorizations stating "such sums as may be necessary" and containing no termination date.

A review of programs under the jurisdiction of the Senate Agricultural Committee (chosen because such a list had been prepared by the GAO at that Committee's request), showed 277 programs operating under permanent legislative authority. Only 65 programs were based on legislation which provided fixed termination dates. The 277 permanent programs represented a total year 1977. The 65 programs subject to periodic reauthorization comprised $6.8 billion in fiscal year 1977 budget requests.

What these two examples point out is that there is a significant segment of the Federal budget which escapes congressional review on a regular cycle.

THE GROWTH IN UNCONTROLLABLE SPENDING

The cost of continuing all 1976 programs in the 1977 budget was estimated at approximately $45–$50 billion higher than last year's spending level. Thus, despite targeted program cutbacks, the first budget resolution for fiscal year 1977 set spending at $413 billion, about $40 billion above the final budget figure for FY 1976.

Most of this growth is attributable to the increase in "uncontrollable" spending, which in 1967 accounted for about 59 percent of that year's budget but which in 1977 will take up roughly 77 percent of all Federal spending. Thus, uncontrollable spending is, in the words of one witness, "bleeding" the controllables. This witness, Dr. Allen Schick of the Congressional Research Service, testified further, that: "If we compared the 1966 and 1976 budgets, we would find dozens of major programs which were funded then, but not now. We would find dozens more which have grown less than inflation. And we would find dozens in which there is a significant and growing gap between the amount authorized and the amount actually appropriated."

Thus every year the uncontrollables are reducing the policy options open to the Congress in determining priorities for Federal spending.

THE GROWTH IN GOVERNMENTAL AGENCIES

In addition to the proliferation of programs administered by the Federal government, there has also been an extraordinary growth in the number of Federal agencies, commissions, bureaus and the like. According to the Library of Congress, from 1960 to 1974, 329 such governmental bodies were created, while only 126 were abolished. Of the 329 themselves, only 63 had been abolished by 1974. In 1974 alone, 85 separate governmental bodies were created.

THE GROWTH OF FEDERALLY-MANDATED LAYERS OF GOVERNMENT

The last decade has seen not only a rapid growth in the activities of the Federal government, but also a mushrooming of new layers of government mandated or spawned by Federal programs.

At the highest level, there are 10 Federal Regional Councils, promoted by the Nixon administration as part of its New Federalism efforts to decentralize Federal activities.

Far more significant in terms of numbers and confusion are the single and multipurpose districts required or spawned by various Federal grant-in-aid programs.

According to a study by the Advisory Commission on Intergovernmental Relations on substate regionalism, released in 1974, over 4,000 geographic program areas had been recognized under 24 different Federal programs involving 11 Federal agencies. These included 481 Law Enforcement Planning regions, 957 Community Action agencies, 419 Cooperative Area Manpower Planning System Councils, 247 Air Quality Regions, 195 Comprehensive Areawide Health Planning agencies, and 165 Resources Conservation and Development districts, among others.

Mr. BIDEN. Some people seem concerned that this legislation is a threat to effective Government action. That is not so. A major concern is the requirement for periodic reauthorization of Federal programs, or automatic termination as it is often called. The feeling is that this is too abrupt or radical a change. Or that it will threaten the continuation of many worthwhile programs now on the books.

This proposal threatens only bad or wasteful programs. All it does is to bring programs out for a public review by the entire Congress. The concept of reauthorization, or automatic termination, is not new. Many programs are periodically renewed right now. Many programs are studied right now. All this proposal does is to adopt already existing congressional procedures, perfect them and extend them to virtually all programs.

There do not seem to be any really reliable figures as to what percentage of programs are subject to periodic reauthorization. The scope of programs that are reauthorized regularly ranges from defense to health to education to aid to the elderly to revenue sharing. This periodic review is not now regarded as a threat, but as an opportunity. An opportunity by proponents of these programs to improve them. So I really see little reason why the reauthorization process should be looked upon as a threat to some other programs, unless they are really not worthwhile. The other half of this proposal, the concept of program evaluation and review is certainly not new. I have not attempted a complete review of congressional oversight, but it is easily traceable to 1946 in the Legislative Reorganization Act which provides:

In order to assist the Congress in—

(1) its analysis, appraisal, and evaluation of the application, administration, and execution of the laws enacted by the Congress, and

(2) its formulation, consideration, and enactment of such modifications of or changes in those laws, and of such additional legislation, as may be necessary or appropriate, each standing committee of the Senate and the House of Representatives shall review and study, on a continuing basis, the application, administration, and execution of those laws, or parts of laws, the subject matter of which is within the jurisdiction of that committee.

There it is, program evaluation and review. Nothing new or radical about it.

The only thing radical and new about this proposal is the new, more effective use it would make of old tried and true congressional processes. It takes the concept of reauthorization, requires it for most programs, and then says that before you reauthorize there must be an evaluation on which to base the decision about continuing the program.

The section of the Legislative Reorganization Act of 1946 cited above did not work very well, because nothing forced the study and the review. Reauthorization has not worked as well as it might, because reauthorization was not always accompanied by a careful study of the program. So tie the two together and require periodic reauthorization as well as a study of the program before you consider reauthorization.

That is a combination that could achieve good results. It will force committees to look more carefully at their programs. It will give Members of the House and Senate a chance to look at every program and to have some basis for judging its merit.

As is often the case with good ideas, this one is not really new. Certainly it is not radical or threatening.

Another issue that always arises is the question of further study, although I just cannot imagine why it should have to be discussed. The ideas behind sunset, as discussed earlier, are not new or difficult to understand. Sunset proposals have been pending before the Senate at least since I introduced my bill in July 1975, 3 years ago. They have been studied by two committees and a staff study group representing all committees.

The history of sunset in the Senate is a rather long one. It is a history filled with lengthy study and hearings, but also, unfortunately, with delays which killed it in 1976. I do not see how there can be further profitable study of this proposal. Rather it is time for the full Senate to dispose of the issue.

Two sunset bills were introduced in the 95th Congress. I introduced my sunset bill, S. 2067, in July 1975. Senator MUSKIE introduced his bill, S. 2925, in February 1976. The Subcommittee on Intergovernmental Relations of the Governmental Operations Committee then held 7 days of hearings on the bill and eventually it was reported favorably. The bill was then referred to the Committee on Finance and the Committee on Rules and Administration. The latter committee held important hearings on the bill. The bill was finally placed on the Calendar on September 20, 1976, too late to receive consideration in the 94th Congress.

In the spring of 1977 both Senator MUSKIE and I introduced new sunset bills, both drafted to take account of comments on earlier legislation and particularly the hearings on the Committee on Rules and Administration. The Intergovernmental Relations Subcommittee then held 6 days of hearings on S. 2 and

a revised version of it was reported favorably. It was then referred to the Committee on Rules and Administration where my bill, S. 1244, had already been referred.

The Rules Committee then took a significant step. Following hearings on the two bills, Chairman CANNON asked the chairman of each standing committee to appoint the staff director (or designee) of his committee to a study group to review S. 2 and S. 1244 and recommend whatever modifications seemed necessary. This was most appropriate since the workload of a sunset bill inevitably falls upon the committees and their staff. While one would have expected an eager response to this opportunity, with a few notable exceptions the response was poor. I had a representative at the meetings, yet seldom, if ever, were a majority of the committees represented. Most were represented below the level of staff director. While the staff working group did, indeed, draft a new proposal, it could hardly be said to represent the concentrated efforts of the Senate committee staffs. This is not to derogate the efforts of those who did attend meetings and work diligently. Some of their proposals are incorporated in the modified proposal before us today.

Following this staff study, the Rules Committee met again and, after hearing from the General Accounting Office, Chairman PELL asked that representatives of Senator MUSKIE and myself meet with the GAO and try to come up with a mutually acceptable version. This was done and a bill emerged that I believe blends the best features of all of the proposals. Since then, other changes have been made to achieve the widest possible support.

I have reviewed the history of sunset to show that this proposition has been long and carefully considered. Any Senator with any real interest or concern has had an opportunity to be heard and, indeed, to participate in drafting legislation. I see no reason for delaying final action any longer.

Is this legislation really so important? What is so urgent about it that we are considering it now, right at the end of a session? I would answer that in two ways.

Sunset is of concern right now, because of the bleak outlook for Federal finances over the next few years. In July the Director of OMB appeared before the Budget Committee to present the administration's forecast of Federal spending for the fiscal years 1980 and 1981. The projections showed what the administration called the unacceptable prospect of a $100 billion increase in Federal spending over the next 2 fiscal years. It is one thing to call such figures unacceptable. It is something else to do something about them. If we are not to remain in a deficit position forever, it is essential that we develop the tools to restrain spending. Four years of work has convinced me that sunset legislation is an essential tool. With the present rate of Federal spending we cannot get it too soon.

● Mr. MARK O. HATFIELD. Mr. President, the sunset legislation we are now considering is the product of years of refinement and months of negotiation. As now fashioned, it represents a meaningful tool for budget reform. I am proud to cosponsor this measure and to rise today in its support.

Enactment of this sunset bill is a method of insuring additional accountability over Government spending. Such accountability is being demanded by the American people and is required in the name of fiscal restraint. To address the public's economic concerns, and to act responsibly in bringing the inflationary spiral under control, more comprehensive and stringent oversight of Federal spending is needed. Sunset constitutes an appropriate and important means to this end.

Sunset legislation mandates that all but a handful of Federal programs will undergo periodic review and will necessitate reauthorization. It requires that similar programs will undergo such review concurrently. Such a process enables Congress to detect wasteful and inefficient spending overlaps. Programs which were good in concept but which have become misdirected or which have survived past their useful life, can be eliminated. Mr. President, this is a commonsense way for Congress to approach its responsibilities toward the Federal budget.

Contrary to the views of some critics, sunset will not bring the Government to a halt or instantly curtail programs on which the public has been led to rely. The charge is baseless. Sunset legislation per se does not vest Congress with the power to terminate Government programs. That power resides in the Constitution. Instead, sunset mandates that program review will be regular, comprehensive, and systematic. It is a sensible and effective means for Congress to order, and proceed with, its oversight agenda.

While I fully support the sunset proposal offered by the senior Senator from Maine, I believe it suffers from one glaring omission. The omission regards the lack of any provision in this legislation to encompass Federal tax expenditures.

Mr. President, tax expenditure statutes account for a revenue loss to the Federal Government estimated at $136 billion for fiscal year 1979. This figure represents some one-fourth of the total amount currently drawn from the Treasury to fund direct spending for Federal activities. Moreover, the vast portion of these tax expenditures is authorized for indefinite periods and is not systematically reviewed. To leave tax expenditures out of sunset coverage is to leave a huge gap in our management of Federal fiscal resources.

Effective budgetary control means that direct spending and tax expenditures must be viewed in light of one another. If the tax expenditure amendment is defeated, the benefits that will accrue from sunset procedures will be significantly impaired. Sunset without tax expenditure coverage would still be an improvement over the present hodgepodge brand of oversight, but the great potential this legislation enjoys for sound fiscal planning and restraint will never be substantially realized.

Mr. President, I believe strongly that passage of a tax expenditure amendment is critical to the success of sunset legislation, and I urge that the Senate enact it.●

Mr. GLENN. Mr. President, I am extremely pleased to see that the full Senate will now have an opportunity to debate, and I hope can get to a final conclusion on, the sunset legislation.

The distinguished Senator from Maine has worked very hard and long on this for several years. I have worked with him on various portions of this for most of that period of time. In helping fashion this legislation, this amendment, which we are now considering, and which I have further amended, is the product of extensive debate in committee in the 94th and 95th Congresses. I believe the product of that effort is a workable bill which I fully support.

I consider "sunset" to be extremely significant and necessary and I urge my colleagues to support it. The amendment is designed to provide for an effective congressional oversight procedure for the reevaluation of Federal programs. In so doing, "sunset" can help to restore confidence in the ability of Congress to control Federal Government. Too many Americans feel they are not getting their money's worth for the average 20 percent of each paycheck which is sent to the Federal Treasury. They are very much concerned about the possibility of double-digit inflation, and they want the Government to hold the line on Federal spending and reduce the massive annual budget deficit which has become so commonplace in recent years.

(Mr. ABOUREZK assumed the chair.)

Mr. GLENN. Mr. President, I believe that sunset can at least start to address some of the concerns which the American people have about the way in which our Government operates.

Our citizens are demanding a more efficient, responsive, and competent government—one that can effectively deal with the problems which concern them, not one that merely grows unrestrained without any real direction. The American people desire and deserve such a government. "Sunset" can be an important step in meeting some of these demands.

"Sunset" legislation has the potential for substantially upgrading the performance of the Government. The purpose of this amendment, according to the Governmental Affairs Committee report, is to "* * * establish a systematic and orderly procedure for the reconsideration by Congress of its past program enactments." The procedure which is utilized in this amendment consists of a 10-year schedule for the reauthorization of substantially all Federal programs and a procedure for their review in a systematic fashion.

The amendment which we are considering is a good one as far as it applies to Federal spending programs, however, I believe it to be deficient unless it applies equally to tax expenditures as well. Tax expenditures to the sunset mechanism is essential if we are to effectively achieve the objectives of the bill. I have offered that amendment to reinstate what was originally a tax incentive title in the original "sunset" legislation.

Sunset is an extremely worthwhile proposal. I believe that the Senate should have an opportunity to record itself pro or con on the merits of the sunset proposal at the earliest possible time.

Now, Mr. President, with direct regard to the sunset tax amendment that I have offered, I offer it along with Senators HATFIELD of Oregon, MUSKIE, GRIFFIN, JACKSON, CHAFEE, MCCLURE, MORGAN, KENNEDY, HATHAWAY, MATHIAS, CLARK, BROOKE, and HART.

The amendment, Mr. President, would extend the sunset concept beyond its application just to Federal spending programs by also requiring periodic review and reauthorization of tax expenditure provisions. The purpose is to subject such tax incentive provisions to the same type of systematic review as is required of direct expenditure programs under Senator MUSKIE's sunset amendment. The bulk of the policy decision involved would be made in the 96th Congress, in the establishment of a specific review schedule. The only decision specifically embodied in the amendment, and I would stress this, is the decision to go ahead with a comprehensive review of tax expenditures.

If we do get this to a vote, Mr. President, that will be the choice for each and every Senator here. A vote for this amendment will be a vote for an orderly review process.

Mr. ROBERT C. BYRD. Will the Senator yield?

Mr. GLENN. I yield.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that I may suggest the absence of a quorum without the floor being taken away from the Senator from Ohio (Mr. GLENN).

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

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

Mr. BIDEN. Mr. President, I object.

The PRESIDING OFFICER. Objection is heard.

The second assistant legislative clerk continued the call of the roll.

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

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

Mr. ROBERT C. BYRD. Mr. President, I shall shortly yield to Mr. GLENN briefly, but before I do so I am going to ask unanimous consent to set aside temporarily the amendment by Mr. MUSKIE with the understanding that on tomorrow morning, when the Senate resumes consideration of the tax bill, he or Mr. GLENN would be recognized to continue their discussion of that pending amendment. That would allow the Senate to proceed with some other amendments to the tax bill tonight which are not in controversy which will not require rollcall votes.

It would allow other business to be dispensed with tonight and some progress will be made thereby.

I, therefore, yield to Mr. GLENN so he can offer a cloture motion.

Mr. GLENN. I thank the distinguished majority leader.

CLOTURE MOTION

Mr. GLENN. Mr. President, I send a cloture motion to the desk.

The PRESIDING OFFICER (Mr. CHILES). The cloture motion having been presented under rule 22, the Chair, without objection, directs the clerk to read the motion.

The legislative clerk read as follows:

CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of Rule XXII of the Standing Rules of the Senate, hereby move to bring to a close the debate upon Amendment No. 3678 (as modified), the Sunset Act of 1978, to the bill (H.R. 13511), an Act to amend the Internal Revenue Code of 1954, to reduce income taxes, and for other purposes.

Edmond S. Muskie, William D. Hathaway, John Glenn, Dennis DeConcini, Thomas F. Eagleton, Adlai E. Stevenson, Charles H. Percy, James Abourezk, Mark O. Hatfield, Joseph B. Biden, Jr., Birch Bayh, Patrick J. Leahy, Howard M. Metzenbaum, Lowell P. Weicker, Jr., Ernest F. Hollings, John C. Culver.

UNANIMOUS-CONSENT REQUEST

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent now that the amendment by Mr. MUSKIE be temporarily laid aside for the purpose of other amendments being called up tonight to the tax bill, amendments which are not in controversy which will only require a voice vote and for the purpose of allowing certain other housekeeping matters and conference reports about which there is no controversy to be called up, with the understanding that tomorrow morning, when the Senate resumes consideration of the tax bill, Mr. MUSKIE would again be recognized, along with Mr. GLENN, and there be no rollcall votes tonight.

Mr. CURTIS. Mr. President, reserving the right to object, and I shall not object, what is the pending business now?

Mr. ROBERT C. BYRD. The pending business is the amendment by Mr. GLENN to the amendment by Mr. MUSKIE to the bill.

Mr. CURTIS. When we resume on that, will it be the Glenn amendment or the Muskie amendment?

Mr. ROBERT C. BYRD. The Glenn amendment would still be pending as an amendment to the Muskie amendment.

Mr. CURTIS. Mr. President, will the distinguished majority leader yield for a parliamentary inquiry?

Mr. ROBERT C. BYRD. I yield.

Mr. CURTIS. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. CURTIS. As I understand it, two cloture motions have been filed. In what order will they be voted upon?

The PRESIDING OFFICER. In the order in which they are filed.

Mr. CURTIS. Very well.

Mr. PACKWOOD. Mr. President, reserving the right to object, what did the majority leader say about tonight in calling up amendments?

Mr. ROBERT C. BYRD. There would be only amendments called up that could be accepted by the managers of the bill and could be voice voted or, if not, there would not be any rollcall votes thereon tonight.

Mr. PACKWOOD. Then I think I will object. I have an amendment I want to call up that is controversial and I am sure will require a roll call vote. I thought we were going to dispose of these tonight, and I was ready to go tonight.

The PRESIDING OFFICER. Objection is heard.

Several Senators addressed the Chair.

Mr. ROBERT C. BYRD. I yield to the Senator from Arizona (Mr. GOLDWATER).

Mr. GOLDWATER. Mr. President, did the distinguished majority leader set a time to come back in tomorrow?

Mr. ROBERT C. BYRD. Yes. The Senate will convene at 9 a.m. tomorrow morning.

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

Mr. ROBERT C. BYRD. I yield to the Senator from Maryland.

Mr. MATHIAS. Mr. President, I wish to say a few words in support of the important amendment offered by my distinguished colleague from the State of Maine. I cosponsored this legislation when it was first introduced, and voted for its passage in the Governmental Affairs Committee. I consider it vital. The concept of this legislation is irresistible; the need for it is irrefutable.

The mood of the country is, at the very least, troubled; some would say rebellious. Rising inflation and the perception that Government is bloated and inefficient have raised demands for reform. Cries are heard throughout the country for an end to waste and for severe cuts in Government spending.

Sunset is a logical, responsible and orderly response to this public concern. We, in Congress, should commit ourselves to reexamining every cent we now spend. We should make sure every Federal dollar is being used as effectively and efficiently as possible.

Mr. President, this type of legislation is long overdue. It provides for automatic termination of Federal programs unless Congress determines, through a review process, that they should be reauthorized or reenacted. The bill simply requires Congress to do its job better and more thoroughly. It requires Congress to reconsider past policies and programs in a way that will allow us to shift resources away from programs we no longer need or from those that are not working well. We need to free up those resources and to put them to work in new, more effective ways.

The Senate Budget Committee recently calculated the cost of 31 new program initiatives likely to be before Congress over the next 5 years. It found that between 1980 and 1983 the cost of these new programs could run as high as $416 billion in new spending. When we factor in our rate of growth, as the budget com-

mittee found, we can fairly project that $120 billion in additional revenues would be needed to pay for these new programs.

We cannot raise taxes to pay for new programs. The American people are already groaning under the tax load. Equally out of the question is increasing the budget deficit. But neither can we ignore the legitimate demands of the future, except at our peril.

What we can do, and what we must do, is to reconsider what we spend now and to realine our spending with our changing national priorities. That is what Sunset is all about. It is a process to help us put sense in our spending and bring inflation under control. The Sunset approach is vastly preferable to arbitrary, mindless across-the-board budget cuts that inevitably fall most heavily on the shoulders of the weak. It offers us an orderly approach to legislation that will benefit all Americans equally.

Mr. President, I urge my colleagues to support this important measure. If we succeed in enacting this legislation this year, I think it will be regarded eventually as the most significant accomplishment of the 95th Congress.

Passage of Sunset legislation now, combined with our earlier passage of the second congressional budget resolution, will be a clear sign to the American people that Congress has heard their appeals for relief and has responded responsibly and constructively.

Several Senators addressed the Chair.

Mr. ROBERT C. BYRD. Mr. President, I yield to the minority leader.

Mr. GLENN. Mr. President, a parliamentary inquiry.

Mr. ROBERT C. BYRD. I yield for that purpose.

Mr. GLENN. A parliamentary inquiry, Mr. President.

The PRESIDING OFFICER. The Senator will state it.

Mr. GLENN. When we had the last quorum call it was my understanding when we came back from that quorum call I retained the right to the floor.

Mr. ROBERT C. BYRD. The Senator is correct.

Mr. GLENN. Under the unanimous-consent agreement that was propounded here, and it was not agreed to because objection was heard, my parliamentary inquiry is: Do I still have priority on the right to the floor?

The PRESIDING OFFICER. The Senator is correct. He has priority.

Mr. ROBERT C. BYRD. The Senator is correct.

The PRESIDING OFFICER. He yielded to the distinguished majority leader.

Mr. ROBERT C. BYRD. The Senator has the floor under the unanimous-consent request.

Mr. GLENN. I will yield to the majority leader, reserving my right to the floor. I yield to him for whatever purposes.

The PRESIDING OFFICER. Under the unanimous-consent agreement he has that right.

Mr. GLENN. Whatever he participates in right here, I reserve the right to the floor this evening unless we have the other unanimous-consent request approved that we agreed to in the cloakroom.

Mr. ROBERT C. BYRD. The Senator is absolutely correct. I apologize for taking the floor. I had no right to the floor. I had forgotten about the order for the recognition of the Senator.

Mr. BAKER. Mr. President, will the majority leader yield? Will the Senator from Ohio yield to me without losing his right to the floor?

Mr. ROBERT C. BYRD. He has yielded to me. I yield to the minority leader.

Mr. BAKER. Mr. President, I hope we might still find a way to arrive at a unanimous-consent agreement to postpone consideration of the Muskie-Glenn amendment until tomorrow. The distinguished Senator from Oregon (Mr. PACKWOOD) has an amendment that will require a rollcall vote, and I judge his principal concern is finding a time certain to vote on that amendment. I wonder if we can work our way around this dilemma and find a time certain to vote on tomorrow?

Mr. PACKWOOD. I would be happy to call it up and lay it down tonight and arrange a time to vote tomorrow morning.

Mr. ROBERT C. BYRD. Perhaps the managers of the bill, the chairman of the committee, would respond.

Mr. LONG. Mr. President, I do not think I would object to calling it up and discussing it and voting on it at a time certain tomorrow.

If it is the amendment I think it is it has more than one feature to it. It is subject to a lot of debate and I would want to have a division so that people can vote for the part they want to vote for and vote against the part they do not want to vote for.

Mr. PACKWOOD. Mr. President, I do not want to take the Senate by surprise. The amendment eliminates DISC, and it cuts the corporate rate by a percent, which is roughly a tradeoff in revenue. On behalf of Senator KENNEDY and myself, we are offering this amendment, which is not a complicated amendment, and would not require a great deal of discussion.

Mr. LONG. I think the Senator ought to know that it would be my intention to insist on a division so that we would vote on whatever part comes first. If DISC is the first part of it, then we would vote on that and then vote on the second part, and that would be the reduction in the rate. Senators might want to vote for one part and not another part. and if they did. that would be their privilege. They could vote for all of it.

Mr. PACKWOOD. I would prefer to vote on it as a whole, but if it is divisible.

Mr. LONG. The Senator said something very logical, with which I thoroughly agree. I never object to anybody doing something that he has a right to do.

Mr. KENNEDY. Mr. President, will the floor manager yield?

Mr. ROBERT C. BYRD. I yield.

Mr. KENNEDY. If we can have a time limitation, we could vote on it this evening. The concern some of us have is if the cloture motion is carried, it would preclude us from consideration of this type of amendment. So if the leader wants to agree on an hour's time limitation, we could do it this evening. I am reluctant, quite frankly, while we have got some Members here, just to lay it down and have a discussion from the Senator from Oregon and myself this evening and then vote on it tomorrow morning. We would be glad to agree to an hour's time limitation.

Mr. ROBERT C. BYRD. Mr. President, Mr. KENNEDY has suggested a time agreement and a vote on it tonight.

The PRESIDING OFFICER. The Chair is having a little difficulty hearing who has the floor now.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the amendment by Mr. MUSKIE be temporarily laid aside, with the understanding that on tomorrow morning it would be the pending question, which it would be in any event without request, but that Mr. MUSKIE would then be recognized—he or Mr. GLENN—to discuss it, and that in the meantime this evening the Senate proceed to the consideration of the amendment by Mr. PACKWOOD; that there be a time limitation of a half hour to the side, at which time the Senate will vote.

Mr. LONG. Mr. President, I do not think we need that much time. I would hope we would limit ourselves to 15 minutes on each side.

Mr. CURTIS. Mr. President, reserving the right to object, there are individuals awav from the Chamber, some of them in the dining room here and elsewhere. Could we fix the vote at a specific time, such as 9:15?

Mr. BUMPERS. Mr. President, reserving the right to object, I did not hear the last statement of the Senator from Nebraska about 9:15.

Mr. ROBERT C. BYRD. There were suggestions that the vote occur at 9 and there were suggestions that the vote occur at 9:15. I think the manager and ranking manager are willing to make it 9 in relation to the amendment tonight.

The PRESIDING OFFICER. Is there objection?

Mr. MELCHER. Mr. President, reserving the right to object, if I could have 2 minutes to pass a wilderness bill while the rest of them get ready, I would not object.

[Laughter.]

Mr. ROBERT C. BYRD. That is a fair bargain.

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

MONTANA WILDERNESS AND RESERVE EXTENSION

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Chair lay before the Senate a message from the House on H.R. 13972.

The PRESIDING OFFICER laid before the Senate H.R. 13972, an act to designate the Great Bear Wilderness, Flathead National Forest, and enlarge the Bob Marshall Wilderness, Flathead and Lewis and Clark National Forests,

State of Montana, which was read twice by its title.

The PRESIDING OFFICER. Without objection, the Senate will proceed to its consideration.

UP AMENDMENT NO. 2000

Mr. MELCHER. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Montana (Mr. MELCHER) proposes an unprinted amendment numbered 2000:

On page 1, line 6, strike the word "September" and insert "October".

On page 1, line 10, strike "ninety thousand, five" and insert "eighty-five thousand, seven".

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Montana.

The amendment was agreed to.

Mr. MELCHER. Mr. President, I simply want to explain that the amendment extends the corridor of the nonwilderness area for about a distance of a half mile between the Great Northern tracks and Highway Two on the northern boundary.

Furthermore, the Senate amendment does restrict or pull back the boundary on Morrison Creek south for about 1½ miles to 2 miles to leave excluded from the wilderness area that portion of Morrison Creek and Crescent Creek to allow the opportunity for both snowmobiling, oil, and gas exploration in that excluded area, and for other multiple uses.

That is, in sum and substance, the Senate amendment, and I can report that it is agreed to on both sides.

Mr. GOLDWATER. Mr. President, will the Senator yield for a question?

Mr. MELCHER. I would be delighted to yield.

Mr. GOLDWATER. Does this bill contain any park, monument, wilderness areas outside of Montana?

Mr. MELCHER. No. I can report to the Senator from Arizona that it is totally within the State of Montana. It is an extension of a reserve, if we count Glacier Park as a reserve, down across the nonwilderness area to the Great Bear area which we are acting upon to join with the Bob Marshall wilderness area and the Scapegoat wilderness area which has long been advocated by our late colleague, Senator Metcalf, who has long championed this cause. I think it is a tribute to him that the Senate can accept it.

The PRESIDING OFFICER (Mr. STONE). The question is on the engrossment of the Senate amendment and third reading of the bill.

The bill (H.R. 13972) was ordered to be engrossed for a third reading, was read the third time and, as amended, was passed.

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.

REVENUE ACT OF 1978

The Senate continued with the consideration of the bill.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. PACKWOOD. Mr. President, do I understand now that we are going to vote on this amendment at 9 o'clock, and that the remaining time is equally divided?

The PRESIDING OFFICER. That is correct.

Mr. PACKWOOD. I am going to call up the amendment in just a moment, but there are different figures on it. I will call it up in a moment.

I might advise Senators that if the committee chairman asks for a division, there might be two votes.

This is an amendment sponsored by the Senator from Massachusetts (Mr. KENNEDY) and myself, which will be very——

Mr. ROBERT C. BYRD. Mr. President, the Senator is trying to explain the amendment. He does not have but 15 minutes in which to do it. I hope the Senate will be in order.

The PRESIDING OFFICER. The Senate will be in order.

Mr. ROBERT C. BYRD. Mr. President, does the Senator want the yeas and nays on his amendment?

Mr. PACKWOOD. Yes.

The PRESIDING OFFICER. Is there objection to ordering the yeas and nays before the amendment is reported? Without objection, it will be in order to ask for the yeas and nays.

Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. PACKWOOD. The amendment is very simple to understand. It eliminates DISC, the Domestic International Sales Corporation. It takes the revenues which are gained from eliminating DISC and uses them, in turn, to reduce the corporate tax rate, by one-half percent now and completely with 1 percent starting in 1982. The corporate tax will thus be lower than it is in the bill. As we have it in the bill, it is cut to 46 percent, and under my amendment, by 1982 it would be cut to 45 percent.

These are the very simple pros and cons of the amendment: If you were to ask most corporations which they prefer to have, DISC, the Domestic International Sales Corporation, or a 1 percent reduction in the corporate tax rate, they would choose the 1 percent reduction in the corporate tax rate.

There are two kinds of corporations which would probably prefer DISC. First are not all, but some, of the multinational corporations, the very large corporations which are heavily involved in exports, and are quite profitable corporations. For them, DISC is a windfall, to my mind, for exports they would make whether or not DISC existed.

Second, there are a very few small specialized corporations which, although small, are heavily involved in exports, and of course they would prefer a tax incentive oriented toward exports.

For the great bulk of the corporations in this country, however, many of the big and almost all of the small corporations, whether they are slightly involved in exports or not at all, would much prefer a 1 percent reduction in the corporate profits tax to maintaining DISC.

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

The PRESIDING OFFICER. The amendment will be stated.

UP AMENDMENT NO. 2001

(Subsequently numbered amendment No. 4007)

(Purpose: To provide for a phase-out of the deferral available under the DISC provisions and a corresponding reduction in the maximum corporation tax rate)

The legislative clerk read as follows.

The Senator from Oregon (Mr. PACKWOOD) proposes an unprinted amendment numbered 2001.

Mr. PACKWOOD. I ask unanimous consent that a further reading of the amendment be dispensed with.

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

The amendment is as follows:

On page 341, between lines 17 and 18, insert the following new sections:

SEC. —. CORPORATE RATE REDUCTIONS.

(a) IN GENERAL.—Section 11 (relating to tax imposed on corporations) is amended to read as follows:

"SEC. 11. TAX IMPOSED.

"(a) CORPORATIONS IN GENERAL.—A tax is hereby imposed for each taxable year on the taxable income of every corporation.

"(b) AMOUNT OF TAX.—The amount of the tax imposed by subsection (a) shall be the sum of—

"(1) 17 percent of so much of the taxable income as does not exceed $25,000;

"(2) 20 percent of so much of the taxable income as exceeds $25,000 but does not exceed $50,000;

"(3) 30 percent of such much of the taxable income as exceeds $50,000 but does not exceed $75,000;

"(4) 40 percent of so much of the taxable income as exceeds $75,000 but does not exceed $100,000; plus

"(5) a percent of so much of the taxable income as exceeds $100,000 equal to—

"(A) 46 percent for taxable years beginning in 1979,

"(B) 45½ percent for taxable years beginning after September 30, 1979, and

"(C) 45 percent for taxable years beginning after December 31, 1981.

"(c) EXCEPTIONS.—Subsection (a) shall not apply to a corporation subject to a tax imposed by—

"(1) section 594 (relating to mutual savings banks conducting life insurance business),

"(2) subchapter L (sec. 801 and following, relating to insurance companies), or

"(3) subchapter M (sec. 851 and following, relating to regulated investment companies and real estate investments trusts).

"(d) FOREIGN CORPORATIONS.—In the case of a foreign corporation, the tax imposed by subsection (a) shall apply only as provided by section 882.".

(b) CONFORMING AMENDMENTS.—

(1) CROSS REFERENCES RELATING TO CORPORATIONS.—Paragraph (7) of section 12 (relating to cross references relating to tax on corporations) is amended to read as follows:

"(7) For limitations on benefits of graduated rate schedule provided in section 11(b), see section 1551.".

(2) CAPITAL GAINS FOR CORPORATIONS.—Subpargraph (B) of section 57(a)(9) is amended by striking out "the sum of the normal tax

rate and surtax rate under section 11" each place it appears and inserting in lieu thereof "the highest rate of tax specified in section 11(b).

(3) DIVIDENDS RECEIVED ON CERTAIN PREFERRED STOCK.—Subparagraph (B) of section 244(a)(2) (relating to dividends received on certain preferred stock) is amended by striking out "the sum of the normal tax rate and the surtax rate of the taxable year prescribed by section 11" and inserting in lieu thereof "the highest rate of tax specified in section 11(b)".

(4) DIVIDENDS PAID ON CERTAIN PREFERRED STOCK OF PUBLIC UTILITIES.—Subparagraph (B) of section 247(a)(2) (relating to dividends paid on certain preferred stock of public utilities) is amended by striking out "the sum of the normal tax rate and the surtax rate for the taxable year specified in section 11" and inserting in lieu thereof "the highest rate of tax specified in section 11(b)".

(5) TAX ON UNRELATED BUSINESS INCOME OF CHARITABLE, ETC., ORGANIZATIONS.—

(A) IMPOSITION OF TAX.—Paragraph (1) of section 511(a) (relating to charitable, etc., organizations taxable at corporation rates) is amended by striking out "a normal tax and a surtax" and inserting in lieu thereof "a tax".

(B) ORGANIZATIONS SUBJECT TO TAX.— Paragraph (2) of section 511(a) is amended by striking out "taxes" each place it appears and inserting in lieu thereof "tax".

(6) POLITICAL ORGANIZATIONS.—Paragraph (1) of section 527(b) (relating to tax imposed) is amended to read as follows:

'(1) IN GENERAL.—A tax is hereby imposed for each taxable year on the political organization taxable income of every political organization. Such tax shall be computed by multiplying the political organization taxable income by the highest rate of tax specified in section 11(b)."

(7) HOMEOWNERS ASSOCIATIONS.—Paragraph (1) of section 528(b) (relating to tax imposed) is amended to read as follows:

"(1) IN GENERAL.—A tax is hereby imposed for each taxable year on the homeowners association taxable income of every homeowners association. Such tax shall be computed by multiplying the homeowners association taxable income by the highest rate of tax specified in section 11(b)."

(8) LIFE INSURANCE COMPANIES.—Paragraph (1) of section 802(a) (relating to tax imposed) is amended by striking out "a normal tax and surtax" and inserting in lieu thereof "a tax".

(9) MUTUAL INSURANCE COMPANIES.—

(A) IN GENERAL.—Subsection (a) of section 821 (relating to tax on mutual insurance companies to which part II applies) is amended to read as follows:

"(a) IMPOSITION OF TAX.—

"(1) IN GENERAL.—A tax is hereby imposed for each taxable year on the mutual insurance company taxable income of every mutual insurance company (other than a life insurance company and other than a fire, flood, or marine insurance company subject to the tax imposed by section 831). Such tax shall be computed by multiplying the mutual insurance company taxable income by the rates provided in section 11(b).

"(2) CAP ON TAX WHERE INCOME IS LESS THAN $12,000.— The tax imposed by paragraph (1) shall not exceed 34 percent of the amount by which the mutual insurance company taxable income exceeds $6,000.".

(B) SMALL COMPANIES.—Paragraph (1) of section 821(c) (relating to alternative tax for certain small companies) is amended to read as follows:

"(1) IMPOSITION OF TAX.—

"(A) IN GENERAL.—There is hereby imposed for each taxable year on the income of every mutual insurance company to which this subsection applies a tax (which shall be in lieu of the tax imposed by subsection (a)). Such tax shall be computed by multiplying the taxable investment income by the rates provided in section 11(b).

"(B) CAP WHERE INCOME IS LESS THAN $6,000.—The tax imposed by subparagraph (A) shall not exceed 34 percent of the amount by which the taxable investment income exceeds $3,000.".

(10) ELECTION BY MUTUAL INSURANCE COMPANY WHICH IS A RECIPROCAL.—Paragraph (1) of section 826(c) (relating to exception) is amended to read as follows:

"(1) is subject to the tax imposed by section 11;".

(11) REGULATED INVESTMENT COMPANIES.—Paragraph (1) of section 852(b) (relating to method of taxation of companies and shareholders) is amended to read as follows:

"(1) IMPOSITION OF TAX ON REGULATED INVESTMENT COMPANIES.—There is hereby imposed for each taxable year upon the investment company taxable income of every regulated investment company a tax computed as provided in section 11, as though the investment company taxable income were the taxable income referred to in section 11.".

(12) REAL ESTATE INVESTMENT TRUSTS.—Paragraph (1) of section 857(b) (relating to imposition of normal tax and surtax on real estate investment trusts) is amended to read as follows:

"(1) IMPOSITION OF TAX ON REAL ESTATE INVESTMENT TRUSTS.—There is hereby imposed for each taxable year on the real estate investment trust taxable income of every real estate investment trust a tax computed as provided in section 11, as though the real estate investment trust taxable income were the taxable income referred to in section 11.".

(13) TAX ON INCOME OF FOREIGN CORPORATIONS CONNECTED WITH UNITED STATES BUSINESS.—The heading of subsection (a) of section 882 (relating to tax on income of foreign corporations connected with United States business) and the heading of paragraph (1) of such subsection are amended to read as follows:

"(a) IMPOSITION OF TAX.—

"(1) IN GENERAL.—.".

(14) FOREIGN TAX CREDIT.—Paragraph (2) of section 907(a) (relating to reduction in amount allowed as foreign tax under section 901) is amended to read as follows:

"(2) the percentage which is equal to the highest rate of tax specified in section 11(b).".

(15) SPECIAL DEDUCTION FOR WESTERN HEMISPHERE TRADE CORPORATION.—Subparagraph (B) of section 922(a)(2) (relating to general rule) is amended by striking out "the sum of the normal tax rate and the surtax for the taxable year prescribed by section 11" and inserting in lieu thereof "the highest rate of tax specified in section 11(b).".

(16) ELECTION BY INDIVIDUALS TO BE SUBJECT TO TAX AT CORPORATE RATES.—Subsection (c) of section 962 (relating to surtax exemption with respect to individuals subject to tax at corporate rates) is amended to read as follows:

"(c) PRORATION OF EACH SECTION 11 BRACKET AMOUNT.—For purposes of applying subsection (a)(1), the amount in each taxable income bracket in the tax table in section 11(b) shall not exceed an amount which bears the same ratio to such bracket amount as the amount included in the gross income of the United States shareholder under section 951(a) for the taxable year bears to such shareholder's pro rata share of the earnings and profits for the taxable year of all controlled foreign corporations with respect to which such shareholder includes any amount in gross income under section 951(a).".

(17) TREATMENT OF RECOVERIES OF FOREIGN EXPROPRIATION LOSSES.—Paragraph (4) of section 1351(d) (relating to adjustment for prior tax benefits) is amended to read as follows:

"(4) SUBSTITUTION OF CURRENT TAX RATE.—For purposes of this subsection, the rates of tax specified in section 11(b) for the taxable year of the recovery shall be treated as having been in effect for all prior taxable years.".

(18) AMENDMENTS OF SECTION 1551.—

(A) Subsection (a) of section 1551 (relating to disallowance of surtax exemption and accumulated earnings credit) is amended—

(i) by striking out "disallow the surtax exemption (as defined in section 11(d))" and inserting in lieu thereof "disallow the benefits of the rates contained in section 11(b) which are lower than the highest rate specified in such section", and

(ii) by striking out "such exemption or" and inserting in lieu thereof "such benefits or".

(B) The section heading of section 1551 is amended to read as follows:

"SEC. 1551. DISALLOWANCE OF THE BENEFITS OF THE GRADUATED CORPORATE RATES AND ACCUMULATED EARNINGS CREDIT.".

(C) The table of sections for part I of subchapter B of chapter 6 is amended by striking out the item relating to section 1551 and inserting in lieu thereof the following new item:

"Sec. 1551. Disallowance of the benefits of the graduated corporate rates and accumulated earnings credit.".

(19) LIMITATIONS ON CERTAIN MULTIPLE TAX BENEFITS IN THE CASE OF CERTAIN CONTROLLED CORPORATIONS.—

(A) IN GENERAL.—Subsection (a) of section 1561 (relating to limitations on certain multiple tax benefits in the case of certain controlled corporations) is amended—

(i) by striking out paragraph (1) and inserting in lieu thereof the following:

"(1) amounts in each taxable income bracket in the tax table in section 11(b) which do not aggregate more than the maximum amount in such bracket to which a corporation which is not a component member of a controlled group is entitled,",

(ii) by striking out "amount" each place it appears in the second sentence and inserting in lieu thereof "amounts", and

(iii) by striking out the last sentence.

(B) CERTAIN SHORT TAXABLE YEARS.—Paragraph (1) of section 1561(b) (relating to certain short taxable years) is amended to read as follows:

"(1) the amount in each taxable income bracket in the tax table in section 11(b),".

(20) REPEAL OF CERTAIN OBSOLETE PROVISIONS.—

(A) Subsection (c) of section 6154 (defining estimated tax) is amended to read as follows:

"(c) ESTIMATED TAX DEFINED.—For purposes of this title, in the case of a corporation the term 'estimated tax' means the excess of—

"(1) the amount which the corporation estimates as the amount of the income tax imposed by section 11 or 1201(a), or subchapter L of chapter 1, whichever is applicable, over

"(2) the amount which the corporation estimates as the sum of the credits against tax provided by part IV of subchapter A of chapter 1.".

(B) Subsection (e) of section 6655 (defining tax) is amended to read as follows:

"(e) DEFINITION OF TAX.—For purposes of subsections (b) and (d), the term 'tax' means the excess of—

"(1) the tax imposed by section 11 or 1201(a), or subchapter L of chapter 1, whichever is applicable, over

"(2) the credits against tax provided by part IV of subchapter A of chapter 1.".

(c) EFFECTIVE DATE.—The amendments

made by this section shall apply to taxable years beginning after December 31, 1978.

(d) Application with section 301.—Section 301 of this Act is hereby repealed, effective on the day after the date of enactment of this Act. The amendments made by that section shall not apply with respect to any taxable year.

SEC. 381. REPEAL OF DISC.

(a) PHASEOUT OF DISC BENEFITS.—

(1) DEEMED DISTRIBUTIONS BY DISC IN YEARS ENDING IN 1979 OR 1980.—Section 955(b)(1) is amended—

(A) by striking out "one-half" at the beginning of subparagraph (F)(i) and inserting in lieu thereof "the applicable percentage",

(B) by striking out "an amount equal to" at the beginning of subparagraph (F)(ii) and inserting in lieu thereof "an amount equal to the applicable percentage of", and

(C) by adding at the end thereof the following: "For purposes of clause (i) of subparagraph (F), the applicable percentage for a taxable year ending after December 31, 1978, is 66⅔ percent if it ends in 1979 and 83⅓ percent if it ends in 1980. For purposes of clause (ii) of subparagraph (F), the applicable percentage for a taxable year ending after December 31, 1978, is 50 percent if it ends in 1979 and 20 percent if it ends in 1980."

(b) SOURCE OF DISTRIBUTIONS.—Section 996(a)(2) is amended by adding a new sentence immediately after the last sentence to read as follows: "In the case of an actual distribution described in the preceding sentence made with respect to taxable years ending in 1979 or 1980, the first sentence of this paragraph shall apply to 33⅓ percent and 16⅔ percent of such amount, respectively, and paragraph (1) shall apply to the remaining amount of such distribution for those respective taxable years."

(c) REPEAL.—Part IV (sections 991 through 997) of subchapter N of chapter 1 (relating to domestic international sales corporations) is hereby repealed.

(d) TREATMENT OF TERMINATED DISCs.—Subchapter N of chapter 1 (relating to tax on income from sources within or without the United States) is amended by adding after part III the following new part:

"PART IV—TAXATION OF SHAREHOLDERS OF TERMINATED DISC

"SEC. 985. TAXATION OF ACCUMULATED DISC INCOME TO SHAREHOLDERS.

"(a) GENERAL RULE.—A shareholder of a terminated DISC (as defined in section 988(a)) shall be subject to taxation as provided in this chapter, but subject to the modifications of this part.

"(b) DEEMED DISTRIBUTIONS.—

"(1) GENERAL RULE.—If—

"(A) a terminated DISC has accumulated DISC income at the end of any taxable year ending after 1980, and

"(B) its accumulated DISC income exceeds the average adjusted basis of its export related assets (as defined in section 988(b)),

then a shareholder of the terminated DISC shall be deemed to have received on the last day of such taxable year a dividend equal to his pro rata share of such excess.

"(2) TERMINATION DISTRIBUTIONS.—

"(A) A shareholder of a corporation which is a terminated DISC and which makes the election described in paragraph (3) shall be deemed to have received at the time specified in subparagraph (B) a distribution taxable as a dividend equal to his pro rata share of the accumulated DISC income of such corporation.

"(B) Distributions described in subparagraph (A) shall be deemed to be received in equal installments on the last day of each of 10 taxable years of the corporation following the year in which the corporation makes the election described in paragraph (3).

(3) ELECTION.—If the terminated DISC elects, at such time and in such manner as the Secretary shall prescribe by regulations, to have paragraph (2) apply, then paragraph (2) shall apply (and paragraph (1) shall not apply) for the taxable year and all succeeding taxable years.

"(c) GAIN ON DISPOSITION OF STOCK IN A TERMINATED DISC.—

"(1) IN GENERAL.—If a shareholder disposes of stock in a terminated DISC, any gain realized on such disposition, notwithstanding any other provision of this title, shall be recognized and be included in gross income as a dividend to the extent provided in paragraph (2).

"(2) AMOUNT INCLUDED.—The amount described in paragraph (1) shall be included in gross income as a dividend to the extent of the accumulated DISC income of the terminated DISC which is attributable to the stock disposed of and which was accumulated in taxable years of such corporation during the period or periods the stock disposed of was held by the shareholder which disposed of such stock.

"SEC. 986. RULES FOR ALLOCATION IN THE CASE OF DISTRIBUTIONS AND LOSSES.

"(a) RULES FOR ACTUAL DISTRIBUTIONS AND CERTAIN DEEMED DISTRIBUTIONS.—

"(1) IN GENERAL.—Any actual distribution (other than a distribution to which section 985(c) applies) to a shareholder by a terminated DISC, which is made out of earnings and profits, shall be treated as made—

"(A) first, out of previously taxed income, to the extent thereof,

"(B) second, out of accumulated DISC income, to the extent thereof, and

"(C) finally, out of other earnings and profits.

"(2) DEEMED DISTRIBUTIONS.—Any deemed distribution described in section 985(b) shall be treated as made out of accumulated DISC income, to the extent thereof.

"(3) EXCLUSION FROM GROSS INCOME.—Amounts distributed out of previously taxed income shall be excluded by the distributee from gross income except for gains described in subsection (d)(2).

"(b) ORDERING RULE FOR LOSSES.—If for any taxable year, a terminated DISC incurs a deficit in earnings, and profits, such deficit shall be chargeable—

"(1) first, to earnings and profits described in section (a)(1)(C), to the extent thereof,

"(2) second, to accumulated DISC income, to the extent thereof, and

"(3) finally, to previously taxed income.

A deficit in earnings and profits shall not be applied against accumulated DISC income which has been determined is to be deemed distributed to the shareholders in accordance with section 985(b)(2).

"(c) PRIORITY OF DISTRIBUTIONS.—Any actual distribution made during a taxable year shall be treated as being made subsequent to any deemed distribution made during such year.

"(d) ADJUSTMENT TO BASIS.—

"(1) ADDITIONS TO BASIS.—Amounts representing deemed distributions in accordance with section 985(b) shall increase the basis of the stock with respect to which the distribution is made.

"(2) REDUCTIONS OF BASIS.—The portion of an actual distribution made out of previously taxed income shall reduce the basis of the stock with respect to which it is made, and to the extent that it exceeds the adjusted basis of such stock, shall be treated as gain from the sale or exchange of property. In the case of stock includible in the gross estate of a decedent for which an election is made under section 2032 (relating to alternate valuation), this paragraph shall not apply to any distribution made after the date of the decedent's death and before the alternate valuation date provided by section 2032.

"(e) ADJUSTMENT TO PREVIOUSLY TAXED INCOME.—Earnings and profits deemed distributed under section 985(b) shall increase previously taxed income.

"(f) EFFECT OF PREVIOUS DISPOSITION OF TERMINATED DISC STOCK.—

"(1) SHAREHOLDER PREVIOUSLY TAXED INCOME ADJUSTMENT.—If—

"(A) gain with respect to a share of stock of a terminated DISC is treated under section 985(c) (or was treated under section 995(c) before its repeal by the Revenue Act of 1978) as a dividend or as ordinary income, and

"(B) any person subsequently receives an actual distribution made out of accumulated DISC income, or a deemed distribution made pursuant to section 985(b) with respect to such share,

such person shall treat such distribution in the same manner as a distribution from previously taxed income to the extent that (i) the gain referred to in subparagraph (A), exceeds (ii) any other amounts with respect to such share which were treated under this paragraph (or under section 996(d)(1) as in effect before its repeal by the Revenue Act of 1978) as made from previously taxed income. In applying this paragraph with respect to a share of stock in a terminated DISC, gain on the acquisition of such share by the terminated DISC or gain on a transaction prior to such acquisition shall not be considered gain referred to in subparagraph (A).

"(2) CORPORATE ADJUSTMENT UPON REDEMPTION.—If section 985(c) applies to a redemption of stock in a terminated DISC, the accumulated DISC income shall be reduced by an amount equal to the gain described in section 985(c) with respect to such stock which is (or has been) treated as ordinary income, except to the extent distributions with respect to such stock have been treated under paragraph (1).

"(g) EFFECTIVELY CONNECTED INCOME.—In the case of a shareholder who is a nonresident alien individual or a foreign corporation, trust, or estate, gains referred to in section 985(c) and all distributions out of accumulated DISC income including deemed distributions shall be treated as gains and distributions which are effectively connected with the conduct of a trade or business conducted through a permanent establishment of such shareholder within the United States.

"SEC. 987. SPECIAL SUBCHAPTER C RULES.

"For purposes of applying the provisions of subchapter C of chapter 1, any distribution of property to a corporation by a terminated DISC which is made out of previously taxed income or accumulated DISC income shall—

"(1) be treated as a distribution in the same amount as if such distribution of property were made to an individual, and

"(2) have a basis, in the hands of the recipient corporation, equal to the amount determined under paragraph (1).

"SEC. 988. DEFINITIONS.

"(a) TERMINATED DISC.—For purposes of this title, the term 'terminated DISC' means, with respect to any taxable year, a corporation which was a DISC (within the meaning of section 992(a)(1) as in effect for taxable years of such corporation ending before January 1, 1981) in a preceding taxable year and at the beginning of the taxable year has undistributed previously taxed income or accumulated DISC income.

"(b) EXPORT RELATED ASSETS.—For purposes of this part, export related assets of a corporation are—

"(1) export property (as defined in subsection (c));

"(2) assets used primarily in connection with the sale, lease, rental, manufacture, storage, handling, transportation, packaging, assembly or servicing of export property, or the performance of engineering or architectural services for construction projects located (or proposed for location) outside the United States or managerial services in furtherance of the sale, lease, rental, or servicing of export property, or of the construction projects described in this paragraph;

"(3) accounts receivable and evidences of indebtedness which arise solely by reason of the sale, lease, rental, or servicing of export property by such corporation;

"(4) money, bank deposits, and other similar temporary investments which, under regulations prescribed by the Secretary, are reasonably necessary to meet the working capital requirements of such corporation attributable to export related activity;

"(5) obligations arising in connection with a producer's loan (as defined in subsection (d)) made in a taxable year of such corporation ending before January 1, 1981;

"(6) obligations issued, guaranteed, or insured, in whole or in part, by the Export-Import Bank of the United States or the Foreign Credit Insurance Association in those cases where such obligations are acquired from such Bank or Association or from the seller or purchaser of the goods or services with respect to which such obligations arose;

"(7) obligations issued by a domestic corporation organized solely for the purpose of financing sales of export property pursuant to an agreement with the Export-Import Bank of the United States under which such corporation makes export loans guaranteed by such bank.

"(c) EXPORT PROPERTY.—

"(1) IN GENERAL.—For purposes of this part, the term 'export property' means property—

"(A) manufactured, produced, grown, or extracted in the United States,

"(B) held primarily for sale, lease, or rental, in the ordinary course of trade or business, by a terminated DISC, for direct use, consumption, or disposition outside the United States, and

"(C) not more than 50 percent of the fair market value of which is attributable to articles imported into the United States.

In applying subparagraph (C), the fair market value of any article imported into the United States shall be its appraised value, as determined by the Secretary under section 402 or 402a of the Tariff Act of 1930 (19 U.S.C., 1401a or 1402) in connection with its importation.

"(2) EXCLUDED PROPERTY.—For purposes of this part, the term 'export property' does not include—

"(A) property leased or rented by a terminated DISC for use by any member of a controlled group (as defined in section 990 (f)) which includes the terminated DISC,

"(B) patents, inventions, models, designs, formulas, or processes, whether or not patented, copyrights (other than films, tapes, records, or similar reproductions, for commercial or home use), good will, trademarks, trade brands, franchises, or other like property,

"(C) products of a character with respect to which a deduction for depletion is allowable (including oil, gas, coal, or uranium products) under section 613 or 613A, or

"(D) products the export of which is prohibited or curtailed under section 4(b) of the Export Administration Act of 1969 (50 U.S.C. App. 2403(b)) to effectuate the policy set forth in paragraph (2)(A) of section 3 of such Act (relating to the protection of the domestic economy).

Subparagraph (C) shall not apply to any commodity or product at least 50 percent of the fair market value of which is attributable to manufacturing or processing, except that subparagraph (C) shall apply to any primary product from oil, gas, coal, or uranium. For purposes of the preceding sentence, the term 'processing' does not include extracting or handling, packing, packaging, grading, storing, or transporting.

"(3) PROPERTY IN SHORT SUPPLY.—If the President determines that the supply of any property described in paragraph (1) is insufficient to meet the requirements of the domestic economy, he may by Executive order designate the property as in short supply. Any property so designated shall be treated as property not described in paragraph (1) during the period beginning with the date specified in the Executive order and ending with the date specified in an Executive order setting forth the President's determination that the property is no longer in short supply.

"(d) PRODUCER'S LOANS.—Obligations shall be treated as arising out of a producer's loan only to the extent such obligations were so treated under section 993(d) as in effect for taxable years of a corporation ending before January 1, 1981.

"(e) UNITED STATES DEFINED.—For purposes of this part, the term 'United States' includes the Commonwealth of Puerto Rico and the possessions of the United States.

"(f) DEFINITIONS OF DIVISIONS OF EARNINGS AND PROFITS.—For purposes of this part:

"(1) ACCUMULATED DISC INCOME.—Accumulated DISC income is that portion of the earnings and profits of a corporation which constituted accumulated DISC income under section 996(f)(1) (as in effect for the last taxable year of such corporation ending in 1980) determined at the end of the last taxable year of such corporation ending in 1980, adjusted as provided in section 986.

"(2) PREVIOUSLY TAXED INCOME.—Previously taxed income is that portion of the earnings and profits of a corporation which constituted previously taxed income under section 996(f)(2) (as in effect for the last taxable year of such corporation ending in 1980) determined at the end of the last taxable year of such corporation ending in 1980, adjusted as provided in section 986.

"(3) OTHER EARNINGS AND PROFITS.—Other earnings and profits are those described in neither paragraph (1) nor (2).

"(g) DISPOSITION.—For purposes of this part, a disposition includes a sale, exchange, or distribution."

(e) TECHNICAL AND CONFORMED AMENDMENTS.—

(1) Section 246 is amended by striking out subsection (d) and by inserting new subsection (d) to read as follows:

"(d) DIVIDENDS FROM A TERMINATED DISC.—No deduction shall be allowed under section 243 in respect of a dividend from a corporation which is a terminated DISC (as defined in section 988(a)) to the extent such dividend is paid out of the corporation's accumulated DISC income or previously taxed income."

(2) Section 751(c) is amended as follows:

(A) Strike out "stock in a DISC (as described in section 992(a))," and insert in lieu thereof "stock in a terminated DISC (as described in section 988(a))".

(B) Strike out "section 995(c)," and insert in lieu thereof "section 985(c),".

(3) Section 861(a)(2) is amended by striking out subparagraph (D) and by inserting new subparagraph (D) to read as follows:

"(D) from a terminated DISC (as defined in section 988(a)) except to the extent the dividend would have been treated (under regulations prescribed by the Secretary) as income from sources without the United States if distributed in a taxable year ending before January 1, 1981."

(4) Section 901(d) is amended as follows:

(A) Strike out "TREATMENT OF DIVIDENDS FROM A DISC OR FORMER DISC" from the heading of subsection (d) and insert in lieu thereof "TREATMENT OF DIVIDENDS FROM A TERMINATED DISC".

(B) Strike out "dividends from a DISC or former DISC (as defined in section 992(a))" and insert in lieu thereof "dividends from a terminated DISC (as defined in section 998(a))".

(5) Section 904(d)(1)(B) is amended by striking out "dividends from a DISC or former DISC (as defined in section 992(a))" and by inserting in lieu thereof "dividends from a terminated DISC (as defined in section 988(a))".

(6) Section 908(a) is amended by striking out "993(a)(3)" and by inserting in lieu thereof "990(f)", by striking out "999(b)" and by inserting "990(b)", and by striking out "999" from paragraph (2) and by inserting in lieu thereof "990".

(7) Section 936 is amended by striking out subsection (f) and by inserting new subsection (f) to read as follows:

"(f) TERMINATED DISC INELIGIBLE FOR CREDIT.—No credit shall be allowed under this section to a corporation for a taxable year for which it is a terminated DISC (as defined in section 988(a)) or in which it owns at any time stock in a terminated DISC."

(8) Section 999 is amended as follows:

(A) Subsection (f) is redesignated as subsection (g) and the following subsection is inserted after subsection (e):

"(f) DEFINITION OF CONTROLLED GROUP.—For purposes of this section, the term 'controlled group' has the meaning assigned to such term by section 1563(a), except that the phrase 'more than 50 percent' shall be substituted for the phrase 'at least 80 percent' each place it appears therein, and section 1563(b) shall not apply."; and

(B) Subsections (a)(1), (b)(1), (b)(2)(A), and (c)(1) are amended by striking out "(within the meaning of section 993(a)(3))" and inserting in lieu thereof "(within the meaning of subsection(f))";

(C) Subsection (c) is amended as follows:

(i) Paragraph (1) is amended by striking out "Sections 908(a), 952(a)(3), and 995(b)(3)," and by inserting in lieu thereof "section 908(a),".

(ii) Paragraph (2) is amended by striking out "section 908(a), the addition to subpart F income under section 952(a)(3), and the amount of deemed distribution under section 995(b)(1)(D)(ii) for the taxable year, if any," and by inserting in lieu thereof "section 908(a)".

(9) Section 999 (as amended) is redesignated as section 990.

(10) Section 1504(b)(7) is amended by striking out "A DISC or former DISC (as defined in section 992(a))" and by inserting in lieu thereof "A terminated DISC (as defined in section 988(a))".

(11) Section 6011 is amended by striking out subsection (c) and by inserting new subsection (c) to read as follows:

"(c) RETURNS, ETC., OF TERMINATED DISC's.—

"(1) RECORDS AND INFORMATION.—A terminated DISC (as defined in section 988(a)) shall for the taxable year—

"(A) furnish such information to persons who were shareholders at any time during such taxable year, and to the Secretary, and

"(B) keep such records, as may be required by regulations prescribed by the Secretary.

"(2) RETURNS.—A terminated DISC shall file for the taxable year such returns as may be prescribed by the Secretary by forms or regulations."

(12) Section 6072(b) is amended by striking out the last sentence thereof and by inserting in lieu thereof the following: "Forms and returns required for a taxable year by section 6011(e)(2) (relating to returns of a terminated DISC) may, under regulations prescribed by the Secretary, be

filed on or before the fifteenth day of the ninth month following the close of the taxable year".

(13) Section 6501(g) is amended by striking out paragraph (3).

(14) The heading of section 6686 is amended to read as follows:

"SEC. 6686. FAILURE OF TERMINATED DISC TO FILE RETURNS"

(15) The item relating to section 6686 in the table of sections for subchapter B of chapter 68 is amended to read as follows:

"Sec. 6686. Failure of terminated DISC to file returns."

(16) The table of parts for subchapter N of chapter 1 is amended to read as follows:

"Part IV. Taxation of shareholders of terminated DISCs."

(17) The table of sections for part V of subchapter N of chapter 1 is amended by redesignating section 999 as section 990.

(18) Section 506 of the Revenue Act of 1971 (Public Law 92-178, 85 Stat. 553), relating to annual reports to Congress by the Secretary of the Treasury, is hereby repealed.

(f) EFFECTIVE DATES.—

(1) The amendments made by subsections (a) and (b) are effective with respect to taxable years of a domestic international sales corporation ending after December 31, 1978.

(2) The amendments made by subsections (c), (d), and (e) are effective with respect to taxable years of a terminated DISC ending after 1980, except that the repeal of section 506 of the Revenue Act of 1971 by subsection (e)(18) is effective December 31, 1978.

Mr. PACKWOOD. Mr. President, I have explained the amendment. It is simple: You pay your money and you take your choice. If your choice is the continuation of an existing subsidy for major corporations that are already involved in exporting and will continue to export whether or not they have DISC, you will oppose this amendment.

If you think American corporations would be better off to have a one-half percent corporate profit tax reduction now, and 1 percent in 1982, and if you think this would help increase domestic productivity and provide more jobs for this country than by having DISC, you should vote in favor of the amendment.

Mr. RIBICOFF. Mr. President, I rise to oppose the amendment.

The proposal that we eliminate DISC is untimely and unwise. It also ignores our country's serious trade problems and the flow of current events.

This country has a very serious trade problem, which can no longer be attributed solely to the larger volume of oil imports. The trade deficit for 1978 will be about $33 billion, the highest in history. For the first time in modern history, we have a trade deficit in manufactured goods which may be as high as $8 billion in 1978. The dollar is sinking at an unprecedented rate. In the last 12 months the dollar has declined 57 percent against the Swiss franc; 42 percent against the yen; and 19 percent against the mark. The decline in the dollar has already contributed one-half to 1 percent to the inflation rate and will continue to fuel inflation.

The PRESIDING OFFICER. If the Senator will suspend momentarily, the Chair would like some order. The Senate will please be in order.

The Senator from Connecticut.

Mr. RIBICOFF. Congress, only a little over 2 years ago, in connection with its consideration of the Tax Reform Act of 1976, rejected elimination of these provisions by a 72 to 16 vote. All of the arguments for repeal of DISC were made then. The opponents of DISC have two problems: (A) They ignore a cumulative trade deficit from 1969 through 1978 of $62 billion; and (B) they offer nothing to replace DISC.

If the decline in the dollar is making U.S. goods more competitive overseas, then now is the time to press the advantage rather than withdraw.

DISC holds special benefits for agriculture. Agricultural products, broadly defined, comprise the largest category of DISC exports. Farm groups, such as the National Farm Coalition, actively support expanded trade in farm products. In 1977, this country had a surplus of trade in agricultural products amounting to approximately $10.5 billion. The value of farm exports, about $24 billion, accounted for 25 percent of cash receipts from farm marketings.

DISC is also beneficial to capital-intensive exporters. This is of particular importance that this country—rich in natural resources—is becoming the source of raw materials for other countries' manufacturing industries. DISC actually helps keep manufacturing jobs here in the United States.

According to a recent prediction, the United States will import more than $100 billion in oil by 1985, twice what we import today. This country, like Japan and West Germany, is going to need exports, and lots of them, in order to pay for our huge oil imports.

About 2.5 million manufacturing jobs produce for export, and that is about one out of every seven manufacturing jobs in the United States. Every third acre of farmland produces for export. We exported some $24 billion of agricultural products last year. DISC has stimulated a significant portion of the increase in U.S. exports since 1971. This conclusion is supported by independent analyses, company experiences, and a critical analysis of the administration and other reports. By 1975, DISC contributed as much as $9.9 billion in additional exports. It accounted for as much as 14 percent of the increases in exports to which it is applicable.

How does DISC affect exports?

The DISC provisions stimulate export principally by allowing a tax-deferred buildup of a capital fund which must then be used to finance exports. Another effect can be reduced prices for export items, but this is not a necessary consequence for the provision to succeed in its purpose—stimulating exports. At least 95 percent of DISC's assets must be invested in export related property. Companies commonly use DISC funds for the following purposes:

To finance export receivables (which are generally riskier and longer term);

To begin, expand, and improve export marketing and promotion programs; and

To lend to the parent company for investment in new or modernized facilities.

This amendment by the Senator from Oregon and the Senator from Massachusetts does not raise revenues—it simply transfers revenues presently being used as an incentive to exports and spreads it out among all taxpayers, whether or not they export. In fact, most of the revenues will go to the same businesses, but they will no longer be required to increase their exports each year, as they are required under DISC. And they will no longer be required to invest in export assets, as required under DISC.

Mr. JAVITS. Mr. President, will the Senator yield very briefly?

Mr. RIBICOFF. I yield to the Senator from New York.

Mr. JAVITS. Mr. President, I thoroughly agree with the Senator, and wish to say that he has put his finger on exactly the principal point, which is that public policy requires encouragement of exports. That is why the continuation of DISC is essential.

An excellent analysis of this point is made in the following statement by Reginald Jones, chairman and chief executive officer of one of the leading exporters of the United States—General Electric of Schenectady, N.Y.

I quote:

I hold no special brief for DISC if someone can come up with something better, but the point is that DISC is in place, and it is the only partial offset we have to the tax rebates that other governments use to help their export industries. European-based exporters enjoy tax refunds of value-added taxes on all purchases, ranging from about 4% and 10% of the final sales price of their goods, plus a waiver of the value-added tax on anything they export. Against that, the DISC provisions provide a tax deferment that equals about 1% to 2% of the sales price of qualifying U.S. exports. Thus, DISC only provides a small and partial offset to the tax advantages of our foreign competitors. Nevertheless, it has had some positive effect because in the years after DISC was enacted, U.S. exports rose from $43 billion in 1971 to $120 billion in 1977. Recently, export growth has slowed down as foreign economies—our potential customers—have run into trouble. Export orders are now much harder to get.

Mr. President, because of the need to encourage exports, I oppose the elimination of DISC.

Mr. RIBICOFF. Mr. President, let me point out again that 95 percent of the assets of DISC must be export related. We are going to have to export or die in this country. It is absolutely essential.

I yield to the Senator from Nebraska.

Mr. CURTIS. Mr. President, the Senator may recall that about the time DISC was started, a young man appeared and said he and his friend had started a two-man business. They discovered that most of their opportunities were in exports, and DISC had been responsible for that; and at that time he was employing about 10 or 11 people.

I relate that to show that it is not a benefit limited to the large multinational corporations, but it gives an opportunity to any taxpayer who has a product or ambition or something some other man might need to engage in foreign export.

DISC was intended to stimulate U.S. exports and to partially offset the com-

petitive advantages provided to foreign exporters by their governments.

According to various measures—including a critical analysis of recent Treasury Department reports, independent analysis and company experiences—DISC has stimulated a significant portion of the dramatic increase in U.S. exports since 1971. By 1975, DISC contributed as much as $9.9 billion in additional exports. Because of the increased exports attributable to DISC, there have been substantial secondary economic gains throughout the U.S. economy, including significant increases in U.S. gross national product and employment. In addition, the rise in exports and economic activity resulting from DISC have generated increases in Federal tax revenues which more than offset the initial DISC deferral.

Serious reverses in U.S. trade in recent years call for a strong national export policy. As in the past, DISC plays an important role in stimulating exports and in U.S. trade policy. In light of the need to stimulate more exports and the current status of international proceedings on the question of export promotion practices, the elimination of DISC at that time is clearly inappropriate.

Mr. RIBICOFF. Let me add that if you are a small business, and if your export profits are below $100,000, you do not have the same requirements as large corporations, so there are definite benefits to small business in DISC.

I am pleased to yield to the Senator from Kansas.

Mr. DOLE. I know in 1976 the Senator from Kansas and the Senator from Minnesota, Senator MONDALE, worked out a compromise on this. At that time benefits were placed on an incremental basis, and U.S. companies were getting these benefits only to the extent their exports were increased. We also reduced the cost of that program about a third. It seems to this Senator we have made some progress. If we just look at the commotion caused in the European community because of DISC, the clear concern expressed by the European community over DISC is, in my view, the best indication that it has an impact and is playing an important role in increasing exports. I support the chairman.

Mr. President, I ask unanimous consent that a document entitled "Arguments Against Repeal of DISC" be printed at this point in the RECORD.

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

ARGUMENTS AGAINST REPEAL OF DISC

1. DISC is more an item of trade policy than of tax reform and it is imperative that trade implications of repeal of DISC not be ignored. The underlying purpose of DISC is to remove an existing distortion in international trade and investment. In addition to establishing a workable system of intercompany pricing on the export of goods, DISC was created to put American exporters on a more nearly equal tax footing with foreign competitors in the world market.

2. In recent years, the United States has incurred alarming deficits in the balance of trade and the balance of payments. The U.S. share of world exports has been decreasing steadily for the past two decades. At a time when our trade position is so precarious, it would be short-sighted to eliminate the major incentive we provide for encouraging U.S. exports. In this situation it is difficult to accept the argument that DISC should be repealed because it is not efficient enough in encouraging exports—that argument might hold more weight if we were not in this present trade crisis or if those urging repeal could offer other programs which clearly would be more effective in stimulating exports.

3. Unlike many of our trading partners, the United States taxes the worldwide income of its corporations. Sooner or later, an American company is taxed on both its production and marketing of export goods. Many foreign countries, including France, Belgium and the Netherlands, to name a few, do not tax the foreign sales income earned on their exports.

4. Many foreign countries give their exporters tax exemptions through rebates of indirect taxes like the value-added tax. The border tax adjustments vary from country to country and from product to product, but on the average the tax is about 15 percent. Therefore, the foreign exporter gets a 15 percent rebate on exports while the American company is taxed an additional 15 percent on his exports, placing the American exporter at any obvious competitive disadvantage.

5. Border tax adjustments are only one kind of tax benefit offered by other countries to their exporters. In France, for example, foreign branch and subsidiary income is not taxed, foreign source dividends are not taxed, and intercompany pricing rules are not enforced, in addition to the border tax adjustments and other export tax incentives. None of these tax incentives for exports are offered to American exporters. Moreover, a French company can route its exports through a tax haven subsidiary and funnel off a substantial portion of the profits. In contrast, for U.S. exporters, this type of income would be currently subject to tax under the subpart F provisions.

6. But the export incentives offered to exporters by many of our trade partners are not limited to tax incentives. Again, using France as an example, there is a long list of nontax incentives that indirectly benefit exporters. A French exporter gets financing assistance at a 7.5 percent rate of interest. In insurance, the French exporter could have production risks, currency fluctuations, market developments and exhibition expenses all insured. But a United States company cannot insure against any of these things.

7. The European community has challenged the legality of DISC under Article XVI of the GATT, and the United States has filed counterclaims against the legality of the European Community's border tax adjustments. The GATT panels have found that both the U.S. and the European practices are export subsidies in violation of GATT. However, these findings have not been accepted by the GATT council because the European Community while insisting that DISC be proscribed, has refused to accept the findings against their tax policies. It is important to emphasize that these European policies involve a far greater benefit to their export industries than DISC does to ours—to unilaterally repeal DISC would eliminate any possible chance we have of getting the Europeans to agree to eliminate their tax practices which are so injurious to our trade position in exchange for our willingness to cut back on DISC. In the GATT negotiations, the United States bargaining position is dependent on DISC, for it enables the United States to get concessions on border tax adjustments from other nations in return for compromises on DISC.

8. The clear concern demonstrated by the European community over DISC is the best indication of its important role in increasing U.S. exports.

9. In the 1976 Act, DISC benefits were placed on an incremental basis so that U.S. companies would get DISC benefits only to the extent that they increase their exports. Therefore, DISC can no longer be viewed as giving windfall benefits.

10. Opponents of DISC argue that most of its benefits go to big business. This is true, but it is only true because most of our exports are made by large companies. DISC benefits are proprotional to the amount of exports of a company because it is a program intended to increase our exports and improve our balance of trade. In fact, small businesses get proportionally a larger benefit from DISC because the incremental rules adopted in 1976 do not apply to small DISCs.

Mr. RIBICOFF. I think it is important to know that the United States is up against every type of foreign subsidy, and these foreign multinational companies that we compete with are getting from their countries all the breaks that our manufacturers do not get. DISC pales in comparison to the amount of subsidies other countries offer exporters. Let me give some examples.

France totally exempts foreign source income from tax. It also has special subsidies for certain industries, like steel.

In Belgium foreign source income is taxed at one-quarter of the rate applied to income from domestic sources.

In The Netherlands a company is taxed on its worldwide income, but it is almost never taxed in practice on income derived from foreign branches.

Japan allows tax deferral for a percentage of gross exports receipts if they are set aside for research.

So what will be accomplished by the repeal of DISC by this country, which has desperate balance of trade problems? Every major manufacturing exporting country in the world has special benefits for its exporters. Here the only break we give to American exporters is DISC and now we are going to remove that.

Mr. DURKIN. Will the Senator yield?

Mr. RIBICOFF. I yield.

Mr. DURKIN. I thank the Senator from Connecticut. I could not agree more with his remarks and the remarks of the Senator from New York. I would like to underscore the remarks made heretofore.

In my own State of New Hampshire there are a number of corporations, small corporations, and if it were not for DISC they could not continue to operate and provide jobs in the State of New Hampshire.

I thank the Senator from Connecticut.

Mr. ROTH. Will the Senator yield?

Mr. RIBICOFF. I am pleased to yield to my colleague.

Mr. ROTH. I thank the Senator.

I join with the distinguished senior Senator from Connecticut in expressing my concern over this amendment. I can think of no time less appropriate for this kind of change. It seems to me, as we are proceeding with multinational trade negotiations, it would indeed be foolhardy for this country to dispense with one of the few advantages that we give business in competing with the strong competition we have from abroad.

One of the most serious problems this

Nation faces is the balance of trade problem. Rather than to restrict what few advantages or help we give them we should look for new ways of assistance.

I was interested that in 1977 the Building and Construction Trades Department of the AFL–CIO noted that the present massive U.S. trade imbalance of $25 billion to $30 billion for 1977 would translate into hundreds of thousands of additional U.S. jobs, if the trade balance were significantly lower. They resolved that Congress should develop an adequate effective incentive program to meet the economic pressures created by foreign subsidy programs.

Of course, if we did away with the DISC program, with no substitution, we would be moving in just the opposite direction. I believe this would be a mistake both from the standpoint of jobs and from the standpoint of our foreign trade deficit and business generally, and I join the Senator in opposing this.

Mr. STEVENSON. Will the Senator yield?

Mr. RIBICOFF. I yield.

Mr. STEVENSON. The United States, Mr. President, is running a yearly trade deficit of about $30 billion at this time, and manufactures running about $12 billion a year. The dollar is sinking erratically and with its sinking is causing recession. I would refer the Members of the Senate to hearings of the Subcommittee on International Finance. One of the volumes is dated March 9, 1978. It includes 40 pages of descriptions of the tax incentives offered by other countries for their exporters. The principal incentive offered by the United States for its exporters is DISC.

I do not mean to suggest for a moment that DISC is the most efficient means by which we can maintain our competitive position in the world, but it is the only program that we have. I would ask the Senator from Connecticut, who is also the chairman of the Subcommittee on Trade of the Finance Committee, if in these circumstances, with the decline of the dollar, a $30 billion trade deficit, the tax incentives and supports offered by other countries to their exporters which are detailed in this volume, would it be wiser for the United States, instead of unilaterally disarming itself, to withdraw its support of exporters as part of the multilateral negotiating process, and what would happen to such efforts if the United States without really attempting to do so were unilaterally in the Congress to repeal DISC?

Mr. RIBICOFF. We would be taking away from Mr. Strauss, who is negotiating on subsidies and countervailing duties, the only weapon he has in his arsenal. Our trading partners hate DISCs. They look at DISC as a competitive factor against them. DISC is the only thing that we have to try to negotiate in Geneva. Maybe some day we will get rid of DISC, but we should not get rid of DISC until our competitors in world trade do something to take away their subsidies.

The PRESIDING OFFICER. The time of the Senator from Connecticut has expired. The Senator from Oregon has 12 minutes.

Mr. KENNEDY. Will the Senator yield?

Mr. PACKWOOD. I yield.

Mr. KENNEDY. Mr. President, I welcome the opportunity to join with my colleague from Oregon in cosponsoring this amendment. First of all, Mr. President, I think it might be of some interest and relevancy to this discussion that we consider the Treasury's finding in their April report of this year on what DISC has meant in terms of the foreign exchange in the whole issue of export expansion. I will just read one line included in chapter 1.

> However, most of the expansion was due to factors other than DISC.

And then it goes on to explain that the principal reasons have been floating exchange rates, the devaluation of the dollar, and the increase in world trade. When DISC was adopted we were on a fixed rate of exchange, but that has changed dramatically.

Mr. President, it is interesting, when we listen to my good friend from New Hampshire talk about those small industries up in New Hampshire, to know that small little company is getting the aid and assistance from DISC. But what about all other New Hampshire corporations that are paying higher tax rates because of DISC. We could give relief to the many, by taking DISC away from the few.

Under present law, parent corporation is permitted to form a "paper" DISC subsidiary to obtain tax benefits for export sales.

Federal income tax is deferred on one-half of DISC income in excess of its base level export income. The base level is 67 percent of the DISC's average export income over a 4-year period.

The effect of DISC for those corporations that are unaffected by the incentive rule is to reduce the corporate tax rate on export income from 48 to 36 percent, or even 24 percent in some cases.

The estimated revenue loss from DISC is over $1.3 billion in fiscal year 1979 and over $1.5 billion in fiscal year 1980.

The proposed amendment would repeal DISC over a 3-year period.

There are many arguments against disc. It was designed to promote U.S. exports in a world of fixed exchange rates; that world no longer exists. DISC now involves a significant waste of money—$1.3 billion in fiscal year 1979.

According to the most recent Treasury study, DISC is cost inefficient, generating only between $1 to $3 billion in additional exports for a $1.3 billion revenue cost.

U.S. export growth since 1971 has been generated by the two devaluations of the dollar, the shift to the international system of floating exchange rates in March 1973, inflation of export prices and the increase in the real volume of world trade, not DISC.

Since the export industry is capital intensive, DISC is an inefficient and perhaps counter-productive subsidy if jobs are the goal. Dollars for DISC are one of the least efficient job-creating incentives, ranking well behind almost all other incentives. For example, Labor Department data show that, per dollar of expenditure, 50 percent more jobs are created by a general tax cut, compared to spending on exports. According to a 1975 study of the House Budget Committee, a $1.4 billion DISC tax expenditure might create at most, 16,000 jobs. As a direct Federal expenditure, the same $1.4 billion would create 112,000 jobs in defense, 120,000 jobs in health, 150,000 jobs in education, and 240,000 public service jobs. The 1977 Treasury DISC study concluded that DISC may actually produce a decline in U.S. jobs.

Under floating exchange rates, DISC may actually cause a net U.S. job loss. Increased exports strengthen the dollar, leading to increased imports. Since U.S. imports are historically labor-intensive, such as shoes, textiles, and automobiles, a net job loss may result. Thus, increases in exports are not the same as increases in net exports or improvements in the overall U.S. trade balance.

DISC is a windfall for large multinational U.S. exporters who would be exporting anyway; 22.5 percent of DISC benefits went to only 10 corporations; 66 percent went to 316 corporations with assets over $250 million. U.S. corporations do not even use DISC benefits to make export sales more competitive; in a recent study, 76 percent of corporations surveyed reported that DISC had no effect on their export prices.

Export profits are extremely high. The Treasury report shows DISC companies earned about 15 percent on export sales, over double the 6.5 percent profit margin on domestic sales. A tax subsidy like DISC is hardly needed when export sales are already so profitable.

DISC's are just paper corporations that exist only in file drawers and on accountants' balance sheets. They have no real economic substance.

DISC is a subsidy for foreign consumers. Because of DISC, goods produced for American consumption are taxed more heavily than goods produced for foreign consumption. Some large U.S. corporations use DISC simply to offer more favorable long-term payment conditions for foreign purchasers.

DISC was enacted in 1971 as an antidote to deferral. Yet the deferral subsidy costs $665 million, whereas DISC costs $1.3 billion.

Mr. President, in July 1975, President Lee Morgan of Caterpillar Tractor testified before the House Ways and Means Committee that, although Caterpillar had received $9 million in DISC tax benefits:

> I am not really sure that we did anything extra in order to generate additional exports. Not much has happened, at least in our company, in order to earn the tax deferral that has come from DISC.

A recent study, based on a survey of 142 large corporations, found that of 110 DISC-electing firms, 35 percent said that DISC had no impact on export sales, 1 percent said it decreased sales and 64 percent said it increased export sales.

DISC has been one of the most notorious tax overruns in the history of the Internal Revenue Code. When originally enacted in 1971, the estimated Treas-

ury cost was $100 million for 1972 and $170 million for 1973. Actual costs were $350 million and $620 million, respectively, or four times the original estimate, and the cost has continued to climb.

DISC is a violation of our international trade commitments; a GATT panel held it to be a prohibited export subsidy under GATT.

More than 100 bipartisan independent economists and tax experts in 1976 called for repeal of DISC as a wasteful and inefficient tax subsidy that distorts the free market system.

Finally, President Carter urged repeal of DISC as part of his 1978 tax program.

Mr. President, the Carter administration as part of its review and the study in the development of its export policy, within the last 10 days, made numerous recommendations for expanding exports. But it left DISC out. A week ago last Monday, the administration announced its program for expanding exports, but not including DISC. Mr. President, I ask unanimous consent that this message may be printed in the RECORD.

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

The message follows:

STATEMENT BY THE PRESIDENT

It is important for this Nation's economic vitality that both the private sector and the Federal government place a higher priority on exports. I am today announcing a series of measures that evidences my Administration's strong commitment to do so.

The large trade deficits the United States has experienced in recent years have weakened the value of the dollar, intensified inflationary pressures in our own economy, and heightened instability in the world economy. These trade deficits have been caused by a number of factors. A major cause has been our excessive reliance on imported oil. We can reduce that reliance through the passage of sound energy legislation this year. Another factor is that the United States economy has been growing at a stronger pace in recent years than the economies of our major trading partners. That has enabled us to purchase relatively more foreign goods while our trading partners have not been able to buy as much of our exports. We will begin to correct this imbalance as our trading partners meet the commitments to economic expansion they made at the Bonn Summit.

The relatively slow growth of American exports has also been an important factor in our trade deficit problem. Over the past 20 years, our exports have grown at only half the rate of other industrial nations and the United States has been losing its share of world markets. Until now, both business and government have accorded exports a relatively low priority. These priorities must be changed.

The measures I am announcing today consist of actions this Administration has taken and will take to:

(1) provide increased direct assistance to United States exporters;

(2) reduce domestic barriers to exports; and

(3) reduce foreign barriers to our exports and secure a fairer international trading system for all exporters.

These actions are in furtherance of the commitment I made at the Bonn Summit to an improved United States export performance.

DIRECT ASSISTANCE TO UNITED STATES EXPORTERS

1. *Export-Import Bank.* I have consistently supported a more effective and aggressive Export-Import Bank. During the past two years, my Administration has increased Eximbank's loan authorization fivefold—from $700 million in FY 1977 to $3.6 billion for FY 1979. I intend to ask Congress for an additional $500 million in FY 1980, bringing Eximbank's total loan authorization to $4.1 billion. These authorizations will provide the Bank with the funds necessary to improve its competitiveness, in a manner consistent with our international obligations, through increased flexibility in the areas of interest rates, length of loans, and the percentage of a transaction it can finance. The Bank is also moving to simplify its fee schedules and to make its programs more accessible to smaller exporters and to agricultural exporters.

2. *SBA Loans to Small Exporters.* The Small Business Administration will channel up to $100 million of its current authorization for loan guarantees to small business exporters to provide seed money for their entry into foreign markets. Small exporting firms meeting SBA's qualifications will be eligible for loan guarantees totalling up to $500,000 to meet needs for expanded production capacity and to ease cash flow problems involving overseas sales or initial marketing expenses.

3. *Export Development Programs.* I am directing the Office of Management and Budget to allocate an additional $20 million in annual resources for export development programs of the Departments of Commerce and State to assist United States firms, particularly small and medium-sized businesses, in marketing abroad through: a computerized information system to provide exporters with prompt access to international marketing opportunities abroad and to expose American products to foreign buyers;

Risk sharing programs to help associations and small companies meet initial export marketing costs; and

Targeted assistance to firms and industries with high export potential and intensified short-term export campaigns in promising markets.

4. *Agricultural Exports.* Agricultural exports are a vital component of the U.S. trade balance. Over the past 10 years, the volume of U.S. farm exports has doubled and the dollar value has nearly quadrupled. Trade in agricultural products will contribute a net surplus of almost $13 billion in fiscal year 1978. This strong performance is due in part to this Administration's mutifaceted agricultural export policy, which will be strengthened and which includes:

An increase of almost $1 billion (up from $750 million in FY 1977 to $1.7 billion in FY 1978) in the level of short-term export credits.

An increase of almost 20% in the level of funding support for a highly successful program of cooperation with over 60 agricultural commodity associations in market development.

Efforts in the Multilateral Trade Negotiations to link the treatment of agricultural and nonagricultural products.

Opening trade offices in key importing nations in order to facilitate the development of these markets.

Aggressive pursuit of an international wheat agreement, to ensure our producers a fair share of the expanding world market.

Support of legislation to provide intermediate export credit for selective agricultural exports.

5. *Tax Measures.* I am hopeful that Congress will work with the Administration to promptly resolve the tax problems of Americans employed abroad, many of whom are directly involved in export efforts. Last February, I proposed tax relief for these citizens amounting to about $250 million a year. I think this proposal, which Congress has not approved, deals fairly and, during a time of great budget stringency, responsibly with this problem. I remain ready to work with the Congress to resolve this issue, but I cannot support proposals which run contrary to our strong concerns for budget prudence and tax equity.

My Administration's concern for exports is matched by our obligation to ensure that government-sponsored export incentives constitute an efficient use of the taxpayers' money. The DISC tax provision simply does not meet that basic test. It is a costly (over $1 billion a year) and inefficient incentive for exports. I continue to urge Congress to phase DISC out or at least make it simpler, less costly, and more effective than it is now, and my Administration stands ready to work with Congress toward that goal.

REDUCTION OF DOMESTIC BARRIERS TO EXPORTS

Direct financial and technical assistance to United States firms should encourage them to take advantage of the increasing competitiveness of our goods in international markets. Equally important will be the reduction of government-imposed disincentives and barriers which unnecessarily inhibit our firms from selling abroad. We can and will continue to administer the laws and policies affecting the international business community firmly and fairly, but we can also discharge that responsibility with a greater sensitivity to the importance of exports than has been the case in the past.

1. *Export Consequences of Regulations.* I am directing the heads of all Executive departments and agencies to take into account and weigh as a factor, the possible adverse effect on our trade balance of their major administrative and regulatory actions that have significant export consequences. They will report back on their progress in identifying and reducing such negative export effects where possible, consistent with other legal and policy obligations. I will make a similar request of the independent regulatory agencies. In addition, the Council of Economic Advisers will consider export consequences as part of the Administration's Regulatory Analysis Program.

There may be areas, such as the export of products which pose serious health and safety risks, where new regulations are warranted. But through the steps outlined above, I intend to inject a greater awareness throughout the government of the effects on exports of administrative and regulatory actions.

2. *Export Controls for Foreign Policy Purposes.* I am directing the Departments of Commerce, State, Defense, and Agriculture to take export consequences fully into account when considering the use of export controls for foreign policy purposes. Weight will be given to whether the goods in question are also available from countries other than the United States.

3. *Foreign Corrupt Practices Act.* At my direction, the Justice Department will provide guidance to the business community concerning its enforcement priorities under the recently enacted foreign antibribery statute. This statute should not be viewed as an impediment to the conduct of legitimate business activities abroad. I am hopeful that American business will not forego legitimate export opportunities because of uncertainty about the application of this statute. The guidance provided by the Justice Department should be helpful in that regard.

4. *Antitrust Laws.* There are instances in which joint ventures and other kinds of cooperative arrangements between American firms are necessary or desirable to improve our export performance. The Justice Department has advised that most such foreign joint ventures would not violate our antitrust laws, and in many instances would actually strengthen competition. This is especially true for one-time joint ventures created to participate in a single activity, such as a large construction project. In fact, no such joint conduct has been challenged under the antitrust laws in over 20 years.

Nevertheless, many businessmen apparently are uncertain on this point, and this uncertainty can be a disincentive to exports. I have, therefore, instructed the Justice Department, in conjunction with the Commerce Department, to clarify and explain the scope of the antitrust laws in this area, with special emphasis on the kinds of ventures that are unlikely to raise antitrust problems.

I have also instructed the Justice Department to give expedited treatment to requests by business firms for guidance on international antitrust issues under the Department's Business Review Program. Finally, I will appoint a business advisory panel to work with the National Commission for the Review of the Antitrust Laws.

5. *Environmental Reviews.* For a number of years the export community has faced the uncertainty of whether the National Environmental Policy Act (NEPA) requires environmental impact statements for Federal export licenses, permits and approvals.

I will shortly sign an Executive Order which should assist U.S. exports by eliminating the present uncertainties concerning the type of environmental reviews that will be applicable and the Federal actions relating to exports that will be affected. The Order will make the following export-related clarifications:

Environmental Impact Statements will not be required for Federal export licenses, permits, approvals, and other export-related actions that have potential environmental effects in foreign countries.

Export licenses issued by the Departments of Commerce and Treasury will be exempt from any environmental reviews required by the Executive Order.

Abbreviated environmental reviews will be required only with respect to (1) nuclear reactors, (2) financing of products and facilities whose toxic effects create serious public health risks, and (3) certain Federal actions having a significant adverse effect on the environment of non-participating third countries or natural resources of global importance.

Accordingly, this Order will establish environmental requirements for only a minor fraction (well below 5 percent) of the dollar volume of United States exports. At the same time, it will provide procedures to define and focus on those exports which should receive special scrutiny because of their major environmental impacts abroad. This Executive Order will fairly balance our concern for the environment with our interest in promoting exports.

REDUCTION IN FOREIGN TRADE BARRIERS AND SUBSIDIES

We are also taking important international initiatives to improve U.S. export performance. Trade restrictions imposed by other countries inhibit our ability to export. Tariff and especially non-tariff barriers restrict our ability to develop new foreign markets and expand existing ones. We are now working to eliminate or reduce these barriers through the Multilateral Trade Negotiations in Geneva.

United States export performance is also adversely affected by the excessive financial credits and subsidies which some of our trading partners offer to their own exporters. One of our major objectives in the MTN is to negotiate an international code restricting the use of government subsidies for exports. In addition, I am directing the Secretary of the Treasury to undertake immediate consultations with our trading partners to expand the scope and tighten the terms of the existing International Arrangement on Export Credits.

I hope that our major trading partners will see the importance of reaching more widespread agreements on the use of export finance, to avoid a costly competition which is economically unsound and ultimately self-defeating for all of us. These international agreements are essential to assure that American exporters do not face unfair competition, and this Administration intends to work vigorously to secure them.

CONCLUSION

While these initiatives will assist private business in increasing exports, our export problem has been building for many years and we cannot expect dramatic improvement overnight. Increasing our exports will take time, and require a sustained effort. Announcement of my Administration's export policy is not the end of our task, but rather the beginning. To ensure that this issue continues to receive priority attention, I am asking Secretary Kreps, in coordination with officials from other concerned government agencies, to direct the continuation of efforts to improve our export potential and performance.

I will shortly sign an Executive Order to reconstitute a more broadly-based President's Export Council to bring a continuous flow of fresh ideas into our government policy-making process. I expect this Council to report to me annually through the Secretary of Commerce.

Increasing U.S. exports is a major challenge—for business, for labor, and for government. Better export performance by the United States would spur growth in the economy. It would create jobs. It would strengthen the dollar and fight inflation.

There are no short-term, easy solutions. But the actions I am announcing today reflect my Administration's determination to give the United States trade deficit the high-level, sustained attention it deserves. They are the first step in a long-term effort to strengthen this Nation's export position in world trade.

Mr. President, this argument that we ought to arm Bob Strauss with DISC so he can negotiate it away is the same argument we heard in 1976. What has actually happened is that it encouraged other countries to retaliate and, in some instances, violate the GATT agreement.

Finally, Mr. President, I think a very serious argument can be made that DISC is actually costing jobs in the United States. It is for this reason that not only the administration, but also the workers, support this amendment.

If exports do expand because of DISC, what we actually do is strengthen the dollar. Therefore, we make it cheaper to import more. If we make it cheaper to import more, it will cost American jobs in import industries which are labor intensive. This loss of jobs may very well more than offset the increase of jobs in export industries, which are capital intensive. It is for that reason that the labor groups have opposed DISC, because they do actually think that it is costing jobs. This is particularly true for our good friends from South Carolina in the shoe and textile industries.

So I think for those reasons, Mr. President, DISC has not been effective, it goes to a very small, select group, and substantial numbers of that group say that it has no effect or impact.

Mr. President, what the amendment of the Senator from Oregon does is use the savings on DISC to reduce the tax rate on corporations across the country. That is effectively what they are doing. It seems to me, Mr. President, that is a fair and equitable way to deal with this problem. This position is supported by the studies of the Treasury, supported by the workers and, I think, supported by many others who feel that if we are going to have a $1.3 billion revenue loss a more favorable and fairer way of distributing it is through a reduction of the corporate tax rate.

Mr. PACKWOOD. Mr. President, let me emphasize again that if you were simply to say to a corporation who does some exporting, "Do you want to keep DISC or get rid of it?" of course, they are going to say, "I want to keep DISC." They get some little benefit out of it. But if you say to them, "Would you rather have DISC or a cut in the corporate rate?" they will say a cut in the corporate rate.

This morning, I had my staff check with some of the principal corporations in Oregon, asking them if they would be willing to make this exchange. These are corporations somewhat involved or heavily involved in export. Tektronics, a company employing over 15,000, in Portland, Oreg., making oscilloscopes, heavily involved in overseas exports and manufacturing, yes.

Hyster Co., one of the world's largest manufacturers of trucks, yes.

Georgia Pacific, forest and wood products, and Boise Cascade, the same. They would all make the trade. They would all say, "Sure, we would like to keep DISC as an exporting incentive but we would rather take a reduction in the corporate rate. That would give us more money to produce more jobs, it will give us more flexibility."

The companies that export are going to keep exporting. The best testimony we had on that was 2 years ago from the president of Caterpillar, again, one of the principal exporters of the United States and selling their machines all over the world.

This is what he said:

> I am not really sure that we did anything extraordinary to generate additional exports. Not much has happened, at least at our company, in order to earn the tax deferral that has come from DISC.

They had just received an annual $9 million DISC benefit—bonus—for doing nothing. For doing exactly the same thing they would be doing whether or not they had DISC.

If you want to waste money inefficiently to encourage exports, keep DISC. If you want to find a way to increase productivity in this country, produce jobs, you can eliminate DISC and do almost nothing to discourage imports. This is such a cost-ineffective way that it not only is a waste of our money, but if we wanted to use the same amount of money to encourage exports, there are a dozen other ways to do it better than DISC.

I reserve the remainder of my time.

Does the Senator from Massachusetts wish some more time?

Mr. KENNEDY. Mr. President, just a final comment. The position of the Senator from Oregon and others supporting the amendment has the support of the administration, the AFL–CIO, and even the Wall Street Journal. That is an unusual combination of support for any amendment.

Mr. LEAHY. May I suggest to the Senator from Massachusetts that under

those circumstances, at least one of the three must have made a mistake somewhere along the line.

Mr. PERCY. Mr. President. I rise in opposition to the amendment offered by the Senator from Oregon to cut DISC.

DISC was created as an export incentive and it has served as virtually the only export incentive this country has had.

The Tax Reform Act of 1976 put DISC on an incremental basis and generally tightened up this program. It is now serving our exporters and, despite the President's announcement of an export promotion program, DISC is our only Federal commitment to exports. Its elimination would certainly be a signal to our trading partners that this country is not serious about reducing our trade imbalance, which hit $26 billion last year and is forecast as being as great or greater this year.

Illinois is the largest exporting State in the Nation because of its productive agriculture and innovative manufacturers. DISC has played an important role in bringing our Illinois firms and farms into exporting and has helped chop the balance-of-payments deficit we have.

Although it is essential to reduce our oil imports, recent months have seen the most dramatic increases in imports in manufactured goods. Our trading partners are aiding their exports in the most comprehensive ways and yet we do so little to develop our export markets. We are the target of export promotion programs of Japan and Western European countries, yet we do not seek to enact our own. DISC is the most significant incentive we have. Rather than signaling the world we will not counter their efforts, we need a hard-hitting program.

The President's recently released export incentive program is much less than I had anticipated and could not support an elimination of DISC.

Mr. PACKWOOD. I am prepared to vote if no other Senator wants time.

Mr. LONG. Mr. President, I ask that in voting, we have a division of the amendment. First, pages 1 through 16, the corporate tax cut; and second, pages 17 to the end, elimination of the DISC.

Mr. PACKWOOD. I did not hear the request.

Mr. RIBICOFF. I yield back all of my time.

The PRESIDING OFFICER. Since the amendment is susceptible of that division, the Senator is within his rights to request it and the amendment will be so divided.

Mr. CURTIS. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator from Nebraska will state it.

Mr. CURTIS. What do we vote on first?

Mr. LONG. First we vote on a further tax cut whether the second point carries or not. Then we vote on the DISC portion.

The PRESIDING OFFICER. The Senator is correct, in the order in which it appears.

Mr. BUMPERS. Mr. President, will the Senator from Oregon yield me 1 minute?

Mr. KENNEDY. I yield 1 minute to the Senator from Arkansas.

Mr. BUMPERS. Mr. President, I have not been actually involved in the debate. I simply read the position paper on this amendment and I have concluded that I intend to support it. There are a number of things that I could say that have persuaded me to do this, but, No. 1, I have been, almost without exception, trying to get the whole DISC loophole closed ever since I have been in the Senate.

One of the most compelling things in this, and I know the point has been made but it is worth making again, is that 22 percent of the tax benefits from DISC go to 10 corporations. Twenty-two percent of the $1.300 billion a year that the DISC costs the U.S. Treasury goes to 10 corporations.

I can tell you that in my State, we have a few DISC's and some of those people will be unhappy with my position. I can also tell you that we have hundreds of corporations who are paying the 48-percent tax rate who would do much better. They would get the capital investment that we hear so much about and they would get the incentive we hear so much about if we reduced their rate to 45 percent. This, as I understand it, is a revenue wash. I think it is one of the most productive, one of the finest opportunities to give the American business community an opportunity to invest, an incentive to invest, an incentive to expand, with the very least damage. Corporations of this country who are exporting right now are going to export with or without DISC. It is to their advantage to do it. So I urge my colleagues to support the amendment.

I thank the Senator for yielding.

The PRESIDING OFFICER. The time on the amendment has expired. Inasmuch as the yeas and nays were ordered prior to the division, the yeas and nays will apply to both divisions. The yeas and nays have been ordered. The question is on agreeing to the first division. The clerk will call the roll on division 1.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Alabama (Mrs. ALLEN), the Senator from Minnesota (Mr. ANDERSON), the Senator from Mississippi (Mr. EASTLAND), the Senator from Colorado (Mr. HASKELL), the Senator from Kentucky (Mr. HUDDLESTON), the Senator from Minnesota (Mrs. HUMPHREY), the Senator from Louisiana (Mr. JOHNSTON), the Senator from West Virginia (Mr. RANDOLPH), the Senator from Michigan (Mr. RIEGLE), the Senator from Maryland (Mr. SARBANES), and the Senator from Alabama (Mr. SPARKMAN) are necessarily absent.

I further announce that, if present and voting, the Senator from West Virginia (Mr. RANDOLPH) would vote "nay."

Mr. STEVENS. I announce that the Senator from New Mexico (Mr. DOMENICI), the Senator from Utah (Mr. HATCH), the Senator from California (Mr. HAYAKAWA), the Senator from Kansas (Mr. PEARSON), the Senator from Virginia (Mr. SCOTT), the Senator from Texas (Mr. TOWER), and the Senator from North Dakota (Mr. YOUNG) are necessarily absent.

The PRESIDING OFFICER (Mr. MATSUNAGA). Are there any Senators who have not yet voted?

The result was announced—yeas 48, nays 34, as follows:

[Rollcall Vote No. 456 Leg.]

YEAS—48

Abourezk	Durkin	McGovern
Bartlett	Eagleton	Melcher
Bayh	Garn	Morgan
Bellmon	Gravel	Moynihan
Biden	Griffin	Muskie
Brooke	Hart	Packwood
Bumpers	Hatfield,	Pell
Burdick	Paul G.	Percy
Byrd,	Hathaway	Proxmire
Harry F., Jr.	Heinz	Schmitt
Chafee	Helms	Schweiker
Church	Hodges	Stevens
Clark	Hollings	Thurmond
Culver	Kennedy	Wallop
Danforth	Laxalt	Weicker
DeConcini	Lugar	Zorinsky
Dole	McClure	

NAYS—34

Baker	Hatfield,	Nelson
Bentsen	Mark O.	Nunn
Byrd, Robert C.	Inouye	Ribicoff
Cannon	Jackson	Roth
Case	Javits	Sasser
Chiles	Leahy	Stafford
Cranston	Long	Stennis
Curtis	Magnuson	Stevenson
Ford	Mathias	Stone
Glenn	Matsunaga	Talmadge
Goldwater	McIntyre	Williams
Hansen	Metzenbaum	

NOT VOTING—18

Allen	Hayakawa	Riegle
Anderson	Huddleston	Sarbanes
Domenici	Humphrey	Scott
Eastland	Johnston	Sparkman
Haskell	Pearson	Tower
Hatch	Randolph	Young

So division 1 of the amendment (UP No. 2001) was agreed to.

Mr. DOLE. Mr. President, I move to reconsider the vote by which division 1 was agreed to.

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The question now occurs on division 2. On this question the yeas and nays have been ordered, and the clerk will call the roll.

Mr. LONG. Mr. President, a point of order. Is division 2 the repeal of the DISC?

The PRESIDING OFFICER. The Chair does not hear the Senator.

Mr. LONG. Will the Chair inform the Senate whether division 2 is a repeal of the DISC, the Domestic International Sales Corporation?

The PRESIDING OFFICER. It is so identified, the Chair informs the chairman.

Mr. MAGNUSON. Mr. President, may we have order in the Senate?

The PRESIDING OFFICER. The clerk will not commence until there is order in the Chamber. The point of order made by the Senator from Washington is well taken. The Senate is not in order.

Senators will please take their seats. Senators will cease conversation on the floor. The Senate will be in order. The clerk will not commence until there is order in the Chamber.

Mr. ROBERT C. BYRD. Mr. President, this will be the last amendment on which there will be a rollcall vote tonight. However, as Senators well know,

sometimes the votes are so close that motions to reconsider and motions to lay on the table are made. If that should happen—if the vote should be close—it is possible that there could be another vote; but if the vote is not close, this will be the last vote tonight.

Mr. BUMPERS. Mr. President, will the Senator yield for a question?

Mr. ROBERT C. BYRD. I yield.

Mr. BUMPERS. Will some of us who have what we consider to be noncontroversial amendments have an opportunity to offer them tonight?

Mr. ROBERT C. BYRD. I ask the manager of the bill to respond.

Mr. LONG. I think we might as well do those tomorrow, if it is all right with the Senator. I suggest that we do them tomorrow. Will the Senator be here tomorrow?

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

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent for 1 minute, and I yield to the Senator.

Mr. MUSKIE. Does the majority leader expect rollcall votes tomorrow?

Mr. ROBERT C. BYRD. Yes; I expect rollcall votes tomorrow. Senators are in town, and they stayed in town expecting to have rollcall votes tomorrow, and I hope we will make progress on the bill tomorrow. The Senate will come in at 8:30 tomorrow morning.

The PRESIDING OFFICER. The question is on agreeing to Division 2 of 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 Alabama (Mr. ALLEN), the Senator from Minnesota (Mr. ANDERSON), the Senator from Mississippi (Mr. EASTLAND), the Senator from Colorado (Mr. HASKELL), the Senator from Kentucky (Mr. HUDDLESTON), the Senator from Minnesota (Mrs. HUMPHREY), the Senator from Louisiana (Mr. JOHNSTON), the Senator from West Virginia (Mr. RANDOLPH), the Senator from Michigan (Mr. RIEGLE), the Senator from Maryland (Mr. SARBANES), and the Senator from Alabama (Mr. SPARKMAN) are necesarily absent.

I further announce that, if present and voting, the Senator from West Virginia (Mr. RANDOLPH) would vote "Nay."

Mr. STEVENS: I announce that the Senator from New Mexico (Mr. DOMENICI), the Senator from Utah (Mr. HATCH), the Senator from California (Mr. HAYAKAWA), the Senator from Kansas (Mr. PEARSON), the Senator from Virginia (Mr. SCOTT), the Senator from Texas (Mr. TOWER), and the Senator from North Dakota (Mr. YOUNG) are necessarily absent.

The PRESIDING OFFICER. Are there Senators who have not yet voted?

The result was announced—yeas 28, nays 54, as follows:

[Rollcall Vote No. 457 Leg.]

YEAS—28

Abourezk	Byrd, Harry F., Jr.	Culver
Bayh	Byrd, Robert C.	Eagleton
Biden	Church	Hart
Bumpers	Clark	Hathaway
Burdick	Hollings	Hodges
Kennedy	Melcher	Packwood
Leahy	Metzenbaum	Pell
McGovern	Morgan	Proxmire
McIntyre	Muskie	Zorinsky
	Nelson	

NAYS—54

Baker	Gravel	Moynihan
Bartlett	Griffin	Nunn
Bellmon	Hansen	Percy
Bentsen	Hatfield, Mark O.	Ribicoff
Brooke	Hatfield, Paul G.	Roth
Cannon	Heinz	Sasser
Case	Helms	Schmitt
Chafee	Inouye	Schweiker
Chiles	Jackson	Stafford
Cranston	Javits	Stennis
Curtis	Laxalt	Stevens
Danforth	Long	Stevenson
DeConcini	Lugar	Stone
Dole	Magnuson	Talmadge
Durkin	Mathias	Thurmond
Ford	Matsunaga	Wallop
Garn	McClure	Weicker
Glenn	Packwood	Williams
Goldwater	Pell	

NOT VOTING—18

Allen	Hayakawa	Riegle
Anderson	Huddleston	Sarbanes
Domenici	Humphrey	Scott
Eastland	Johnston	Sparkman
Haskell	Pearson	Tower
Hatch	Randolph	Young

So division 2 of the amendment (UP No. 2001) was rejected.

Mr. RIBICOFF. Mr. President, I move to reconsider the vote by which division 2 was rejected.

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

The motion to lay on the table was agreed to.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. LONG. Mr. President, I believe Senators should know that in their generosity today they have broken the bank.

Mr. CURTIS. Mr. President, may we have order?

The PRESIDING OFFICER. The Senator's point is well taken. The Senate will be in order. The Senator from Louisiana will suspend until there is order in the Chamber.

Mr. LONG. The fiscal generosity with which the Senate has voted today has now moved this bill to a tax cut of a total of $22.133 billion. The budget allows $21.900 billion, so now the Senate has voted for about $200 million more tax cuts than the budget will permit.

Technically, Mr. President, we can still operate because some of the generosity went on the bill and some of it went on the committee amendment. But when we try to combine the two something is going to have to be squeezed out.

So, I would challenge the conscience of Senators to think about it overnight, think about what they would like to do.

Mind you, the Senate has already voted for more tax cuts, to add more tax cuts, to the bill than the budget will permit, and that assumes no energy bill, no energy tax bill at all. Even the Hart amendment that was passed, that assumes none of that. That assumes nothing about the noisy airplanes which passed the House and which was scheduled to be considered. It assumes nothing about section 911 dealing with workers and Americans doing business overseas. In other words, just all the other things that have been passed, it only assumes just what is here that the Senate has voted on, and the Senate has voted to exceed the budget by about $200 million.

So, we are about $200 million over the budget.

Now Senators can meditate overnight as to how they would like to try to get it back inside the budget.

I would point out that there was a total of the committee bill which was $20.530 billion. The Haskell amendment amounted to a tax saving or overall tax saving of $200 million.

Tuition credit would cost $330 million, the individual rate cuts would cost another $910 million, and the corporate rate cut just voted would cost another $563 million for a total of $22.133 billion.

So from this point forward if Senators want to think in terms of providing further tax cuts they will have to be thinking about which among these items claim the highest priority.

Mr. PERCY. Mr. President, will the distinguished Senator yield for a question?

Mr. NELSON. Mr. President, may we have order so that we can hear the dialog?

The PRESIDING OFFICER. The Senate will be in order. The Senator from Louisiana still has the floor.

Mr. LONG. I yield for a question first to the Senator from Illionis.

Mr. PERCY. The Senator from Illinois is very sympathetic with the floor manager's position and problem. The Senator from Illinois has two amendments, neither one of which will cost a dime to the Treasury. Is it possible for them to be taken up—and I believe there are other Senators tonight who would like to take up amendments—so long as they do not require rollcall votes? Would it be possible to take them up tonight?

The PRESIDING OFFICER. Will the Senator from Illinois use the microphone, please?

Mr. LONG. Let me say, Mr. President, that I am willing to stay around and consider amendments we hope will not be controversial, and will not require a rollcall vote. In the event it would appear that the amendment might be something the Senate would like to vote on a rollcall, I would have to insist that that be brought up subsequently.

The Senator from Wisconsin wanted to announce that he hopes to consider another bill which is not a revenue bill.

Mr. NELSON. I can do it tonight or not; if there are others who want amendments in, that does not bother me. Mine is agreed on all sides, I will just wait until tomorrow sometime, when it is convenient.

But I wonder if the Senator will yield for a request.

Mr. LONG. Yes.

Mr. NELSON. There is an issue involving locks and dam 26 as to which the distinguished Senator from Louisiana is well informed. Language is being worked out on that, I understand. I want to see the language before it is acted upon. Do I have assurance that that issue, which has been controversial and may not be any more, I do not know, will not be considered tonight?

Mr. BAKER. Mr. President, will the

Senator yield to me just half a moment on that point?

Mr. NELSON. Yes.

Mr. BAKER. If the distinguished manager of the bill——

The PRESIDING OFFICER. The Senator from Louisiana has the floor.

Mr. LONG. Mr. President, I know of no plan to consider locks and dam 26 tonight. The Senator is correct that progress is being made toward working out a compromise with Mr. DOMENICI and other Senators that we would hope that the Secretary of Transportation could recommend. I am happy, as I say, that progress is being made. I would say things are looking up; it looks like we might reach an agreement. But we are not ready yet, Senator.

Mr. NELSON. Well, fine. I just wanted to have the opportunity to look at the final language, and so I would not want it considered later tonight.

I will withhold the other amendment I have that is noncontroversial, and has nothing to do with this bill, until we have a free moment.

Mr. PERCY. Mr. President, will the Senator from Wisconsin yield for a unanimous-consent request on that point?

The PRESIDING OFFICER. The Senator from Louisiana has the floor.

Mr. LONG. I yield first to the minority leader, and then I will yield to the Senator from Illinois.

Mr. BAKER. I will not take but just a minute.

First, I must tell the Senator that I must protect a Member on this side in respect to locks and dam 26, so I would object in any event to consideration of that tonight.

Second, the Senator from Texas (Mr. BENTSEN) and I have an amendment which is noncontroversial, and I would hope we could dispose of that tonight.

Mr. LONG. I yield to the Senator from Illinois.

Mr. PERCY. Mr. President, the following statement pertains to locks and dam 26:

Mr. President, I would like to comment on the recent amendment offered by my colleague from Illinois concerning lock and dam 26 at Alton, Ill. While the amendment is not fully acceptable to either this Congress or this administration, it does serve as a reminder that lock and dam 26 remains in hostage because of our combined inability to actively negotiate a reasonable and acceptable position on users fees before this session of Congress adjourns.

The Senate authorized the construction of lock and dam 26 in May of this year, as a part of a water resources bill that the President has indicated he may veto because of its cost. We need to act expeditiously to crystalize a compromise that will allow this Congress the opportunity to approve a lock and dam 26 proposal that contains a reasonable user fee. To allow this project to elude us once again would be a great disservice to the American economy.

We have discussed this project for most of this decade and still we do not have agreement on a proposal that will assure construction of this essential project. Every day we continue to delay places greater strain on a worn out facility and allows inflation to further drive up the cost of the new construction.

There is no question about the need for this new construction that will replace a lock and dam that is essential for the movement of commodities on the Mississippi River. The economy of the Midwest and the entire Nation are dependent upon the efficient operation of this Inland Waterway System. Moving grain, fuel and other vitally important commodities to their markets is absolutely essential. Providing a lock and dam that can do that job is our responsibility.

We should resolve this issue during this Congress so that we can move on to other pressing matters before us. To devote so much time to this project and not reach agreement would be a tragedy and an injustice.

Therefore, I once again ask all parties to this controversy for their attention and support for the effort to reach a compromise so that we can offer an acceptable proposal to the President that will authorize construction of lock and dam 26.

UP AMENDMENT NO. 2002

(Purpose: To eliminate the requirement that married taxpayers must file a joint return to benefit from the exclusion for disability payments)

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

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Arkansas (Mr. BUMPERS) proposes an unprinted amendment numbered 2002.

Mr. BUMPERS. 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 appropriate place in the bill, add the following new section:

"SEC. ——. (a) Paragraphs (4) and (6) of subsection (d) of section 105 of the Internal Revenue Code of 1954, as amended by subsection (a) of section 505 of the Tax Reform Act of 1976, Public Law 94–455, approved October 4, 1976, are hereby repealed.

(b) Paragraphs (5) and (7) of subsection (d) of section 105 of the Internal Revenue Code of 1954, as amended by subsection (a) of section 505 of the Tax Reform Act of 1976, Public Law 94–455, approved October 4, 1976, are hereby renumbered (4) and (5).

(c) The amendments made by this section shall be effective as of the effective date of section 505 of the Tax Reform Act of 1976, Public Law 94–455, approved October 4, 1976.

Mr. BUMPERS. Mr. President, if I may have the attention of the floor manager for a moment, this amendment, in my opinion, rectifies what I think must be an omission in the present 1976 law.

It works like this:

Right now people who are totally disabled, under 65 years of age, are entitled to up to $5,200 a year in such pay exclusions. However, if a husband and wife combined have incomes exceeding $15,000 a year, the sick pay exclusion phases out, dollar for dollar, of every dollar they have in their income jointly in excess of $15,000.

Mr. President, the purpose of this requirement is unhappily clear. It apparently is designed to attribute to a taxpayer whatever income his or her spouse may have for the purposes of computing the $15,000 phaseout. The taxpayer loses the benefit of the exclusion.

I have a specific case; I will tell you quite frankly this was brought to my attention by a hardship case in my State. But my point is simply this: What we did in 1976 was to provide that the sick pay exclusion only counts if you file a joint return. So a wife who may literally contribute nothing to the support of her husband, who is totally disabled, may make $15,000 a year, and he may have an income of $5,200 a year, and he loses the entire sick pay exclusion. I cannot believe that the Senate or Congress intended that.

Second, they must file a joint return if they are living together. This is another one of those instances where we encourage people to live separate and apart. In the case I am talking about, the man is totally disabled, his wife has an income, and he loses the exclusion. But if he wants to move out of the house, they do not have to get a divorce, all they have to do is separate and live in separate houses, and he is entitled to the exclusion; and they may file separate returns.

What this amendment does is simply allow these people to file separate returns. It takes away the mandate that they file a joint return and attribute the wife's or husband's income to the other, depending on which one is disabled.

Incidentally, I might give you another illustration. I am sure there are some cases where both husband and wife are totally disabled. It is conceivable that each one of them would have a $15,000 income or, say, a $12,500 income, and jointly they would have $25,000 income. They would lose the entire $10,000 exclusion. And you know that when people are totally disabled, their medical expenses are exorbitant. It is, I think, a grievous injustice to these people, and I strongly recommend the amendment to my colleagues, and hope that the floor managers will be able to accept this amendment.

Mr. LONG. Mr. President, as the Senator has said, there is a problem in this area. He has made quite a good statement for his amendment. I cannot say that this is necessarily the answer to the problem; it is one answer to it.

If it be the judgment of the Senate that this matter should go to conference, I would be glad to discuss it with the House of Representatives and with the representatives of the Treasury in conference, and if we can work it out I would be glad to help solve the problem. Perhaps the amendment might be the answer. I regret to say that I am not that much of an expert on the problem. But there is a problem here, and I would be glad to consider it if the Senate would like to have it considered.

Mr. KENNEDY. Mr. President, will the Senator yield for a question?

Mr. LONG. Yes.

Mr. KENNEDY. Has the Treasury expressed an opinion on this amendment?

Mr. LONG. I am just not aware of the Treasury's position with regard to this, Senator.

Mr. KENNEDY. I have a paper provided by the Treasury, which indicates their opposition to it.

I have just come across this in the last minute or two. I wonder what the reaction of the committee was.

Mr. LONG. I must confess I was unaware of it. The Treasury did not show the Finance Committee or the Joint Committee on Taxation the courtesy of letting them know their views on this matter.

If the Senator from Massachusetts said they provided those views, then they did. He is much better informed than I. That being the case, I would urge the Senator to withhold his amendment.

Mr BUMPERS. I want to thank the Senator from Massachusetts for pointing out the compassion, concern, and sensitivity that the Treasury Department always shows in cases such as this. What they are saying is that the people who are fully able, healthy, able-bodied and making any amount of income they want to can file separate returns and take advantage of whatever loopholes there may be in the law to file separate returns, but if you happen to be disabled you have to file a joint return and lose your sick pay exclusion. What is $5,200 to people who are disabled?

I will tell you what, if I thought the Secretary of the Treasury had anything to do with what the Senator from Massachusetts read I would demand his resignation tmorrow. It is the most outrageous thing I ever heard of in my life.

I would hope that the committee will accept this amendment and at least take it to conference, get the Treasury Department to give it to the conference firsthand, let them tell the committee in conference that they are opposed to this amendment, that they are opposed to people who are disabled filing separate returns, which everybody who is able-bodied in this country is permitted to do.

Mr. LONG. Mr. President, I would hope that the Senator would withhold his amendment at this point.

Mr. BUMPERS. Mr. President, I withdraw my amendment without losing my right to reintroduce it during the course of this debate. I will contact the Treasury Department and I will do my very best to get them to reverse their position on this.

The PRESIDING OFFICER. The Senator from Arkansas has the right to withdraw his amendment. The amendment is withdrawn.

AMENDMENT NO. 3589

(Purpose: To extend the time within which charitable trusts may be reformed to qualify for the charitable deduction)

Mr. BUMPERS. Mr. President, I call up amendment No. 3589 and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Arkansas (Mr. BUMPERS) proposes an amendment numbered 3589.

Mr. BUMPERS. 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 appropriate place in the bill, add the following new section:

SEC. . AMENDMENT OF GOVERNING INSTRUMENTS TO MEET REQUIREMENTS FOR GIFTS OF SPLIT INTEREST TO CHARITY.

(a) CHARITABLE LEAD TRUSTS AND CHARITABLE REMAINDER TRUSTS IN THE CASE OF ESTATE TAX.—The first sentence of paragraph (3) of section 2055(e) is amended to read as follows: "In the case of a will executed before December 31, 1977, or a trust created before such date, if a deduction is not allowable at the time of the decedent's death because of the failure of an interest in property which passes from the decedent to a person, or for a use, described in subsection (a) to meet the requirements of subparagraph (A) or (B) of paragraph (2) of this subsection, and if the governing instrument is amended or conformed on or before December 31, 1978, or, if later, on or before the 30th day after the date on which judicial proceedings begun on or before December 31, 1978 (which are required to amend or conform the governing instrument), become final, so that interest is in a trust which meets the requirements of such subparagraph (A) or (B) (as the case may be), a deduction shall nevertheless be allowed."

(b) CHARITABLE LEAD TRUSTS AND CHARITABLE REMAINDER TRUSTS IN THE CASE OF INCOME AND GIFT TAXES.—Under regulations prescribed by the Secretary of the Treasury or his delegate, in the case of trusts created before December 31, 1977, provisions comparable to section 2055(e)(3) of the Internal Revenue Code of 1954 (as amended by subsection (a)) shall be deemed to be included in sections 170 and 2522 of the Internal Revenue Code of 1954.

Mr. BUMPERS. I will do my best to explain this.

Mr. President, at the expense of getting a good editorial in the Washington Post in a couple of days about pork barreling and so forth, again, most of us perhaps do not admit it on the floor of the Senate but I am happy to admit that Arkansas College, a small college in the northern part of the State, which serves a very fine area of the State, was granted a substantial charitable bequest. But because they did not know about it until after December 31, 1977, they are now faced with the possibility of being liable for a $40,000 estate tax.

What I am asking is that they be allowed until December 31, 1978, to file suit to amend the charitable bequest, which they could have done, incidentally, last year, had they known about it because in 1977 we extended the time for amending charitable bequests to make these technical corrections to perfect the charitable bequest until December 31, 1977. I am asking that we extend that to December 31, 1978, to give this particular college an opportunity to file suit between now and the end of the year to perfect the imperfections of that charitable bequest and let this private college get the benefit of it. It is worth approximately $40,000 to it, and it is simple justice, simple equity. I hope the committee will accept it.

Mr. LONG. Mr. President, my information on this is that the Treasury does not oppose the Senator's amendment. This deals with a type of thing that has been done before. The last time it was done it was indicated that it was not intended to be done again. But it may be that the case the Senator had in mind might have such compelling merit that it has to be treated the same as others that have had the same consideration. If that were the case, perhaps it should be considered in line with others who had the same consideration in the past.

I am not aware of any Treasury opposition. As a matter of fact, since the last amendment came up I have been handed a Treasury sheet or a mimeographed sheet which says Treasury is not opposed to the Senator's amendment.

Mr. BUMPERS. I thank the Senator. I am sure the Senator will want to hear from the Senator from Massachusetts before he agrees to accept this amendment.

Does the Senator from Massachusetts want to speak?

Mr. KENNEDY. No.

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

The amendment was agreed to.

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

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

The motion to lay on the table was agreed to.

Mr. BUMPERS. Mr. President, before offering another amendment, I would like to ask the distinguished chairman if the proposed amendment which I have on file dealing with deferred compensation for physicians who perform services for the State has been discussed with the floor manager.

Mr. LONG. We simply do not have that information now, but if the Senator will bring it up tomorrow I believe we will have the information.

Mr. BUMPERS. I will not offer it at this time. I will offer it tomorrow. I yield the floor.

The PRESIDING OFFICER. The Senator from Arizona.

UP AMENDMENT NO. 2003 (SUBSEQUENTLY NUMBERED AMENDMENT NO. 4008)

(Purpose: To provide for the current capital treatment of certain estimated losses experienced in connection with the loss of savings through fraud and mismanagement of an uninsured thrift institution)

Mr. DECONCINI. 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 Arizona (Mr. DECONCINI) proposes an unprinted amendment numbered 2003.

Mr. DECONCINI. 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 383, between lines 8 and 9, insert the following new section:

SEC. 510. TREATMENT OF LOSS OF SAVINGS THROUGH FRAUD AND MISMANAGEMENT OF AN UNINSURED THRIFT INSTITUTION.

In the case of a taxpayer who establishes, to the satisfaction of the Secretary of the Treasury, the amount of the loss he may reasonably be expected to suffer in connection with his savings (whether in the form of demand or time deposits) in a thrift institution which was placed under a temporary receiver in December, 1975, and which, as of March 14, 1977, was being administered by trustees appointed by a judge of a United States District Court, the amount of the loss so established by the taxpayer shall, at the election of the taxpayer (made at such time and in such manner as the Secretary may require), be treated as a short-term capital loss from the sale or exchange of a capital asset suffered for the taxable year of that taxpayer beginning in 1977 for purposes of chapter 1 of the Internal Revenue Code of 1954. In the case of a taxpayer who has attained the age of 65 years before January 1, 1978, the provisions of section 1211(b)(2) of the Internal Revenue Code of 1954 (relating to limitations on capital losses for taxpayers other than corporations) shall be applied under the preceding sentence by substituting "$4,000" for "$2,000" where it appears in subparagraph (A). If the amount of such loss is finally determined to be smaller than the amount established by the taxpayer under the provisions of this Act, the difference between the two amounts shall be treated as income to the taxpayer, for purposes of such chapter, on the date of such final determination.

On page 129, after the item relating to section 509 of the bill, add the following new item:

"SEC. 510. TREATMENT OF LOSS OF SAVINGS THROUGH FRAUD AND MISMANAGEMENT OF AN UNINSURED THRIFT INSTITUTION.".

Mr. DECONCINI. Mr. President, this amendment will help to alleviate the hardships caused to depositors when Lincoln Thrift Association of Phoenix, Ariz., and U.S. Thrift Association of Tucson, Ariz., were placed under a temporary receiver, and ultimately a court appointed trusteeship.

My amendment, which is identical to S. 1261, that I introduced on April 16, 1977, directs the Secretary of the Treasury to allow individuals victimized by the Lincoln Thrift affair to recapture part of their losses through the application of various tax provisions. These individuals, primarily senior citizens who lost their life savings, would be permitted to treat their loss as a loss from the sale of exchange of a capital asset. The approach taken by this amendment is justified by the very unusual circumstances surrounding the Lincoln Thrift collapse and the large number of persons who will be unable to gain any relief in any other manner.

In addition, taxpayers would be able to declare the loss immediately rather than wait until their savings are declared worthless. Each taxpayer affected would be allowed to deduct up to $2,000 of losses against ordinary income. Another special provision for persons 65 years or older has been added, allowing them to deduct up to $4,000. As under current law, the individual would be allowed to carry the losses forward up to the total amount of the loss. In the event that the individual recovers more of the loss than anticipated, there is a recapture provision which treats the difference between the losses declared and the losses incurred as taxable income at the time of final disposition by courts.

Lincoln Thrift Association and U.S. Thrift Association, which had 66 branch offices in Arizona, raised $52,887,492 from about 20,000 investors. There were approximately 33,000 different accounts between the 2 thrift associations. They offered the public an opportunity to purchase essentially three types of securities in the form of interest bearing debt instruments: First, passbooks with interest generally at 6 percent; second, time certificates at between 1 to 4 years maturity at generally from 6½ percent to 8 percent; and third, subordinated notes from 8 percent to 9 percent with normaliy a 5 year maturity date. Within these classifications of security holders, there were variations on the particular terms of the debt instrument. All of these securities were registered under Arizona law. As of December 3, 1975, the thrift associations had outstanding securities in the following amounts:

	Lincoln Thrift	U.S. Thrft
Passbooks	$13,207,325	$3,728,008
Time certificates	22,915,000	8,578,500
Subordinated notes	6,780,000	3,077,500
Totals	42,902,325	15,384,008

Both thrift associations were qualified under Arizona law which allowed them to receive funds from investors and then reinvest the investors' funds. They were not regulated as such under Federal law and were not insured by an agency of the Federal Government.

In Arizona, thrift companies were regulated by the Securities Division of the Arizona Corporation Commission. Under Arizona law, restrictions were placed on the use which a thrift company can make of funds supplied by its investors. These restrictions, which were designed to uphold the safety and liquidity of the assets, included prohibitions against purchase of real estate, prohibitions of loans to officers and directors of the thrift association, prohibitions against unsecured loans, the limitation of loans to 2 years, and the maintenance of statutory reserves.

On October 29, 1975, the Securities and Exchange Commission commenced a formal investigation which was greatly assisted by the Arizona Corporation Commission and the Arizona Attorney General. The Commission filed a civil injunctive action in the United States District Court for the District of Arizona on November 24, 1975, against Lincoln Thrift Association; Lincoln Leasing Corp. (a wholly owned subsidiary of Lincoln Thrift Association); U.S. Thrift Association; U.S. Thrift Leasing Corp. (a wholly owned subsidiary of U.S. Thrift Association); Omaha Surety Corp. of Phoenix, Ariz.; Robert H. Fendler of Phoenix, the principal officer and director of the corporate defendants who owned and controlled both thrift associations; James R. Holman of Phoenix, Ariz., the attorney for the corporate defendants; and Leonard H. Forman of Phoenix, Ariz., the public accountant for the corporate defendants.

The complaint alleged that the defendants violated the antifraud provisions of the Federal securities laws in the offer and sale of the thrift certificates, thrift passbooks, and other debt instruments issued by Lincoln Thrift Association and U.S. Thrift Association. The complaint also alleged that the defendants did not use the investors' funds in the manner described in their prospectus and advertising, but instead, appropriated the investors' funds to finance their own speculative enterprises. The defendants were further charged with concealing the insolvent financial condition of the respective thrift associations from investors by preparing and distributing false financial statements.

In addition, the complaint alleged that the defendants misrepresented the safety of the investment by falsely stating the adequacy of the insurance which was purported to protect deposits in the thrift associations. This purported insurance was provided by Omaha Surety Corp. of America, an undisclosed affiliate of both Lincoln Thrift Association and U.S. Thrift Association. The assets of Omaha Surety Corp. of America were insufficient to cover the insurance written and were composed of receivables from the thrift associations. The insurance purported to have terms which resembled insurance provided by the Federal Deposit Insurance Corporation. In addition to seeking an injunction to prevent future violations of the Federal securities laws, the Securities and Exchange Commission asked the court to appoint an equity receiver to take charge of the assets of the thrift associations in order that all investors could be treated equally.

The Honorable Walter E. Craig, United States district judge, entered a temporary restraining order immediately which prevented the withdrawal of funds from the thrift associations and the dissipation of any assets by the defendants or the destruction of any documents pending further hearings on the matter. A hearing was held on November 26, 1975, and evidence was submitted with respect to the violations of the law and the appropriateness of the appointment of a temporary receiver for the corporate defendants. After hearing the evidence, the court continued the temporary restraining order until December 2, 1975, and ruled that a temporary receiver would be appointed at that time. On December 2, the court appointed Continental Service Corp., a subsidiary of the Continental Bank of Phoenix, Ariz., as the temporary receiver.

The temporary receiver's duties under the court order were to conserve and marshal the assets of Lincoln Thrift Association, U.S. Thrift Association, and their numerous subsidiaries for the bene-

fit of investors and to report to the court the true condition of the companies.

On March 15, 1976, the temporary receiver and its auditors filed a three-volume report with the court. This report stated that Lincoln Thrift Association, U.S. Thrift Association and their numerous subsidiaries and affiliates as of December 3, 1975, on a consolidated basis, had total assets of $38,028,204 and total liabilities of $69,183,983. These liabilities include $52,887,204 due to investors.

Additionally, the report revealed that the thrift associations were operated in violation of virtually every regulation under the Arizona State Thrift Company Act. The thrift associations' statutory reserves were not maintained in Government securities or cash as required to insure liquidity, but were invested in affiliated companies. That is, the statutory reserves in U.S. Thrift Association consisted of investments in Lincoln Thrift Association and its subsidiaries. Conversely, the statutory reserves for Lincoln Thrift Association consisted of investments in U.S. Thrift Association and its subsidiaries. Since each entity was insolvent, the statutory reserves were worthless. The proceeds from the sale of the securities were illegally invested in real estate, illegally loaned to officers and directors of the thrift associations and illegally loaned in unsecured transactions or in transactions in excess of 2 years. Investors' funds were unlawfully used by the thrift associations for operating overhead, salaries, and other business expenses.

As the result of the insolvency of the two thrift associations and the mismanagement by former officers and directors, the temporary receiver recommended that the assets of the thrift associations remain under court supervision. Negotiations with the defendants resulted in their consenting to the entry of an order appointing an independent board of trustees and special counsel for the thrift associations on May 7, 1976. At the same time the court entered a consensual permanent injunction against further violations of the antifraud provisions of the Federal securities laws against Robert H. Fendler, Lincoln Thrift Association, U.S. Thrift Association, Lincoln Leasing Corp., U.S. Thrift Leasing Corp., and Omaha Surety Corp. of America.

Mr. President, I might add, that in light of the developments relative to Lincoln Thrift and U.S. Thrift Associations, which were the only thrift associations operating in Arizona, the Arigona State Legislature has repealed the Thrift Company Act.

The trustees are charged with managing the remaining assets of the companies in the best interests of the investors and are required to report to the court the best methods of either liquidating or reorganizing the companies.

To date, three partial returns of depositors' investments have been distributed. In July of 1977, investors received a 10 percent return; 7 percent was returned in December of 1977; and in July of 1978, an additional 8 percent was returned. Thus, most depositors of Lincoln Thrift Association and U.S. Thrift Association have had 25 percent of their investments returned. The board of trustees has projected that upon final settlement, depositors will have had returned to them between 35 and 40 percent of their investment. Further, it is estimated, that final settlement of depositors claims is at least 2 years in the future.

This bill is an attempt to provide a measure of immediate relief to those depositors who have financially suffered from this thrift fiasco. Families had deposited their entire life's savings, as much as $25,000 or $35,000, with dreams of realizing a secure retirement, only to discover their dream had vanished because of the fraudulent practices of these thrift companies. Well over 50 percent of the depositors are 65 years of age, or older, with many on fixed income, such as social security.

Obviously, all depositors will not receive the benefits of this proposed legislation, only those with a taxable income. But enactment will be a direct message from the United States Congress to the 20,000 depositors of U.S. and Lincoln Thrift that we are concerned about their welfare, that we do have a humane interest in their financial difficulties, and that we are responsive to their needs.

In conclusion, I want to quote a portion of a letter from a retired citizen of Sun City, Ariz., that further demonstrates the necessity for such legislation:

> As you well know many folks in Arizona have lost money because of either Lincoln Thrift or U.S. Thrift. It has now been over a year that our money has been held up and goodness only knows when ever a fraction thereof will be released to us. In addition it would appear that that fraction will be rather small. According to current rulings of the IRS we cannot take any credit on our income tax until that fraction is finally determined. Some of us may even die before that figure is determined. Even a ten or twenty percent credit would be wonderful if we were allowed to claim same on our 1976 tax returns and to do it now.

Mr. President, I urge my colleagues to support this measure.

I have discussed this with the manager of the bill.

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. LONG. Mr. President, this amendment would permit depositors who suffered a loss of all or part of their savings in a thrift institution——

Mr. KENNEDY. Mr. President, I cannot hear. May we have order in the Chamber?

The PRESIDING OFFICER. The point of order is well taken. The Senate will be in order.

The Senator from Louisiana.

Mr. LONG. Mr. President, the amendment would permit depositors who suffered a loss of all or part of their savings in a thrift institution to elect to deduct the estimated loss for their taxable year beginning in 1977, even though the amount of the loss has not been finally determined by the end of that year.

In addition, depositors who are 65 before January 1, 1978, could deduct up to $4,000 of the loss against the ordinary income for 1977 rather than $2,000.

The amendment would apply only to depositors in a thrift institution which was placed under a temporary receiver in December 1975, and which, as of March 14, 1977, was being administered by trustees appointed by a judge or U.S. district court.

Mr. President, we are not aware and have not been informed of the Treasury position on this matter. It may be that some other Senator might have been, but we have not.

Has the Senator from Arizona been informed of any Treasury objection?

Mr. DECONCINI. No, I have not.

Mr. LONG. We are not aware of it. We just do not have it.

Mr. KENNEDY. Did the Senator read what the Treasury's position has been?

Mr. LONG. I do not know the Treasury's position on the amendment. As far as we are concerned, I personally have no objection to the amendment. If it be the judgment of the Senate that the Senate should accept the amendment, we will discuss it in conference. Perhaps we shall find out what Treasury thinks about it at that point. The amendment does have merit and I am sure that some arguments can be made both ways on it. It is a matter that we could discuss in conference if it be the judgment of the Senate that we should agree to the amendment.

Mr. KENNEDY. Mr. President, it is my understanding that Treasury is opposed to this amendment.

Mr. LONG. The Senator from Massachusetts might very well have more information about the Treasury position than we have. We have had the good fortune of obtaining, since we discussed the first Bumpers amendment, a mimeographed sheet from the Treasury which indicated that the Treasury does not support it. It does not explain the reason. It says the Treasury does not support the first Bumpers amendment. That was not available to me and, so far as I know, it was not available to our staff, when Mr. BUMPERS brought up his amendment.

Mr. KENNEDY. Mr. President, I think that with any general legislation, there are a number of worthwhile and valuable special provisions that ought to be favorably considered by the Senate. But I think that we ought to know on each of these occasions who the beneficiaries are and what the position of the Treasury is on each of those, so that the Members of the Senate have that information. I have reservations about considering items such as this unless we have a position from the Treasury. I hope that we shall not consider this amendment further this evening until we get the reaction of the Treasury. Then the Senate will be on notice and can work its will.

Mr. LONG. Mr. President, we cannot consider objected-to amendments this evening and I hope the Senator will withhold his amendment at this point and perhaps we can consider it at a later date. Perhaps at that point, we might have an expression from the Treasury.

Mr. DECONCINI. If the Senator from Louisiana will yield, I should be glad to explain to the Senator from Massachusetts who is involved here: About 20,000 depositors, over 50 percent of them 60

years or older, who have invested in what is known as the Lincoln Thrift Association, uninsured. They have lost all their savings and this would only give them the ability to deduct some of those losses against their income tax and if, in fact, which is very doubtful, there is any recapture, they would have to pay it back to the receivership. But that is not going to happen.

The estimated amount of possible revenue involved in the Treasury is $200,000. These are senior citizens who, most of them, have moved to Arizona from Massachusetts, Iowa, and other fine States. The institution was closed due to fraud and the president has been convicted of criminal fraud and is awaiting sentencing pending appeal.

This is, I should think, worthy enough, with the kind consultation of the chairman of the committee, to take it to conference and see what can be worked out. If nothing, we shall have to come back next year.

I appreciate immensely the willingness of the distinguished Senator from Louisiana to do that for these people. It is the only relief I can get. I cannot get anything else under criminal sanctions that have been imposed against the officers.

This is something that is a real humanistic problem, with senior citizens who invested and have nothing, nothing at all.

I hope the Senator from Massachusetts can see his way clear to letting the committee accept this amendment and see what can be done in the conference committee.

(Mr. MORGAN assumed the chair.)

Mr. METZENBAUM. Mr. President, it seems to me if there are depositors in a thrift association who will lose their funds, A, they would normally be in a position to write off a portion of those funds under the tax laws; second, if that is not the case or there is something special about this case, it occurs to me that we would be setting a dangerous precedent here this evening to say that depositors in one particular thrift association can be treated especially, because I am certain that many other financial institutions in the country have found themselves in a position of insolvency.

I think at 10:05 in the evening, we ought not to accept an amendment of this kind without really understanding what its total implications are—not just for those who are involved in this situation, but to see to it that we are not setting a precedent for others without any rhyme or reason for doing so.

I hope that the chairman of the Committee on Finance will not see fit to accept the amendment under these circumstances.

Mr. LONG. Mr. President, I regret that we are compelled to do business in the way that we are. I do not complain about it. It is one of those things that happens all the time. If I had my way, we would be proceeding through this bill in sequence; we would be moving title by title and everybody would be in a position to know what we are going to consider next. That being the case, we could do business in a much more orderly fashion and be better advised, both from the Treasury's point of view and anyone else's who wanted to make his point of view known.

I think the Senate knows that the manager of the bill sought consent that we proceed title by title, proceed in sequence. That consent was not given. That being the case, we are compelled to go on a catch-as-catch-can basis. Under the circumstances, when an unprinted amendment is offered, those at Treasury have the right to complain that they did not know about the amendment, did not know it was going to be offered, only learned about it recently and were not in a position to react. So, under the circumstances, I am now informed that the Treasury does oppose the amendment.

I hope that perhaps the Senator can discuss this matter with those who represent the Treasury during the next day or so and perhaps he could work out something with them that they will not object to. Under the circumstances, I regret to say that we shall have to urge the Senator to withhold the amendment.

Mr. DECONCINI. Mr. President, if the Senator will yield, I shall agree to withdraw this amendment if I can have unanimous consent that it can be brought up again on a time limitation basis prior to passage. I would be glad to have a half hour, no longer than a half hour, or 1 hour. If I can get such a unanimous-consent agreement, I shall be glad to do that.

Mr. LONG. I have no objection, I say to the Senator. I hope very much that the matter can be worked out.

Mr. DECONCINI. Mr. President, I ask unanimous consent that the pending amendment be withdrawn, with the understanding and unanimous consent of this body that it can be brought up prior to passage, with not more than 1 hour of debate.

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

The amendment was withdrawn.

UP AMENDMENT NO. 2004

(Purpose: To amend the source of income rules of the Internal Revenue Code so as to permit the more efficient use of railroad rolling stock)

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. PERCY. Mr. President, I send to the desk an amendment and ask that it be considered.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Illinois (Mr. PERCY) proposes an unprinted amendment numbered 2004.

Mr. PERCY. I ask unanimous consent that further reading be dispensed with.

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

The amendment is as follows:

On page 341, line 12, insert the following:

SEC. 380. INCOME FROM CERTAIN RAILROAD ROLLING STOCK TREATED AS INCOME FROM SOURCES WITHIN THE UNITED STATES.

(a) GENERAL RULE.—Section 861 of the Internal Revenue Code of 1954 (relating to income from sources within the United States) is amended by adding at the end thereof the following new subsection:

"(f) INCOME FROM CERTAIN RAILROAD ROLLING STOCK TREATED AS INCOME FROM SOURCES WITHIN THE UNITED STATES.—

"(1) GENERAL RULE.—For purposes of subsection (a) and section 862(a), if

"(A) a taxpayer leases railroad rolling stock which is section 38 property (or would be section 38 property but for section 48(a)(5)) to a domestic common carrier by railroad or a corporation which is controlled, directly or indirectly, by one or more such common carriers, and

"(B) the use under such lease is expected to be used within the United States,

all amounts includible in gross income by the taxpayer with respect to such railroad rolling stock (including gain from sale or other disposition of such railroad rolling stock) shall be treated as income from sources within the United States. The requirements of subparagraph (B) of the preceding sentence shall be treated as satisfied if the only expected use outside the United States is use by a person (whether or not a United States person) in Canada or Mexico on a temporary basis which is not expected to exceed a total of 90 days in any taxable year.

"(2) PARAGRAPH (1) NOT TO APPLY WHERE LESSOR IS A MEMBER OF CONTROLLED GROUP WHICH INCLUDES A RAILROAD.—Paragraph (1) shall not apply to a lease between 2 members of the same controlled group of corporations (as defined in section 1563) if any member of such group is a domestic common carrier by railroad or a switching or terminal company referred to in subparagraph (B) of section 184(d)(1).

"(3) DENIAL OF FOREIGN TAX CREDIT.—No credit shall be allowed under section 901 for any payments to foreign countries with respect to any amount received by the taxpayer with respect to railroad rolling stock which is subject to paragraph (1)."

(b) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendment made by subsection (a) shall apply to all railroad rolling stock placed in service with respect to the taxpayer after the date of the enactment of this Act.

(2) ELECTION TO EXTEND SECTION 861(f) TO RAILROAD ROLLING STOCK PLACED IN SERVICE BEFORE DATE OF ENACTMENT.—

(A) IN GENERAL.—At the election of the taxpayer, the amendment made by subsection (a) shall also apply, for taxable years beginning after the date of the enactment of this Act, to all railroad rolling stock placed in service with respect to the taxpayer on or before such date of enactment. Such an election may not be revoked except with the consent of the Secretary of the Treasury or his delegate.

(B) MANNER AND TIME OF ELECTION AND REVOCATION.—An election under subparagraph (A), and any revocation of such an election, shall be made in such manner and at such time as the Secretary of the Treasury or his delegate may by regulations prescribe.

Mr. PERCY. Mr. President, as I understand it, there is no objection from the Treasury Department to this amendment and it is acceptable to the floor managers of the bill.

The purpose of the amendment is to remove the existing obstacle to the free flow of leased railroad rolling stock between the United States, Canada, and Mexico which is caused by the source of income rules of the Internal Revenue Code. This will permit U.S. railroads to obtain greater utilization of their existing supply of equipment and to route their traffic in the fastest and most efficient manner. Such an improvement in

efficiency is especially important at the present time, when rolling stock is in short supply.

The amendment will permit leased rolling stock to be treated on a par with aircraft and ships. Under existing law, lessors of aircraft and ships are given an election to treat all income from the rental of ships and aircraft as from sources within the United States. The amendment would provide for similar treatment in the case of railroad rolling stock which is leased to a U.S. railroad or a corporation which is controlled by one or more U.S. railroads. However, the new source of income rules would only apply where the rolling stock is to be used outside the United States on a temporary basis—less than 90 days in a taxable year.

The substantive provisions of the amendment were adopted by the House of Representatives last week, after hearings held by the Ways and Means Committee. The only reason that this matter was not considered by the Finance Committee was that it arrived on this side of the Hill too late to be considered in the Finance Committee's markup of H.R. 13511.

The amendment is noncontroversial; it has been approved by the Department of Transportation and not opposed by the Treasury Department. It is also supported by the railroads, particularly those located close to the border between Canada and the United States and whose business involves a significant amount of traffic to and through Canada.

Last, but certainly not least, the adoption of the amendment will not result in a significant decrease in revenue. Under existing law, leased rolling stock which would be subject to the amendment does not, as a practical matter, travel outside the United States. Thus the income from such cars is presently U.S. source income. The amendment merely permits a lessor to continue to treat the income from such cars as U.S. source income, even though the cars may be temporarily outside the country. Thus, there will be no significant loss of revenue.

Mr. LONG. Mr. President, this bill does not result in any significant revenue loss. The amendment was passed by the House on H.R. 12352, and it is not opposed by the Treasury.

The amendment provides that the income or loss from rental of the railroad rolling stock is to be U.S. source income or loss if the rolling stock is not used outside the United States, except on a temporary basis not expected to exceed 90 days.

This modification would prevent the potential loss of lessors' foreign tax credits.

Personally, I have no objection to the amendment.

Mr. PERCY. I thank my distinguished colleague.

I have no further comments to make.

Mr. HATHAWAY. Will the Senator yield?

Mr. PERCY. Yes.

Mr. HATHAWAY. Will the Senator add my name as a cosponsor of the amendment?

Mr. PERCY. Of course.

The PRESIDING OFFICER. The Senator's name will be added.

Mr. KENNEDY. Mr. President, what is the loss? As I understand it, this is the similar rule used for airlines and ships and is now being extended to the railroad cars?

Mr. PERCY. That is right.

Mr. KENNEDY. What is the revenue loss?

Mr. PERCY. The only comment the Senator from Illinois could obtain on this from either the House or the Treasury Department was that there is not a significant decrease in revenue.

It may be something, but it is insignificant.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. DANFORTH. Mr. President, has the previous bill been disposed of?

The PRESIDING OFFICER. No.

The question is on agreeing to the amendment——

Mr. PERCY. The Senator from Illinois would like a vote on this amendment, and then he has an additional quick amendment, then he will finish his business.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Illinois.

The amendment (UP No. 2004) was agreed to.

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

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

The motion to lay on the table was agreed to.

UP AMENDMENT NO. 2005

(Subsequently numbered Amendment 4009)

(Purpose: to change the period for the payment of taxes under Section 416(a))

Mr. PERCY. Mr. President, I send my last amendment to the desk.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Illinois (Mr. PERCY) proposes an unprinted amendment numbered 2005.

Mr. PERCY. 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 383, between lines 8 and 9, insert the following:

"SEC. 510. TIME FOR PAYMENT OF MANUFACTURERS EXCISE TAX ON RODS, CREELS, ETC.

(a) IN GENERAL.—Section 6302 (relating to mode or time of collecting tax) is amended by adding at the end thereof the following new subsection:

"(d) TIME FOR PAYMENT OF MANUFACTURERS EXCISE TAX ON RODS, CREELS, ETC.—The tax imposed by section 4161(a) (relating to manufacturers excise tax on rods, creels, etc.) shall be due and payable—

"(1) in the case of articles sold during the quarter ending December 31, on March 31,

"(2) in the case of articles sold during the quarter ending March 31, on June 30,

"(3) in the case of articles sold during the quarter ending June 30, on September 24, and

"(4) in the case of articles sold during the quarter ending September 30, at such time as the Secretary may by regulations prescribe.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) of this section shall apply to articles sold after December 31, 1978.

Mr. PERCY. Mr. President, this amendment would simply postpone the payment of the manufacturers' excise tax on fishing equipment. It would not reduce the taxes presently paid. Rather it would help a small domestic industry which has a uniquely seasonal character.

This change in the excise tax payment date will not affect general revenues in any way. The funds collected through this excise tax have since 1952 been used to support the Federal aid and fish restoration program which is used in conservation and fish restoration efforts throughout the United States. The industry supported the creation of this program and the excise tax that makes it possible and continues this support for the tax today. These small businesses are concerned, however, about the timing of the collection.

The House Ways and Means Committee held hearings on this bill last year and reported it to the floor earlier this year. The committee, in its report, specifically stated that the bill would "not affect the aggregate fiscal year collection of the manufacturers excise tax on fishing equipment." There will be no cost to the public.

Under the present law, sales of fishing rods, creels, reels, and artificial lures are subject to a 10 percent manufacturers' excise tax. Treasury regulations require that the excise tax must be paid at certain times, if the sales for a period exceed $2,000. Specifically, when the liability for all excise taxes—reported on IRS form 720—exceeds $2,000 for any month in the preceding calendar quarter, the manufacturer must pay the taxes on a semimonthly basis within 9 days after the close of the period involved.

Consequently, payment corresponds with time of shipment. Time of payment in the fishing equipment business, however, is often months later. In fact, fishing tackle manufacturers do not historically receive payment until 5 months after shipment has occurred.

Basically, the tackle manufacturers' cycle begins with product development during the summer months, followed by order-taking in late summer and shipments starting in October and continuing through March. To induce distributors to purchase equipment throughout the year and thereby make efficient use of their plants and maintain employment levels, virtually every member of the industry offers extended credit terms.

Mr. President, as a result of these factors, the fishing tackle industry—which is composed mostly of small businesses—must use short-term financing to pay this excise tax. In its committee report to H.R. 6853, the Ways and Means Committee concluded that:

This payment problem is unique to the fishing equipment industry. . . .

My amendment would delay the excise tax so that it would be payable on March 31 for articles sold during the quarter ending December 31; on June 30 for

articles sold during the quarter ending March 31 and on September 24 for articles sold during the quarter ending June 30. No change would be made for articles sold during the last quarter of the calendar year but the Treasury could change the regulations for this quarter of the Secretary felt it appropriate to do so.

Mr. President, the delay in the payment of this excise tax will remove a real burden from the backs of America's small businesses engaged in the manufacture of fishing equipment, without costing the taxpayers a dime. I urge my colleagues to support this amendment, which embodies the text of a bill Senator NELSON introduced this year and of which Senator BELLMON and I are cosponsors.

Mr. President, I ask unanimous consent to add the distinguished Senator from Michigan (Mr. GRIFFIN) as a cosponsor of this amendment.

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

Mr. STEVENS. Will the Senator yield?

Mr. PERCY. I am happy to yield.

Mr. STEVENS. Did I understand the Senator to say the net receipts to the Treasury in any fiscal year will not be affected by the Senator's amendment?

Mr. PERCY. They are not affected at all.

What this will do, however, let us be sure we understand this, it will save these small manufacturers the cost of borrowing money for a period of 4 or 5 months.

They will borrow the money to pay the Treasury and pay probably 11 percent, 12 percent, 12.5 percent interest for those 4 or 5 months.

They, themselves, do not receive payment.

The Senator from Illinois was in a business that was highly seasonal and every attempt was made to maintain steady employment with 50 percent of the sales occurring at Christmas time.

It is much more economical to keep the people in the factory, keep production under way, keep employment going throughout the course of the year.

In the fishing industry, they make the shipments, and the dealers carry the inventory in their stock, but they do not pay for it until later.

Mr. STEVENS. I say to the Senator that any business that is on an accrual accounting system will have the same situation develop. When our timber people cut timber and they send it out of our State, they still pay their taxes on an accrual basis, and they pay them within a taxable year.

I want to make certain, because the moneys the Senator is talking about are distributed to the conservation fund, that the payments into the fund, according to Senator's amendment, would be the same in that fiscal year. Is that correct?

Mr. PERCY. That is correct.

Mr. STEVENS. Can the Senator tell me what happened to the bill in the House?

Mr. PERCY. The Senator from Illinois understands that it was reported in April but was never brought to a vote on the floor.

Mr. STEVENS. I am not going to oppose it. I hope that if it is adopted, the Senator will not move to reconsider. We handled this as a part of the budget in our subcommittee and the Appropriations Committee. I would have liked to have had a chance to look this matter over. I am not certain that it is as uncontroversial in terms of its impact on the program as the Senator feels. I think it may be setting a precedent. In terms of handling businesses which should be dealing on an accrual basis, that may be very difficult for us to handle in this field.

I understand the Senator's position with regard to it, but I have a little difficulty with this.

Mr. PERCY. As authority for the fact that this is a unique situation, the Senator from Illinois uses the report from the Ways and Means Committee, report to H.R. 6853. The report says:

This payment problem is unique to the fishing equipment industry.

In the experience of my distinguished colleague from Alaska, when shipments are made by the timber industry, is it not true that they are billed as they are made and payment is received by the timber industry?

In this case, in order to keep manufacturing level throughout the course of the year despite the highly seasonal nature of the sales, the industry, as a matter of trade practice, does not bill the customer for it until 5 months later, when the customer actually is making sales himself.

When interest costs were 3, 4, or 5 percent, a small business man could afford to do that. But many times, the profit margins of a small business person are not more than 4 or 5 percent. If they are paying 12 percent or 12.5 percent for their money, for a period of 5 months, that could wipe out the profits of this particular industry.

Mr. STEVENS. I say to the Senator that I do not know the circumstances. I do not oppose the Senator's amendment. I hope it is adopted. It is based on a report of the House.

I hope that out of courtesy to those of us who handle the area, if it is adopted, we will wait until tomorrow to have it reconsidered, if that is required.

Mr. MOYNIHAN. Mr. President, I am required to say that the Treasury Department at this time cannot support the amendment of the Senator from Illinois.

The general proposition, as I understand it, is that this is an industry whose credit practices are somewhat different from the general industrial norm, which does not commend itself to the Treasury as the case for making an exception with respect to a general tax practice.

I believe it would be the desire of the managers of the bill that the Senator from Illinois, who clearly knows a great deal more about this than does the Senator from New York, might be willing to discuss it with the Treasury and come back to the matter when perhaps a common position has been reached.

Mr. PERCY. Perhaps my distinguished colleague, the floor manager of the bill, will consider this: Let us have a vote on this; but the Senator from Illinois, as a courtesy to the distinguished Senator from Alaska and to any other Senator who would want to study this matter, would not move to reconsider it, and it could be brought up and reconsidered at any time.

Mr. MOYNIHAN. I would be happy to do that—it is a reasonable thought—if the Senator would understand that if the Treasury continues to oppose, the senior manager of the bill might feel called upon to object to reconsideration.

Mr. PERCY. With that understanding, there is no problem with that.

The Senator from Illinois has not talked personally to the Treasury about this matter. I would be very happy to discuss this question with them; and the Senator from Illinois may seriously object and have a feeling—not because the amounts here are nothing, but if they think it would set a bad precedent that others would want to follow, then the Senator from Illinois would have to give full consideration to that.

The Senator from Illinois is relying upon the House Ways and Means Committee report that this is a unique problem to the fishing industry.

Mr. MOYNIHAN. Mr. President, I believe I will have to withdraw the proposal I have just made. The Treasury opposition is of an order that makes the chairman of the committee feel that it would not be proper to proceed at this time.

Mr. PERCY. In that event, Mr. President, because of the lateness of the hour and the number of my colleagues who have other amendments they wish to offer—it is now 10:30 in the evening—the Senator from Illinois asks unanimous consent to withdraw the amendment. He would like to discuss this matter with the Treasury Department and see whether or not we can gain their support for it.

The PRESIDING OFFICER. The amendment is withdrawn.

UP AMENDMENT NO. 2006

(Purpose: To extend through 1979 the treatment of National Research Service Awards as scholarships under Section 117)

Mr. JAVITS. 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 New York (Mr. JAVITS), for himself and Mr. HATHAWAY, offers an unprinted amendment numbered 2006.

Mr. JAVITS. 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 211, strike lines 14 through 24 and insert the following:

SEC. 161. CERTAIN GOVERNMENT SCHOLARSHIP AND AWARD PROGRAMS.

(a) GOVERNMENT HEALTH PROFESSION SCHOLARSHIP PROGRAMS.

Subsection (c) of Section 4 of the Act entitled "An Act to suspend until the close of June 30, 1975, the duty on certain carboxymethyl cellulose salts, and for other purposes" (Public Law 93-483; 88 Stat. 1457) approved October 26, 1974, is amended—

(1) by striking out "1979" and inserting in lieu thereof "1980", and

(2) by striking out "1983" and inserting in lieu thereof "1984".

(b) NATIONAL RESEARCH SERVICE AWARDS.

(1) GENERAL RULE.—Any amount paid to, or on behalf of, an individual from appropriated funds as a national research service award under section 472 of the Public Health Service Act shall be treated as a scholarship or fellowship grant under section 117 of the Internal Revenue Code of 1954.

(2) EFFECTIVE DATE.—The provisions of subsection (b) shall apply to awards made during calendar years 1974 through 1979.

Mr. JAVITS. Mr. President, this is an amendment to extend the treatment of National Research Service Awards as scholarships, and therefore nontaxable, under section 117 of the Code.

Mr. President, this amendment relates to National Research Service Awards which are awarded to our brightest people in the health professions, to pursue basic research. It seeks to exempt from taxation this financial assistance, this expenditure for assistance for education and living expenses. The grantee agrees to work in health research for a period of years after completion of education.

This measure is included in H.R. 9251, which relates to another matter—to wit, the taxation of Americans living abroad, on which the conferees have been unable to agree. Therefore, it is hung up in that bill.

Because Congress has established the National Research Service Awards to encourage individuals to pursue basic research so vital to our Nation's health, I believe it is important not to provide a disincentive to participation in the program through taxation of the grant. I understand, however, that the Joint Committee on Internal Revenue Taxation and others are studying the issue of the appropriate tax treatment for scholarships and other grants. Therefore, my amendment covers awards made only through 1979, rather than the permanent exclusion which I would prefer.

My amendment makes only one minor modification of the Senate-passed measure in H.R. 9251. Whereas H.R. 9251 provides scholarship treatment only through 1979, my amendment would provide such scholarship treatment for awards made through 1979. This change gives certainty to students that receive an award of 2 or 3 or 4 years' duration that the tax treatment will not be changed while they are in the middle of their programs. This certainty is important, for many students on tight budgets would be forced to drop from the program because they were unable to meet the additional tax burden that would arise.

The committee bill provides this same certainty for participants in the Public Health Service and Armed Forces programs by extending tax-exempt treatment through 1983 for students entering the program through 1979. Because the Public Health Service/Armed Forces programs are generally 4 years whereas the National Research Service Awards are frequently postdoctoral and therefore of varying durations, I have placed no outer limit on the exemption. Rather, the limit will be the duration of the award, which in most if not all cases will be less than the 4 years provided for the Public Health Service/Armed Forces awards.

It is my understanding that there is no objection to this effort to encourage our young people—as we are encouraging them in the Public Health Service and Armed Forces programs—in order to induce them to undertake this kind of work.

I urge my colleagues to accept this amendment.

Mr. LONG. Mr. President, is this an unprinted amendment which the Senator is offering?

The PRESIDING OFFICER. That is correct.

Mr. LONG. Mr. President, I hope the Senator will let his amendment be printed and let this matter go over. Then we will be in a position to obtain the position of those in the Treasury, and we will be in a position to be better informed about the amendment.

I am informed that this is essentially the same thing that the Senate has passed in H.R. 9251, so that what the Senator is offering has been expressed as the will of the Senate on a previous occasion.

Mr. JAVITS. That is the reason I offered it. I was going to say that. I gather that it has gone through the scrutiny that is required for all these amendments.

Mr. LONG. I understand that the Treasury does not oppose this amendment. Mr. President, and I have no objection to it. The Senate having passed it before, I have no objection.

The PRESIDING OFFICER. (Mr. HODGES). The question is on agreeing to the amendment.

The amendment was agreed to.

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

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Missouri.

UP AMENDMENT NO. 2007

(Purpose: Bondholder Taxable Option)

Mr. DANFORTH. 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 Missouri (Mr. DANFORTH) proposes an unprinted amendment numbered 2007.

Strike page 289, line 1 through page 296, line 6.

Mr. DANFORTH. Mr. President, when the Finance Committee met last week to mark up the tax bill it approved a proposal of mine which will have a major impact on the municipal financing. I am referring to the bondholder taxable bond option contained in section 336 of the bill and described on pages 143 through 150 of the Finance Committee report.

This provision, I am convinced, will be of immense value to all State and local governments by reducing their costs of borrowing and improving the efficiency of the municipal bond market. At the same time, the proposal will improve the horizontal and vertical equity of our Federal tax structure.

My proposal will accomplish the reduction of municipal borrowing costs—but avoid all the potential fears expressed by local government officials and the securities industry when the administration proposed its taxable bond option earlier this year.

Unfortunately, my proposal did not receive much notice until this past week. My staff has made dozens of calls for the offices of mayors and Governors across the country in attempt to explain the important differences between this proposal and the administration's original proposal. Municipal security analysts, were consulted.

At this point, let me quote from several of the letters I have received on the proposals:

U.S. Treasury Department: We support this proposal. This provision would not mean any increased Federal involvement in State and local financing. But it would help State and local governments by making their bonds more attractive to persons in income brackets that are not high enough to justify investment in tax-exempt issues. This provision would improve municipal financing prospects and would also enhance the equity of the income tax system.

Public Securities Association: We understand that the proposal is intended to achieve several objectives, including reducing the cost of State and local government borrowing and improving the efficiency of the municipal bond market. PSA supports these important objectives, but in view of the potential broad impact of the proposal, we believe that detailed industry analysis of it is appropriate.

National Governors' Association: You have broken new ground on the crucial issue of State and local financing, and we support further study of your idea.

When I brought this matter up in committee I indicated that I would personally withdraw the amendment on the floor if substantial opposition arose. Although, no one has raised substantive objections, there does appear to be great concern that we not pass this proposal in a rush to adjourn without the benefit of careful consideration and study.

I understand this reasonable reaction to a proposal that would have such a major impact—no matter how beneficial that impact might be. It is for these reasons that I offer this amendment to strike section 336 from the bill and request that a study be made of the proposal to be completed early in the next session, hopefully by the Joint Committee on Taxation. I am also seeking the chairman's assistance to schedule a hearing in the Finance Committee early in the next session so that this proposal can receive prompt and careful consideration.

Mr. LONG. Mr. President, I applaud the Senator's decision to move to strike his own amendment in order that it can receive more thorough consideration in depth.

As the Senator knows the Treasury favors the amendment and feels that it is a significant step forward, but the Senator is wise, in my judgment, to be cautious and to be sure that all who

might have a concern about the matter have an opportunity to be heard and make their position clear.

I honestly believe that is the best way to be sure we are passing good legislation and not doing something we might later regret.

Mr. DANFORTH. I wonder if I could secure some kind of agreement that perhaps the Joint Committee on Taxation could analyze this and maybe we could have a hearing on it in the Finance Committee some time early next year.

Mr. LONG. The Senator may be sure that the staff will be happy to assist him, and I have no doubt we can arrange for a hearing. Perhaps it will by the Taxation Subcommittee, but we can work it out and have a hearing and invite those interested to make their views known.

Mr. DANFORTH. Fine.

Mr. KENNEDY. Mr. President, will the Senator just yield for a brief comment?

Mr. DANFORTH. I yield.

Mr. KENNEDY. I commend the Senator for pressing this particular proposal forward.

As the Senator knows, the taxable bond option was a concept which was accepted in 1969 by the House of Representatives.

One of the distinguished Members, Congressman REUSS, has been pressing this for a number of years.

I believe that it offers a very creative, imaginative way of providing new capital opportunities for municipalities and for other governmental groups.

I think it is an imaginative, creative idea, and I just commend the Senator for moving it forward and join with him in hoping we can come up with a proposal that is going to permit the formulation of new capital for many of the communities.

I think many of the municipalities have not understood this as clearly as the Senator, and I think it is a very worthy and commendable idea. I just commend the Senator and indicate that I am very hopeful that the final result will be the kind of constructive, positive action the Senator desires.

Mr. DANFORTH. I thank the Senator very much.

I am hopeful that the initial reaction was very favorable by bond brokers, by local governments, and the like. It came along too quickly. I think it is only fair to everyone to let the idea simmer down a little bit and give people an opportunity to really analyze it.

SEVERAL SENATORS. Vote!

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Missouri.

The amendment was agreed to.

The PRESIDING OFFICER. The Senator from Tennessee.

UP AMENDMENT NO. 2008

(SUBSEQUENTLY NUMBERED AMENDMENT 3975)

(Purpose: To exempt from any excise tax imposed on trailers any trailer designed to be used with a light-duty for farming purposes or for transporting horses or livestock)

Mr. BAKER. Mr. President, I have an amendment at the desk which I understand has been cleared on both sides and it is noncontroversial, and I ask the clerk to state it.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Tennessee (Mr. BAKER) for himself and Mr. BENTSEN proposes unprinted amendment numbered 2008.

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

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

The amendment is as follows:

On page 383, between lines 8 and 9, add the following new section:

SEC. 510. EXCISE TAX EXEMPTION FOR CERTAIN TRAILERS DESIGNED TO BE USED WITH LIGHT DUTY VEHICLES.

(a) IN GENERAL.—Section 4063(a) of the Internal Revenue Code of 1954 (relating to exemptions from motor vehicle excise taxes) is amended by adding at the end thereof the following new paragraph.

"(8) CERTAIN TRAILERS USED FOR FARMING OR FOR TRANSPORTING HORSES OR LIVESTOCK.—The tax imposed under section 4061(a) shall not apply in the case of any trailer or semitrailer, or any chassis or body for any trailer or semitrailer, which is—

"(A) suitable for use with a vehicle having a gross vehicle weight of 10,000 pounds or less (as determined under regulations prescribed under section 4061(a)(2)), and

"(B) designed to be used for farming purposes (determined in accordance with section 6420(c)) or for transporting horses or livestock.".

(b) FLOOR STOCKS REFUNDS.—

(1) IN GENERAL.—Where, before the day after the date of enactment of this Act, any article made exempt from taxations by reason of the amendment made by subsection (a) has been sold by the manufacturer, producer, or importer and on such day is held by a dealer and has not been used and is intended for sale, there shall be credited or refunded (without interest) to the manufacturer, producer, or importer an amount equal to the tax paid by such manufacturer, producer, or importer on his sale of the article, if—

(A) claim for such credit or refund is filed with the Secretary of the Treasury or his delegate before the first day of the tenth calendar month beginning after the day after the date of the enactment of this Act based upon a request submitted to the manufacturer, producer, or importer before the first day of the seventh calendar month beginning after the day after the date of the enactment of this Act by the dealer who held the article in respect of which the credit or refund is claimed; and

(B) on or before the first day of such tenth calendar month reimbursement has been made to the dealer by the manufacturer, producer, or importer in an amount equal to the tax paid on the article or written consent has been obtained from the dealer to allowance of the credit or refund.

(2) LIMITATION ON ELIGIBILITY FOR CREDIT OR REFUND.—No manufacturer, producer, or importer shall be entitled to credit or refund under paragraph (1) unless he has in his possession such evidence of the inventories with respect to which the credit or refund is claimed as may be required by regulations prescribed by the Secretary of the Treasury or his delegate under this subsection.

(3) OTHER LAWS APPLICABLE.—All provisions of law, including penalties, applicable with respect to the taxes imposed by section 4061 of the Internal Revenue Code of 1954 shall, insofar as applicable and not inconsistent with paragraphs (1) and (2) of this subsection, apply in respect of the credits and refunds provided for in paragraph (1) to the same extent as if the credits or refunds constituted overpayments of the tax.

(c) DEFINITIONS.—For purposes of subsection (b)—

(1) The term "dealer" includes a wholesaler, jobber, distributor, or retailer.

(2) An article shall be considered as "held by a dealer" if the title thereto has passed to such dealer (whether or not delivery to him has been made) and if for purposes of consumption title to such article or possession thereof has not at any time been transferred to any person other than a dealer.

(d) EFFECTIVE DATE—

The amendment made by susbsection (a) of this section shall apply with respect to articles sold on or after the day after the date of the enactment of this Act.

On page 129, after the item relating to section 509 of the bill, add the following new item:

"SEC. 510. EXCISE TAX EXEMPTION FOR CERTAIN TRAILERS DESIGNED TO BE USED WITH LIGHT-DUTY VEHICLES.".

Mr. BAKER. Mr. President, my amendment would add to H.R. 13511 the text of H.R. 2984, a bill passed by the House earlier this year to exempt from the excise tax imposed on trailers any trailer designed to be used with a light-duty vehicle for farming purposes or for transporting horses or livestock.

In 1971, the Congress amended section 4061 of the Internal Revenue Code to exempt from the 10-percent manufacturers excise tax on trucks, buses, tractor and trailers, light-duty trailers suitable for use with vehicles having a gross vehicle weight of 10,000 pounds or less. This provision exempted the majority of farm and ranch trailers that are characterized as gooseneck trailers which are suitable for use with light-duty trucks. The original intent of the Congress would have exempted all but three-axle trailers of this configuration. However, restrictive regulations by the IRS have limited the availability of the exclusion in the case of trailers used for farming or livestock transport purposes.

This is so because Treasury regulations use, as a primary determinant of gross vehicle weight, the maximum load-carrying capability of the axles. The trailers in question are manufactured by a relatively small number of producers who lack the precise engineering standards required to respond to the technical limitations imposed by the IRS. They often use axles produced for use as components of recreational vehicles or mobile homes, because these axles are generally readily available at reasonable prices. These axles, however, may have a load-carrying capability of more than 10,000 pounds and, even though they are used in farming to carry loads of less than that capacity, they are disqualified under IRS rules from the excise tax exemption.

Mr. President, I am pleased that the distinguished Senator from Texas (Mr. BENTSEN) has joined with me in cosponsoring this amendment to alleviate a situation in which trailers designed to haul feed to cattle, sheep, horses, and so forth are exempt, but trailers designed to haul the same livestock to market are taxable.

Mr. President, this amendment was approved by the House of Representatives as H.R. 2984 on May 8, 1978. It was adopted by the Senate Finance Committee as an amendment to another tax bill, H.R. 1920, in August. Unfortunately, however, the amendment was dropped from that measure before the Senate approved H.R. 1920. I ask unanimous consent that excerpts from the House Ways

and Means Committee's report on H.R. 2984 which explain in more detail the provisions of this measure be printed at this point in the RECORD.

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

EXCERPTS FROM HOUSE REPORT 95-988 ON H.R. 2984

PRESENT LAW

Under present law, a manufacturers excise tax of 10 percent is imposed on sales of chassis and bodies of trucks, buses, highway tractors, or their related trailers and semitrailers by a manufacturer, producer, or importer of such an article (sec. 4061(a) of the Internal Revenue Code of 1954).[1]

Present law provides an exclusion from the tax in the case of sales of chassis and bodies of light-duty trucks, buses, trucks trailers, and semitrailers (sec. 4061(a)(2)).[2] To be eligible for this exclusion, the chassis or body of the truck trailer or semitrailer must be "suitable for use" with a trailer or semitrailer having a gross vehicle weight of 10,000 pounds or less, determined in accordance with Treasury Department regulations (sec. 4061(a)(2)).[3] Furthermore, in order to be exempt, the truck trailer or semitrailer itself must be suitable for use with a towing vehicle having a gross vehicle weight of 10,000 pounds or less (sec. 4061(a)(2)).

Before the Revenue Act of 1971, which repealed the tax on automobiles and their trailers and semitrailers, the automobile tax rate applied to "trailers and semitrailers * * * suitable for use in connection with passenger automobiles." (Sec. 4061(a)(2)(B).) The Service ruled that "one-horse and two-horse trailers are considered to be suitable for use in connection with passenger automobiles, inasmuch as they possess actual and practical fitness for such use." Three-horse and 4-horse trailers were "concluded to be primarily designed for highway use in combination with taxable trucks." Rev. Rul. 68-584, 1968-2 CB 492.

[1] The tax is scheduled to be reduced to 5 percent on October 1, 1979. Revenues from this tax go to the Highway Trust Fund (through September 30, 1979).

[2] The 7-percent manufacturers excise tax on automobiles, etc., was repealed by the Revenue Act of 1971 (Pub. L. 92-178). Since many persons use smaller trucks, etc., as passenger vehicles, sales of light-duty trucks, trailers, and semitrailers also were excluded from the 10-percent truck excise tax by the 1971 Act.

[3] "Gross vehicle weight" is defined as the maximum total weight of a loaded vehicle. (Treas. Regs. § 48.4061(a)-1(f)(3)(i)). The maximum total weight of a loaded vehicle is the gross vehicle weight rating of the manufactured article as specified or established by the manufacturer, unless such a rating is unreasonable in light of the particular facts and circumstances. Generally, a manufacturer must specify or establish a weight rating for each chassis, body, or vehicle sold by it if the item requires no significant post-manufacture modification (Treas. Regs. § 48.4061(a)-1(f)(3)(ii)). The manufacturer's gross vehicle weight rating must take into account the strength of the chassis frame, the axle capability (capacity and placement), and the spring, brake, rim, and tire capacities. The lowest weight rating component ordinarily is determinative of the gross vehicle weight (Treas. Regs. § 48.4061(a)-1(f)(3)(v)). The total of the axle ratings is the sum of the maximum load-carrying capability of the axles and, in the case of a trailer or semitrailer, the weight that is to be borne by the vehicle used in combination with the trailer or semitrailer for which gross vehicle weight is determined (Treas. Regs. § 48.4061(a)-1(f)(3)(vi)).

REASONS FOR CHANGE

The committee understands that the present requirement for exemption from the manufacturers excise tax for trailers having gross vehicle weights of 10,000 pounds or less is administered by the Internal Revenue Service in a manner which imposes unrealistically low limits in the case of trailers designed to be used for farming purposes, or designed to be used for transporting horses or livestock. Under the Treasury Regulations, the primary determinant of gross vehicle weight frequently is the maximum load carrying capability of the axles (see footnote 3, above). The committee understands that manufacturers of farming trailers, and of trailers designed to be used for transporting horses or livestock, often use axles produced for use as components of recreational vehicles or mobile homes, because these axles generally are readily available at reasonable prices. However, because of the particular conditions generally dealt with in the recreational vehicle and mobile home industries, axles designed for use as components of such vehicles often may be rated at more than 10,000 pounds. Nevertheless, in the case of trailers designed to be used for farming purposes or for transporting horses or livestock, those same axles would be used only in carrying loans of 10,000 pounds or less. Accordingly, the committee concludes that such items should be eligible for the light-duty truck exemption.

The committee, therefore, has decided to exempt trailers designed to be used for farming purposes or for transporting horses or livestock from the 10-percent manufacturers excise tax where such trailers are suitable for use with light-duty towing vehicles.

EXPLANATION OF THE BILL

Under the bill, an exemption is provided from the 10-percent manufacturers excise tax for certain trailers or semitrailers which are designed to be used for farming purposes or for transporting horses or livestock. The bill, in effect, eliminates the present law requirement for exemption that a trailer or semitrailer designed for such purposes have a gross vehicle weight of 10,000 pounds or less. However, the bill retains the present law limitations on the size of such a trailer or semitrailer—that it be suitable for use with a light-duty vehicle having a gross vehicle weight of 10,000 pounds or less. If a body or chassis is sold separately, then it must be suitable for use with such a trailer or semitransfer's order to qualify under the exemption.

The bill does not affect the separate 8-percent manufacturers excise tax on parts and accessories (sec. 4061(b)).

To avoid creating competitive disadvantages which might arise because of the relative sizes of dealers' inventories, and in conformity with prior practice, the bill provides for floor stocks refunds or credits (without interest) with respect to all articles exempted by the bill that are in dealers' inventories on the day after the date of enactment. These floor stocks refunds (or credits) are to be available with respect to exempted trailers or semitrailers (and their chassis and bodies), sold by the manufacturer, producer, or importer on or before the date of enactment which have not been used, but are intended for sale by the dealer. The credits or refunds for these floor stocks must be claimed by the manufacturer, producer, or importer before the first day of the 10th calendar month beginning after the day after the date of enactment of the bill, based upon requests submitted to it from the dealer before the first day of the 7th calendar month beginning after the day after the date of enactment. Also, on or before the first day of the 10th calendar month beginning after the day after the date of enactment, the manufacturer, producer, or importer must have reimbursed the dealer for the tax or obtained the dealer's written consent to the refund or credit. In addition, the manufacturer, producer, or importer must have in its possession evidence of the inventories on which the credit or refund is claimed (to the extent required by Treasury regulations).

An article is considered "held by a dealer", for these purposes, if title to the article has passed to the dealer (even if delivery has not been made). However, the article will not be considered "held by a dealer" unless title to the article or possession of the article has never been transferred to a non-dealer for purposes of consumption. The term "dealer" is defined to include a wholesaler, jobber, distributor, or retailer.

EFFECTIVE DATE

The exemptions made by the bill apply with respect to articles sold on or after the day the bill's enactment.

Mr. BAKER. I hope that the distinguished managers of the bill will agree to including this provision as a part of the Revenue Act of 1978.

Mr. PACKWOOD. Mr. President, was that an amendment that was voted on or not?

Mr. BAKER. No, it was not.

Mr. PACKWOOD. Then I will wait.

Mr. LONG. Mr. President, this measure has been passed by the House notwithstanding the Treasury's objection. It involves a revenue loss of about $2 million per year.

I have no doubt that if anyone wants a rollcall vote on it, the amendment will be agreed to.

If anyone wants to object to it, knowing the Treasury does not favor a reduction of this excise tax, since it would like to keep all revenue it is receiving from excise taxes, but knowing that this is popular and would undoubtedly be the will of the Senate if the Senate votes on this matter. I would respect the Senator's right to see the amendment go over.

In this case, Mr. President, I would certainly be willing to vote for the amendment. But if anyone wants to have it go over, we will have it go over because I have no doubt that, if the Senate votes on it, the Senate will vote for the amendment.

Mr. KENNEDY. Mr. President, I think the Treasury does have strong objections to this particular amendment, and I think we ought to have it go over.

Mr. BAKER. Mr. President, if that is the case, I had understood this was an amendment which would not be controversial, in that case I think the very best thing to do, since the Senator from Texas is not here at this time to speak on his own behalf, and since he is cosponsoring it, the best course would be to withdraw the amendment.

Mr. President, I therefore ask that the amendment be withdrawn.

The PRESIDING OFFICER. The Senator has that right.

Mr. BAKER. Mr. President, I ask that the amendment be withdrawn.

Mr. LONG. Mr. President, I would hope the Senator will bring his amendment up at a later date because the Senator well knows we were not going to have any rollcall votes tonight, and have no doubt that the Senate will vote for it.

Mr. PACKWOOD addressed the Chair.

The PRESIDING OFFICER. Does the Senator wish to propose an amendment? The Chair would simply advise the Sen-

ator from Oregon that a number of Senators have come and been placed on the list. The Senator from North Carolina had asked to be called following the Senator from Tennessee.

Mr. PACKWOOD. Will the Chair put me on the list after the Senator from North Carolina?

The PRESIDING OFFICER. The Senator should know that the Senators who asked are the Senator from North Carolina, the Senator from Maine, the Senator from Kansas, and I will now put the Senator from Oregon on the list, and the Senator from New York.

Mr. MORGAN. Mr. President, unless there is objection, I ask unanimous consent that the Senator from Maine go ahead because I understand his amendment will only take a few minutes.

The PRESIDING OFFICER. The Senator from Maine.

UP AMENDMENT NO. 2009

Mr. HATHAWAY. I thank the Senator from North Carolina.

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

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Maine (Mr. HATHAWAY) proposes an unprinted amendment numbered 2009.

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

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

At the appropriate place in the committee amendment add the following new title:

TITLE . TECHNICAL CORRECTIONS OF THE TAX REFORM ACT OF 1976

SEC. . TECHNICAL AMENDMENTS TO INCOME TAX PROVISIONS AND ADMINISTRATIVE PROVISIONS.

(a) AMENDMENTS RELATING TO RETENTION OF PRIOR LAW FOR RETIREMENT INCOME CREDIT UNDER SECTION 37(e).—

(1) CLARIFICATION THAT SPOUSE UNDER AGE 65 MUST HAVE PUBLIC RETIREMENT SYSTEM INCOME.—Paragraph (2) of section 37(e) (relating to election of prior law with respect to public retirement system income) is amended by striking out "who has not attained age 65 before the close of the taxable year" and inserting in lieu thereof "who has not attained age 65 before the close of the taxable year (and whose gross income includes income described in paragraph (4)(B))".

(2) CLARIFICATION THAT QUALIFYING SERVICES MUST HAVE BEEN PERFORMED BY TAXPAYER OR SPOUSE.—Subparagraph (B) of section 37(e)(4) (defining retirement income) is amended by inserting "and who performed the services giving rise to the pension or annuity (or is the spouse of the individual who performed the services)" after "before the close of the taxable year".

(3) DISREGARD OF COMMUNITY PROPERTY LAWS.—Subsection (e) of section 37 (relating to election of prior law with respect to public retirement system income) is amended—

(A) by redesignating paragraph (8) as paragraph (9) and by inserting after paragraph (7) the following new paragraph:

"(8) COMMUNITY PROPERTY LAWS NOT APPLICABLE.—In the case of a joint return, this subsection shall be applied without regard to community property laws.",

(B) by striking out "paragraph (8)(A)" in paragraph (4)(B) and inserting in lieu thereof "paragraph (9)(A)"; and

(C) by striking out "paragraph (8)(B)" in paragraph (5)(B) and inserting in lieu thereof "paragraph (9)(B)".

(4) EFFECTIVE DATES.—

(A) The amendments made by paragraphs (1) and (2) shall apply to taxable years beginning after December 31, 1975.

(B) The amendments made by paragraph (3) shall apply to taxable years beginning after December 31, 1977.

(b) AMENDMENTS RELATING TO THE MINIMUM TAX.—

(1) SPECIAL RULES FOR MINIMUM TAX IN THE CASE OF SUBCHAPTERS CORPORATIONS AND PERSONAL HOLDING COMPANIES.—

(A) Paragraph (1) of section 57(a) (relating to adjusted itemized deductions) is amended by striking out "An amount" and inserting in lieu thereof "In the case of an individual, an amount".

(B) The last sentence of section 57(a) (relating to items of tax preference) is amended by striking out "Paragraphs (1), (3), and" and inserting in lieu thereof "Paragraphs (3) and".

(C) Subsection (1) of section 58 (defining corporation) is amended by striking out "Except as provided in subsection (d)(2), for purposes of this part" and inserting in lieu thereof "For purposes of this part (other than section 57(a)(9))".

(2) DIVISION OF $10,000 AMOUNT AMONG MEMBERS OF CONTROLLED GROUPS.—Subsection (b) of section 58 (relating to members of controlled groups) is amended to read as follows:

"(b) MEMBERS OF CONTROLLED GROUPS.—In the case of a controlled group of corporations (as defined in section 1563(a)), the $10,000 amount specified in section 56 shall be divided among the component members of such group in proportion to their respective regular tax deductions (within the meaning of section 56(c)) for the taxable year."

(3) COMPUTATION OF ADJUSTED ITEMIZED DEDUCTIONS IN THE CASE OF ESTATES AND TRUSTS.—Paragraph (2) of section 57(b) (relating to computation of adjusted itemized deductions in the case of estates and trusts) is amended to read as follows:

"(2) SPECIAL RULES FOR ESTATES AND TRUSTS.—

"(A) IN GENERAL.—In the case of an estate or trust, for purposes of paragraph (1) of subsection (a), the amount of the adjusted itemized deductions for any taxable year is the amount by which the sum of the deductions for the taxable year other than—

"(i) the deductions allowable in arriving at adjusted gross income,

"(ii) the deduction for personal exemption provided by section 642(b),

"(iii) the deduction for casualty losses described in section 165(c)(3),

"(iv) the deductions allowable under section 651(a), 661(a), or 691(c), and

"(v) the deductions allowable to a trust under section 642(c) to the extent that a corresponding amount is included in the gross income of the beneficiary under section 662(a)(1) for the taxable year of the beneficiary with which or within which the taxable year of the trust ends,

exceeds 60 percent (but does not exceed 100 percent) of the adjusted gross income of the estate or trust for the taxable year.

"(B) DETERMINATION OF ADJUSTED GROSS INCOME.—For purposes of this paragraph, the adjusted gross income of an estate or trust shall be computed in the same manner as in the case of an individual, except that—

"(i) the deductions for costs paid or incurred in connection with the administration of the estate or trust, and

"(ii) to the extent provided in subparagraph (C), the deductions under section 642(c),

shall be treated as allowable in arriving at adjusted gross income.

"(C) TREATMENT OF CERTAIN CHARITABLE CONTRIBUTIONS.—For purposes of this paragraph, the following deductions under section 642(c) (relating to deductions for amounts paid or permanently set aside for charitable purposes) shall be treated as deductions allowable in arriving at adjusted gross income:

"(i) deductions allowable to an estate,

"(ii) deductions allowable to a trust all of the unexpired interests in which are devoted to one or more of the purposes described in section 170(c)(2)(B),

"(iii) deductions allowable to a trust which is a pooled income fund within the meaning of section 642(c)(5),

"(iv) deductions allowable to a trust which are attributable to transfers to the trust before January 1, 1977, and

"(v) deductions allowable to a trust, all of the income interest of which is devoted solely to one or more of the purposes described in section 170(c)(2)(B), which are attributable to transfers pursuant to a will or pursuant to an inter vivos trust in which the grantor had the power to revoke at the date of his death."

(4) SECTION 691(c) DEDUCTION NOT TAKEN INTO ACCOUNT FOR DETERMINING ADJUSTED ITEMIZED DEDUCTIONS.—Paragraph (1) of section 57(b) is amended by striking out "and" at the end of subparagraph (C), by inserting "and" at the end of subparagraph (D), and by inserting after subparagraph (D) the following new subparagraph:

"(E) the deduction allowable under section 691(c),".

(5) ALLOCATION OF ITEMS OF TAX PREFERENCE IN THE CASE OF ESTATES AND TRUSTS.—Paragraph (1) of section 58(c) (relating to estates and trusts) is amended by striking out "on the basis of the income of the estate or trust allocable to each" and inserting in lieu thereof "in accordance with regulations prescribed by the Secretary".

(6) EFFECTIVE DATE.—The amendments made by this subsection shall take effect as if included in the amendments made by section 301 of the Tax Reform Act of 1976.

(c) SICK PAY.—

(1) IN GENERAL.—Section 105(d) is amended by striking out paragraphs (4) and (6), by redesignating paragraph (5) as paragraph (4) and paragraph (7) as paragraph (6), and by inserting after paragraph (4) the following new paragraph:

"(5) SPECIAL RULES FOR MARRIED COUPLES.—

"(A) MARRIED COUPLE MUST FILE JOINT RETURN.—Except in the case of a husband and wife who live apart at all times during the taxable year, if the taxpayer is married at the close of the taxable year, the exclusion provided by this subsection shall be allowed only if the taxpayer and his spouse file a joint return for the taxable year.

"(B) APPLICATION OF PARAGRAPHS (2) AND (3).—In the case of a joint return—

"(i) paragraph (2) shall be applied separately with respect to each spouse, but

"(ii) paragraph (3) shall be applied with respect to their combined adjusted gross income.

"(C) DETERMINATION OF MARITAL STATUS.—For the purposes of this subsection, marital status shall be determined under section 143(a).

"(D) JOINT RETURN DEFINED.—For purposes of this subsection, the term 'joint return' means the joint return of a husband and wife made under section 6013."

(2) CONFORMING AMENDMENTS.—

(A) Subsection (c)(3) of section 505 of the Tax Reform Act of 1976 (relating to disability retirement) is amended by striking out "section 105(d)(5)" and inserting in lieu thereof "section 105(d)(4)".

(B) Subsection (c) and (e)(1) of section 301 of the Tax Reduction and Simplification Act of 1977 (relating to effective date of changes in the exclusion for sick pay) are each amended by striking out "section 105(d)(7)" and inserting in lieu thereof "section 105(d)(6)".

(3) EFFECTIVE DATE.—

(A) The amendments made by paragraphs (1) and (2)(A) shall take effect as if included in section 105(d) of the Internal Revenue Code of 1954 as such section was amended by section 505(a) of the Tax Reform Act of 1976.

(B) The amendments made by paragraph (2)(B) shall take effect as if included in section 301 of the Tax Reduction and Simplification Act of 1977.

(d) NET OPERATING LOSSES.—

(1) AMENDMENT OF SECTION 172(b)(1)(B).—The second sentence of subparagraph (B) of section 172(b)(1) (relating to years to which net operating losses may be carried) is amended by striking out "and (F)" and inserting in lieu thereof "(F), and (G)".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to losses incurred in taxable year ending after December 31, 1975.

(e) EFFECTIVE DATE FOR FISCAL YEAR TAXPAYER FOR CONSTRUCTION PERIOD INTEREST AND TAXES.—Paragraph (1) of section 201(c) of the Tax Reform Act of 1976 is amended to read as follows:

"(1) in the case of nonresidential real property if the construction period begins on or after the first day of the first taxable year beginning after December 31, 1975.".

(f) CLARIFICATION OF PROVISIONS PROVIDING TAX INCENTIVES TO ENCOURAGE THE PRESERVATION OF HISTORIC STRUCTURES.—

(1) DEFINITION OF CERTIFIED HISTORIC STRUCTURES.—Subsection (d) of section 191 (relating to amortization of certain rehabilitation expenditures for certified historic structures) is amended by redesignating paragraphs (2) and (3) as paragraphs (3) and (4), respectively, and by striking out paragraph (1) and inserting in lieu thereof the following new paragraphs:

"(1) CERTIFIED HISTORIC STRUCTURE.—The term 'certified historic structure' means a building or structure which is of a character subject to the allowance for depreciation provided in section 167 and which—

"(A) is listed in the National Register, or

"(B) is located in a registered historic district and is certified by the Secretary of the Interior to the Secretary as being of historic significance to the district.

"(2) REGISTERED HISTORIC DISTRICT.—The term 'registered historic district' means—

"(A) any district listed in the National Register, and

"(B) any district—

"(i) which is designated under a statute of the appropriate State or local government, if such statute is certified by the Secretary of the Interior to the Secretary as containing criteria which will substantially achieve the purpose of preserving and rehabilitating buildings of historic significance to the district, and

"(ii) which is certified by the Secretary of the Interior to the Secretary as meeting substantially all of the requirements for the listing of districts in the National Register."

(2) AMENDMENT OF CROSS REFERENCES.—Subsection (g) of section 191 (relating to cross references) is amended to read as follows:

"(g) CROSS REFERENCES.—

"(1) For rules relating to the listing of buildings, structures, and historic districts in the National Register, see the Act entitled 'An Act to establish a program for the preservation of additional historic properties throughout the Nation, and for other purposes', approved October 15, 1966 (16 U.S.C. 470 et seq.).

"(2) For special rules with respect to certain gain derived from the disposition of property the adjusted basis of which is determined with regard to this section, see sections 1245 and 1250."

(3) SPECIAL RULES FOR RECAPTURE OF AMORTIZATION DEDUCTION.—

(A) Paragraph (2) of section 1245(a) (relating to gain from dispositions of certain depreciable property) is amended—

(i) by striking out "190, or 191" the first place it appears and inserting in lieu thereof "or 190" and

(ii) by striking out "190, or 191" the second and third place it appears and inserting in lieu thereof "190, or (in the case of property described in paragraph (3)(C)) 191".

(B) Subparagraph (D) of section 1245(a)(3) (relating to gain from dispositions of certain depreciable property) is amended by striking out "190, or 191" and inserting in lieu thereof "or 190".

(C) Paragraph (3) of section 1250(b) (relating to depreciation adjustments) is amended by striking out "190 or 191" and inserting in lieu thereof "or 190".

(D) Paragraph (2) of section 57(a) (relating to items of tax preference) is amended by inserting "or 191" after "167(k)".

(E) Paragraph (4) of section 1250(b) (relating to definition of additional depreciation) is amended—

(i) by inserting "or amortization" after "depreciation" the second and third places it appears, and

(ii) by inserting "or 191" after "167(k)" each place it appears.

(4) STRAIGHT LINE METHOD IN CERTAIN CASES.—Subsection (n) of section 167 is amended to read as follows:

"(n) STRAIGHT LINE METHOD IN CERTAIN CASES.—

"(1) IN GENERAL.—In the case of any property in whole or in part constructed, reconstructed, erected, or used on a site which was, on or after June 30, 1976, occupied by a certified historic structure (or by any structure in a registered historic district) which is demolished or substantially altered after such date—

"(A) subsections (b), (j), (k), and (l) shall not apply, and

"(B) the term 'reasonable allowance' as used in subsection (a) means only an allowance computed under the straight line method.

The preceding sentence shall not apply if the last substantial alteration of the structure is a certified rehabilitation.

"(2) EXCEPTIONS.—The limitations imposed by this subsection shall not apply—

"(A) to personal property, and

"(B) in the case of demolition or substantial alteration of a structure located in a registered historic district, if the Secretary of the Interior certified to the Secretary—

"(i) before the beginning of the demolition or substantial alteration of such structure that such structure—

"(I) is not a certified historic structure, and

"(II) is not of historic significance to the district; or

"(ii) after the beginning of the demolition or substantial alteration of such structure, that—

"(I) such structure was not a certified historic structure,

"(II) such structure was not of historic significance to the district, and

"(III) the taxpayer has certified to the Secretary that, at the time of such demolition or substantial alteration, he in good faith was not aware of any certification requirement under this subparagraph.

"(3) DEFINITIONS.—For purposes of this subsection, the terms 'certified historic structure', 'registered historic district', and 'certified rehabilitation' have the respective meanings given such terms by section 191(d)."

(5) DEMOLITION OF CERTAIN HISTORIC STRUCTURES.—Subsection (b) of section 280B (relating to special rule for registered historic districts) is amended to read as follows:

"(b) SPECIAL RULE FOR REGISTERED HISTORIC DISTRICTS.—For purposes of this section, any building or other structure located in a registered historic district (as defined in section 191(d)(2)) shall be treated as a certified historic structure unless the Secretary of the Interior has certified—

"(1) before the beginning of the demolition or substantial alteration of such structure that such structure—

"(A) is not a certified historic structure, and

"(B) is not of historic significance to the district; or

"(2) after the beginning of the demolition or substantial alteration of such structure, that—

"(A) such structure was not a certified historic structure,

"(B) such structure was not of historic significance to the district, and

"(C) the taxpayer has certified to the Secretary that, at the time of such demolition or substantial alteration, he in good faith was not aware of the certification requirement under this subparagraph.".

(6) SUBSTANTIALLY REHABILITATED HISTORIC PROPERTY.—

(A) Paragraph (1) of section 167(o) (relating to substantially rehabilitated historic property) is amended by inserting "(other than property with respect to which an amortization deduction has been allowed to the taxpayer under section 191)" after "substantially rehabilitated historic property".

(B) Paragraph (2) of section 167(o) is amended by striking out "section 191(d)(3)" and inserting in lieu thereof "section 191(d)(4)".

(7) AMORTIZATION ALLOWABLE TO PERSONS WITH CERTAIN LEASE INTERESTS.—Section 191(f) (relating to treatment of life tenants and remaindermen) is amended to read as follows:

"(f) SPECIAL RULES FOR CERTAIN INTERESTS.—

"(1) LIFE TENANT AND REMAINDERMAN.—In the case of property held by one person for life with remainder to another person, the deduction under this section shall be computed as if the life tenant were the absolute owner of the property and shall be allowable to the life tenant.

"(2) CERTAIN LESSEES.—

"(A) IN GENERAL.—In the case of a lessee of a certified historic structure who has expended amounts in connection with the certified rehabilitation of such structure which are properly chargeable to capital account, the deduction under this section shall be allowable to such lessee with respect to such amounts.

"(B) AMORTIZABLE BASIS.—For purposes of subsection (a), the amortizable basis of such lessee shall not exceed the sum of the amounts described in subparagraph (A).

"(C) LIMITATION.—Subparagraph (A) shall apply only if on the date of the certified rehabilitation is completed, the remaining term of the lease (determined without regard to any renewal periods) extends—

"(i) beyond the last day of the useful life (determined without regard to this section) of the improvements for which the amounts described in subparagraph (A) were expended, and

"(ii) for not less than 30 years.".

(4) EFFECTIVE DATE.—The amendments made by this subsection shall take effect as if included in the respective provisions of the Internal Revenue Code of 1954 to which such amendments relate, as such provision were added to such Code, or amended, by section 2124 of the Tax Reform Act of 1976.

(g) FOREIGN CONVENTIONS.—

(1) DEDUCTIONS NOT DISALLOWED TO EMPLOYER WHERE EMPLOYEE INCLUDES AMOUNTS IN GROSS INCOME.—Subparagraph (D) of section 274(h)(6) (relating to application of subsection to employer as well as to traveler) is amended to read as follows:

"(D) SUBSECTION TO APPLY TO EMPLOYER AS WELL AS TO TRAVELER.—

"(i) Except as provided in clause (ii), this subsection shall apply to deductions otherwise allowable under section 162 or 212 to any person, whether or not such person is the individual attending the foreign convention. For the purposes of the preceeding sen-

tence such person shall be treated, with respect to each individual, as having selected the same 2 foreign conventions as were selected by such individual.

"(ii) This subsection shall not deny a deduction to any person other than the individual attending the foreign convention with respect to any amount paid by such person to or on behalf of another person if includible in the gross income of such other person. The preceding sentence shall not apply if such amount is required to be included in any information return filed by such person under part III of subchapter A of chapter 61 and is not so included.".

(2) INDIVIDUALS RESIDING IN FOREIGN COUNTRIES.—Section 274(h)(6) is amended by adding at the end thereof the following new subparagraph:

"(E) Individuals Residing in Foreign Countries.—For purposes of this subsection, in the case of an individual citizen of the United States who establishes to the satisfaction of the Secretary that he was a bona fide resident of a foreign country at the time that he attended a convention in such foreign country, such individual's attendance at such convention shall not be considered as attendance at a foreign convention.".

(3) TECHNICAL AMENDMENT.—The first sentence of section 274(h)(3) is amended by striking out "more than one-half" and inserting in lieu thereof "at least one-half".

(4) EFFECTIVE DATE.—The amendments made by this subsection shall apply to conventions beginning after December 31, 1976.

(h) RENTAL OF FORMER PRINCIPAL RESIDENCE.—

(1) IN GENERAL.—Subsection (d) of section 280A (relating to use of residence for personal purposes) is amended by adding at the end thereof the following new paragraph:

"(3) RENTAL OF PRINCIPAL RESIDENCE.—

"(A) IN GENERAL.—For purposes of applying subsection (c)(5) to deductions allocable to a qualified rental period, a taxpayer shall not be considered to have used a dwelling unit for personal purposes for any day during the taxable year which occurs before or after a qualified rental period described in subparagraph (B)(i), or before a qualified rental period described in subparagraph (B)(ii), if with respect to such day such unit constitutes the principal residence (within the meaning of section 1034) of the taxpayer.

"(B) QUALIFIED RENTAL PERIOD.—For purposes of subparagraph (A), the term 'qualified rental period' means a consecutive period of—

"(i) 12 or more months which begins or ends in such taxable year, or

"(ii) less than 12 months which begins in such taxable year and at the end of which such dwelling unit is sold or exchanged, and for which such unit is rented to a person other than a member of the family (as defined in section 267(c)(4)) of the taxpayer, or is held for rental, at a fair rental."

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall take effect as if included in section 280A of the Internal Revenue Code of 1954, as such provision was added to such Code by section 601(a) of the Tax Reform Act of 1976.

(i) CLARIFICATION OF LAST SENTENCE OF SECTION 337(c)(2).—

(1) IN GENERAL.—Subsection (c) of section 337 (relating to limitations on application of section 337) is amended by striking out the last sentence of paragraph (2) and by adding at the end of such subsection the following new paragraph:

"(3) SPECIAL RULE FOR AFFILIATED GROUP.—

"(A) IN GENERAL.—Paragraph (2) shall not apply to a sale or exchange by a corporation (hereinafter in this paragraph referred to as the 'selling corporation') if—

"(i) within the 12-month period beginning on the date of the adoption of a plan of complete liquidation by the selling corporation, the selling corporation and each distributee corporation is completely liquidated, and

"(ii) none of the complete liquidations referred to in clause (i) is a liquidation with respect to which section 333 applies.

"(B) DEFINITIONS.—For purposes of subparagraph (A)—

"(i) The term 'distributee corporation' means a corporation in the chain of includible corporations to which the selling corporation or a corporation above the selling corporation in such chain makes a distribution in complete liquidation within the 12-month period referred to in subparagraph (A)(i).

"(ii) The term 'chain of includible corporations' includes, in the case of any distribution, any corporation which (at the time of such distribution) is in a chain of includible corporations for purposes of section 1504(a) (determined without regard to the exceptions contained in section 1504(b)). Such term includes, where appropriate, the common parent corporation."

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to sales or exchanges made pursuant to a plan of complete liquidation adopted after December 31, 1975.

(j) CERTAIN TRANSACTIONS INVOLVING TWO OR MORE INVESTMENT COMPANIES.—

(1) AMENDMENTS OF SECTION 368(a)(2)(F).—

(A) The first sentence of clause (iii) of section 368(a)(2)(F) is amended—

(i) by striking out "more than 50 percent" and inserting in lieu thereof "50 percent or more"; and

(ii) by striking out "more than 80 percent" and inserting in lieu thereof "80 percent or more."

(B) The first sentence of clause (vi) of section 368(a)(2)(F) is amended by striking out "is not diversified within the meaning" and inserting in lieu thereof "does not meet the requirements".

(C) The second sentence of such clause (vi) is amended to read as follows: "If such investment company acquires stock of another corporation in a reorganization described in section 368(a)(1)(B), clause (i) shall be applied to the shareholders of such investment company as though they had exchanged with such other corporation all of their stock in such company for stock having a fair market value equal to the fair market value of their stock of such investment company immediately after the exchange."

(D) Subparagraph (F) of section 368(a)(2) is amended by adding at the end thereof the following new clauses:

"(vii) For purposes of clauses (ii) and (iii), the term 'securities' includes obligations of State and local governments, commodity futures contracts, shares of regulated investment companies and real estate investment trusts, and other investments constituting a security within the meaning of the Investment Company Act of 1940 (15 U.S.C. 80a-2(36)).

"(viii) In applying paragraph (3) of section 267(b) in respect of any transaction to which this subparagraph applies, the reference to a personal holding company in such paragraph (3) shall be treated as including a reference to an investment company and the determination of whether a corporation is an investment company shall be made as of the time immediately before the transaction instead of with respect to the taxable year referred to in such paragraph (3):"

(2) EFFECTIVE DATES.—

(A) Except as provided in subparagraphs (B) and (C), the amendments made by paragraph (1) shall apply as if included in section 368(a)(2)(F) of the Internal Revenue Code of 1954 as added by section 2131(a) of the Tax Reform Act of 1976.

(B) Clause (viii) of section 368(a)(2)(F) of the Internal Revenue Code of 1954 (as added by paragraph (1)) shall apply only with respect to losses sustained after September 26, 1977.

(C) Clause (vii) of section 368(a)(2)(F) of the Internal Revenue Code of 1954 (as added by paragraph (1)) shall apply only with respect to transfers made after September 26, 1977.

(k) AT RISK PROVISIONS.—

(1) CLERICAL AMENDMENT TO EFFECTIVE DATE.—Subparagraph (A) of section 204(c)(3) of the Tax Reform Act of 1976 is amended by striking out "section 465(c)(1)(B)" and inserting in lieu thereof "section 465(c)(1)(C)".

* * * * *

(2) CLARIFICATION OF SECTION 465(d).—Subsection (d) of section 465 (defining loss for purposes of the at risk provisions) is amended by striking out "(determined without regard to this section)" and inserting in lieu thereof "(determined without regard to the first sentence of subsection (a))".

(3) EFFECTIVE DATE.—The amendments made by this subsection shall take effect on October 4, 1976.

(l) AMENDMENTS RELATING TO USE OF ACCRUAL ACCOUNTING FOR FARMING.—

(1) AUTOMATIC 10-YEAR ADJUSTMENT PERIOD FOR FARMING CORPORATIONS REQUIRED TO USE ACCRUAL ACCOUNTING.—Paragraph (3) of section 447(f) (relating to coordination with section 481) is amended—

(A) by striking out "(except as otherwise provided in such regulations)", and

(B) by inserting "(or the remaining taxable years where there is a stated future life of less than 10 taxable years)" after "10 taxable years".

(2) AUTOMATIC 10-YEAR ADJUSTMENT FOR FARMING SYNDICATES CHANGING TO ACCRUAL ACCOUNTING.—If—

(A) a farming syndicate (within the meaning of section 464(c) of the Internal Revenue Code of 1954) was in existence on December 31, 1975, and

(B) such syndicate elects an accrual method of accounting (including the capitalization of preproductive period expenses described in section 447(b) of such Code) for a taxable year beginning before January 1, 1979, then such election shall be treated as having been made with the consent of the Secretary of the Treasury or his delegate and, under regulations prescribed by the Secretary of the Treasury or his delegate, the net amount of the adjustments required by section 481(a) of such Code to be taken into account by the taxpayer in computing taxable income shall be taken into account in each of the 10 taxable years (or the remaining taxable years where there is a stated future life of less than 10 taxable years) beginning with the year of change.

(3) EXTENDING FAMILY ATTRIBUTION TO SPOUSE IN THE FARMING SYNDICATE RULES.—

(A) Subparagraph (E) of section 464(c)(2) (defining farming syndicate) is amended by striking out "(within the meaning of section 267(c)(4))" and inserting in lieu thereof "(or a spouse of any such member)".

(B) Paragraph (2) of section 464(c) is amended by adding at the end thereof the following new sentence: "For purposes of subparagraph (E), the term 'family' has the meaning given to such term by section 267(c)(4)."

(4) EFFECTIVE DATE.—The amendments made by paragraphs (1) and (3) shall take effect as if included in section 447 or 464 (as the case may be) of the Internal Revenue Code of 1954 at the time of the enactment of such sections.

(m) EXTENSION OF CERTAIN PROVISIONS TO FOREIGN PERSONAL HOLDING COMPANIES.—

(1) SECTION 465.—Subsection (a) of section 465 (relating to deductions limited to amount at risk in case of certain activities) is amended—

(A) by striking out "In the case of a taxpayer (other than a corporation which is neither an electing small business corporation (as defined in section 1371(b)) nor a personal holding company (as defined in section 542)) engaged" and inserting in lieu

thereof "In the case of an individual engaged"; and

(B) by adding at the end thereof the following new sentence: "For purposes of this section, an electing small business corporation (as defined in section 1371(b)), a personal holding company (as defined in section 542), and a foreign personal holding company (as defined in section 552) shall be treated as an individual."

(2) SECTION 189.—Subsection (a) of section 189 (relating to amortization of real property construction period interest and taxes) is amended—

(A) by striking out "an electing small business corporation (within the meaning of section 1371(b)), or personal holding company (within the meaning of section 542),"; and

(B) by adding at the end thereof the following new sentence: "For purposes of this section, an electing small business corporation (as defined in section 1371(b)), a personal holding company (as defined in section 542), and a foreign personal holding company (as defined in section 552) shall be treated as an individual."

(3) SECTION 280.—Subsection (a) of section 280 (relating to certain expenditures incurred in production of films, books, records, or similar property) is amended—

(A) by striking out "Except in the case of a corporation (other than an electing small business corporation (as defined in section 1371(b)) or a personal holding company (as defined in section 542)) and except" and inserting in lieu thereof "In the case of an individual, except"; and

(B) by adding at the end thereof the following new sentence: "For purposes of this section, an electing small business corporation (as defined in section 1371(b)), a personal holding company (as defined in section 542), and a foreign personal holding company (as defined in section 552) shall be treated as an individual."

(4) EFFECTIVE DATES.—

(A) The amendments made by paragraph (1) shall take effect as if included in the amendment made by section 204(a) of the Tax Reform Act of 1976.

(B) The amendments made by paragraph (2) shall take effect as if included in the amendment made by section 201(a) of the Tax Reform Act of 1976.

(C) The amendments made by paragraph (3) shall take effect as if included in the the amendment made by section 210(a) of the Tax Reform Act of 1976.

(n) DEFINITION OF CONDOMINIUM MANAGEMENT ASSOCIATION.—

(1) IN GENERAL.—Paragraph (2) of section 528(c) (defining condominium management association) is amended by striking out "as residences" and inserting in lieu thereof "by individuals for residences".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to taxable years beginning after December 31, 1973.

(o) DEFINITION OF PERSONAL HOLDING COMPANY.—

(1) IN GENERAL.—The last sentence of section 542(a)(2) of the Internal Revenue Code of 1954 (relating to stock ownership requirement) shall not apply in the case of an organization or trust organized or created before July 1, 1950, if at all times on or after July 1, 1950, and before the close of the taxable year such organization or trust has owned all of the common stock and at least 80 percent of the total number of shares of all other classes of stock of the corporation.

(2) EFFECTIVE DATE.—The provisions of paragraph (1) shall apply with respect to taxable years beginning after December 31, 1976.

(p) SPECIAL RULE FOR GAIN ON PROPERTY TRANSFERRED TO TRUST AT LESS THAN FAIR MARKET VALUE.

(1) ADDITIONAL TAX TO APPLY ONLY TO RECOGNIZED GAINS.—

(A) IN GENERAL.—Subsections (a)(1), (a)(2), and (b)(1) of section 644 (relating to special rule for gain on property transferred to trust at less than fair market value) are each amended by striking out "gain realized" each place it appears and inserting in lieu thereof "gain recognized".

(B) SPECIAL RULE FOR SUBSTITUTED BASIS PROPERTY.—Subsection (d) of section 644 (relating to special rule for short sales) is amended to read as follows:

"(d) SPECIAL RULES.—

"(1) SHORT SALES.—If the trust sells the property referred to in subsection (a) in a short sale within the 2-year period referred to in such subsection, and 2-year period shall be extended to the date of the closing of such short sale.

"(2) SUBSTITUTED BASIS PROPERTY.—For purposes of this section, in the case of any property held by the trust which has a basis determined in whole or in part by reference to the basis of any other property which was transferred to the trust—

"(A) the initial transfer of such property in trust by the transferor shall be treated as having occurred on the date of the initial transfer in trust of such other property,

"(B) subsections (a)(1)(B) and (b)(2) shall be applied by taking into account the fair market value and the adjusted basis of such other property, and

"(C) the amount determined under subsection (b)(2) with respect to such other property shall be allocated (under regulations prescribed by the Secretary) among such other property and all properties held by the trust which have a basis determined in whole or in part by reference to the basis of such other property."

(2) TREATMENT OF NET OPERATING LOSSES, CAPITAL LOSSES, ETC., WHICH MAY AFFECT TRANSFEROR'S TAX IN OTHER YEARS.—Section 644(a)(2) (relating to additional tax on gain on property transferred to trust at less than fair market value) is amended by adding at the end thereof the following new sentence: "The determination of tax under clause (i) of subparagraph (A) shall be made by not taking into account any carryback, and by not taking into account any loss or deduction to the extent that such loss or deduction may be carried by the transferor to any other taxable year."

(3) TECHNICAL AMENDMENT.—Paragraph (1) of section 644(f) is amended by striking out "subsection (a)" and inserting in lieu thereof "subsection (a) (other than the 2-year requirement of paragraph (1)(A) thereof)".

(4) CONFORMING AMENDMENT TO REVISION OF SECTION 644.—Section 1402(b)(1) of the Tax Reform Act of 1976 (relating to holding period for long-term capital gains treatment) is amended by striking out subparagraph (K) thereof.

(5) EFFECTIVE DATES.—

(A) Except as provided in subparagraph (B), the amendment made by this subsection shall apply to transfers in trust made after May 21, 1976.

(B) The amendment made by paragraph (4) shall take effect on October 4, 1976.

(q) ALLOWANCE OF FOREIGN TAX CREDIT FOR ACCUMULATION DISTRIBUTIONS.—

(1) SPECIAL RULES FOR FOREIGN TRUST.—

(A) Subsection (d) of section 665 is amended to read as follows:

"(d) TAXES IMPOSED ON THE TRUST.—For purposes of this subpart—

"(1) IN GENERAL.—The term 'taxes imposed on the trust' means the amount of the taxes which are imposed for any taxable year of the trust under this chapter (without regard to this subpart or subpart A of part IV of subchapter A) and which, under regulations prescribed by the Secretary, are properly allocable to the undistributed portions of distributable net income and gains in excess of losses from sales or exchanges of capital assets. The amount determined in the preceding sentence shall be reduced by any amount of such taxes deemed distributed under section 666 (b) and (c) or 669 (d) and (e) to any beneficiary.

"(2) FOREIGN TRUSTS.—In the case of any foreign trust, the term 'taxes imposed on the trust' includes the amount, reduced as provided in the last sentence of paragraph (1), of any income, war profits, and excess profits taxes imposed by any foreign country or possession of the United States on such foreign trust which, as determined under paragraph (1), are so properly allocable."

(B) Section 667 is amended by adding at the end thereof the following new subsection:

"(d) SPECIAL RULES FOR FOREIGN TRUST.—

"(1) FOREIGN TAX DEEMED PAID BY BENEFICIARY.—

"(A) IN GENERAL.—In determining the increase in tax under subsection (b)(1)(D) for any computation year, the taxes described in section 665 (d) (2) which are deemed distributed under section 666 (b) or (c) and added under subsection (b)(1)(C) to the taxable income of the beneficiary for any computation year shall, except as provided in subparagraphs (B) and (C), be treated as a credit against the increase in tax for such computation year under subsection (b)(1)(D).

"(B) DEDUCTION IN LIEU OF CREDIT.—If the beneficiary did not choose the benefits of subpart A of part III of subchapter N with respect to the computation year, the beneficiary may in lieu of treating the amounts described in subparagraph (A) (without regard to subparagraph (C)) as a credit may treat such amounts as a deduction in computing the beneficiary's taxable income under subsection (b)(1)(C) for the computation year.

"(C) LIMITATION ON CREDIT; RETENTION OF CHARACTER.—

"(i) LIMITATION ON CREDIT.—For purposes of determining under subparagraph (A) the amount treated as a credit for any computation year, the limitations under subpart A of part III of subchapter N shall be applied separately with respect to amounts added under subsection (b)(1)(C) to the taxable income of the beneficiary for such computation year. For purposes of computing the increase in tax under subsection (b)(1)(D) for any computation year for which the beneficiary did not choose the benefits of subpart A of part III of subchapter N, the beneficiary shall be treated as having chosen such benefits for such computation year.

"(ii) RETENTION OF CHARACTER.—The items of income, deduction, and credit of the Trust shall retain their character (subject to the application of section 904(f)(5)) to the extent necessary to apply this paragraph.

"(D) COMPUTATION YEAR.—For purposes of this paragraph, the term 'computation year' means any of the three taxable years remaining after application of subsection (b)(1)(B).".

(C) The last sentence of section 667(b)(1) is amended by inserting "(other than the amount of taxes described in section 665(d)(2))" after "taxes".

(2) RECAPTURE OF OVERALL FOREIGN LOSS.—Section 904(f) is amended by adding at the end thereof the following new paragraph:

"(5) ACCUMULATION DISTRIBUTIONS OF FOREIGN TRUST.—For purposes of this chapter, in the case of amounts of income from sources without the United States which are treated under section 666 (without regard to subsections (b) and (c) thereof if the taxpayer choose to take a deduction with respect to the amounts described in such subsections under section 667(d)(1)(B)) as having been distributed by a foreign trust in a preceding taxable year, that portion of such amounts equal to the amount of any overall foreign loss sustained by the beneficiary in a year prior to the taxable year of the beneficiary in which such distribution is received from the trust shall be treated as income from sources within the United States (and not income

from sources without the United States) to the extent that such loss was not used under this subsection in prior taxable years, or in current taxable year, against other income of the beneficiary.".

(3) EFFECTIVE DATES.—

(A) The amendments made by paragraph (1) shall apply to distributions made in taxable years beginning after December 31, 1975.

(B) The amendments made by paragraph (2) shall take effect as if included in section 904(f) of the Internal Revenue Code of 1954, as such provision was added to such Code by section 1032(a) of the Tax Reform Act of 1976.

(r) RETENTION OF CHARACTER OF AMOUNTS DISTRIBUTED FROM ACCUMULATION TRUST TO NONRESIDENT ALIENS AND FOREIGN CORPORATIONS.—

(1) IN GENERAL.—Section 667 (relating to treatment of amounts deemed distributed by trust in preceding years) is amended by adding at the end thereof the following new subsection:

"(e) RETENTION OF CHARACTER OF AMOUNTS DISTRIBUTED FROM ACCUMULATION TRUST TO NONRESIDENT ALIENS AND FOREIGN CORPORATIONS.—In the case of a distribution from a trust to a nonresident alien individual or to a foreign corporation, the first sentence of subsection (a) shall be applied as if the reference to the determination of character under section 662(b) applied to all amounts instead of just to tax-exempted interest."

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to distributions made in taxable years beginning after December 31, 1975.

(s) LIMITATION ON ALLOWANCE OF PARTNERSHIP IN THE CASE OF NONRECOURSE LOANS.—

(1) IN GENERAL.—Section 704(d) (relating to limitation on allowance of partnership losses) is amended by striking out the last sentence and by adding the following at the end thereof: "The preceding sentence shall not apply with respect to any activity to the extent that section 465 (relating to limiting deductions to amounts at risk in case of certain activities) applies, nor shall it apply to an activity involving the holding of real property (other than mineral property). For purposes of the preceding sentence, the holding of real property shall be treated as a separate activity and personal property and services which are incidental to making real property available as living accommodations shall be treated as part of the activity of holding such real property.".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to liabilities incurred after December 31, 1976.

(t) EXEMPT INTEREST DIVIDENDS OF REGULATED INVESTMENT COMPANIES.—

(1) TREATMENT OF TAX-EXEMPT INTEREST FOR PURPOSES OF THE 90-PERCENT AND 30-PERCENT TESTS.—Subsection (b) of section 851 (relating to limitations on the definition of regulated investment company) is amended by adding at the end thereof the following new sentence: "For purposes of paragraphs (2) and (3), amounts excludable from gross income under section 103(a)(1) shall be treated as included in gross income."

(2) LOSSES ATTRIBUTABLE TO TAX-EXEMPT INTEREST WHERE STOCK IS HELD LESS THAN 31 DAYS.—Paragraph (4) of section 852(b) (relating to loss on sale or exchange of stock held less than 31 days) is amended to read as follows:

"(4) LOSS ON SALE OR EXCHANGE OF STOCK HELD LESS THAN 31 DAYS.—

"(A) LOSS ATTRIBUTABLE TO CAPITAL GAIN DIVIDEND.—If—

"(i) under subparagraph (B) or (D) of paragraph (3) a shareholder of a regulated investment company is required, with respect to any share, to treat any amount as a long-term capital gain, and

"(ii) such share is held by the taxpayer for less than 31 days,

then any loss (to the extent not disallowed under subparagraph (B)) on the sale or exchange of such share shall, to the extent of the amount described in clause (i), be treated as a long-term capital loss.

"(B) LOSS ATTRIBUTABLE TO EXEMPT-INTEREST DIVIDEND.—If—

"(i) a shareholder of a regulated investment company receives an exempt-interest dividend with respect to any share, and

"(ii) such share is held by the taxpayer for less than 31 days,

then any loss on the sale or exchange of such share shall, to the extent of the amount of such exempt-interest dividend, be disallowed.

"(C) DETERMINATION OF HOLDING PERIODS.—For purposes of this paragraph, the rules of section 246(c)(3) shall apply in determining whether any share of stock has been held for less than 31 days; except that '30 days' shall be substituted for the number of days specified in subparagraph (B) of section 246(c)(3)."

(3) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1975.

(u) AMENDMENTS RELATING TO REAL ESTATE INVESTMENT TRUSTS.—

(1) ANNUAL ACCOUNTING PERIOD.—Section 859 (relating to adoption of annual accounting period), as redesignated by section 372(d)(6) of the Act, is further amended to read as follows:

"SEC. 859. ADOPTION OF ANNUAL ACCOUNTING PERIOD.

"For purposes of this subtitle—

"(1) a real estate investment trust shall not change to any accounting period other than the calendar year, and

"(2) a corporation, trust, or association may not elect to be a real estate investment trust for any taxable year beginning after October 4, 1976, unless its accounting period is the calendar year.

Paragraph (2) shall not apply to a corporation, trust, or association which was considered to be a real estate investment trust for any taxable year beginning on or before October 4, 1976."

(2) AMENDMENT OF SECTION 856(c)(3).—Subparagraph (D) of section 856(c)(3) is amended by inserting "(other than gain from prohibited transactions)" after "and gain".

(3) EXCISE TAX ON REIT UNDISTRIBUTED INCOME.—

(A) Paragraph (3) of section 6501(e) (relating to limitations on assessment and collection) is amended by striking out "or 43" and inserting in lieu thereof "43, or 44".

(B) Subsection (b) of section 1605 of the Tax Reform Act of 1976 (relating to technical amendments) is amended by striking out paragraph (1) thereof.

(C) Subparagraph (D) of section 1605(b)(5) of the Tax Reform Act of 1976 is amended to read as follows:

"(D) by striking out 'of chapter 43 tax for the same taxable years,' in subsection (c)(1) and inserting in lieu thereof 'of chapter 43 tax for the same taxable year, of chapter 44 tax for the same taxable year,'."

(4) CORRECTION OF CROSS REFERENCE.—Subparagraph (B) of section 859(b)(2) is amended by striking out "section 6601(c)" and inserting in lieu thereof "section 6601(b)".

(5) EFFECTIVE DATE.—The amendments made by this subsection shall take effect on October 4, 1976.

(v) AMENDMENTS RELATING TO TREATMENT OF FOREIGN INCOME.—

(1) FOREIGN TAX CREDITS NOT DISALLOWED ON CERTAIN DISTRIBUTIONS MADE BY POSSESSIONS CORPORATIONS.—

(A) IN GENERAL.—Paragraph (1) of section 901(g) (relating to certain taxes paid with respect to distributions from possessions corporations) is amended to read as follows:

"(1) IN GENERAL.—For purposes of this chapter, any tax of a foreign country or possession of the United States which is paid or accrued with respect to any distribution from a corporation—

"(A) to the extent that such distribution is attributable to periods during which such corporation is a possessions corporation, and

"(B)(i) if a dividends received deduction is allowable with respect to such distribution under part VIII of subchapter B, or

"(ii) to the extent that such distribution is received in connection with a liquidation or other transaction with respect to which gain or loss is not recognized,

shall not be treated as income, war profits, or excess profits taxes paid or accrued to a foreign country or possession of the United States, and no deduction shall be allowed under this title with respect to any amount so paid or accrued."

(B) DEFINITION OF POSSESSIONS CORPORATION.—Paragraph (2) of section 901(g) (defining possessions corporation) is amended—

(i) by striking out "or during which section 931" and inserting in lieu thereof ", during which section 931", and

(ii) by inserting before the period at the end thereof the following: ", or during which section 957(c) applied to such corporation".

(C) EFFECTIVE DATES.—The amendment made by subparagraph (A) shall apply as if included in section 901(g) of the Internal Revenue Code of 1954 as added by section 1051(d)(2) of the Tax Reform Act of 1976. The amendments made by subparagraph (B) shall apply to distributions made after the date of the enactment of this Act in taxable years ending after such date.

(2) FOREIGN TAX CREDIT ADJUSTMENTS FOR CAPITAL GAINS.—

(A) IN GENERAL.—Paragraph (2) of section 904(b) (relating to treatment of capital gains for purposes of the foreign tax credit limitation) is amended by striking out "For purposes of subsection (a)—" and inserting in lieu thereof "For purposes of this section—".

(B) SOURCE RULE.—Subparagraph (C) of section 904(b)(3) is amended by striking out "For purposes of this paragraph, there" and inserting in lieu thereof "There".

(C) SOURCE RULE FOR LIQUIDATIONS OF CERTAIN FOREIGN CORPORATIONS.—Paragraph (3) of section 904(b) (relating to source rules for gain from the sale of certain personal property) is amended by redesignating subparagraph (D) as subparagraph (E) and by inserting after subparagraph (C) the following new subparagraph:

"(D) GAIN FROM LIQUIDATION OF CERTAIN FOREIGN CORPORATIONS.—Subparagraph (C) shall not apply with respect to a distribution in liquidation of a foreign corporation to which part II of subchapter C applies if such corporation derived less than 50 percent of its gross income from sources within the United States for the 3-year period ending with the close of such corporation's taxable year immediately preceding the year during which the distribution occurred."

(D) EFFECTIVE DATE.—The amendments made by this paragraph shall apply to taxable years beginning after December 31, 1975.

(3) TREATMENT OF CERTAIN CAPITAL LOSS CARRYOVERS AND CARRYBACKS FOR PURPOSES OF THE LIMITATION ON CREDIT FOR FOREIGN TAXES.—

(A) IN GENERAL.—Clause (iii) of section 904(2)(2)(A) (relating to treatment of capital gains of corporations for purposes of the foreign tax credit limitation) is amended by striking out "any net capital loss" and inserting in lieu thereof "for purposes of determining taxable income from sources without the United States, any net capital loss (and any amount which is a short-term capital loss under section 1212(a))".

(B) EFFECTIVE DATE.—The amendment made by subparagraph (A) shall apply to

taxable years beginning after December 31, 1975.

(4) TREATMENT OF CAPITAL LOSS CARRYOVERS FOR PURPOSES OF FOREIGN LOSS RECAPTURE.—

(A) IN GENERAL.—Subparagraph (A) of section 904(f)(2) (defining overall foreign loss) is amended by striking out "or any capital loss carrybacks and carryovers to such year under section 1212".

(B) FOREIGN OIL RELATED LOSSES.—Subparagraph (A) of section 904(f)(4) (relating to determination of foreign oil related loss where section 907 applies) is amended by striking out "or any capital loss carrybacks and carryovers to such year under section 1212".

(C) EFFECTIVE DATE.—The amendments made by this paragraph shall apply—

(i) to overall foreign losses sustained in taxable years beginning after December 31, 1975, and

(ii) to foreign oil related losses sustained in taxable years ending after December 31, 1975.

(5) EFFECTIVE DATE FOR RECAPTURE OF FOREIGN OIL RELATED LOSSES.—

(A) IN GENERAL.—Paragraph (1) of section 1032(c) of the Tax Reform Act of 1976 is amended to read as follows:

"(1) IN GENERAL.—Except as provided in paragraphs (2), (3), and (5), the amendment made by subsection (a) shall apply to losses sustained in taxable years beginning after December 31, 1975. The amendment made by subsection (b)(1) shall apply to taxable years beginning after December 31, 1975. The amendment made by subsection (b)(2) shall apply to losses sustained in taxable years ending after December 31, 1975."

(B) FOREIGN OIL RELATED LOSSES.—Subsection (c) of section 1032 of the Tax Reform Act of 1976 is amended by adding at the end thereof the following new paragraph:

"(5) FOREIGN OIL RELATED LOSSES.—The amendment made by subsection (a) shall apply to foreign oil related losses sustained in taxable years ending after December 31, 1975."

(6) TRANSITIONAL RULES FOR CERTAIN MINING OPERATIONS.—The second sentence of paragraph (2) of section 1031(c) of the Tax Reform Act of 1976 is amended to read as follows: "In the case of a loss sustained in a taxable year beginning before January 1, 1979, by any corporation to which this paragraph applies, if section 904(a)(1) of such Code (as in effect before the enactment of this Act) applies with respect to such taxable year, the provisions of section 904(f) of such Code shall be applied with respect to such loss under the principles of such section 904(a)(1)."

(7) TRANSITIONAL RULES FOR RECAPTURE OF CERTAIN FOREIGN LOSSES.—

(A) COMPUTATION OF DEFICIT IN EARNINGS AND PROFITS FOR PURPOSES OF THE RECAPTURE OF CERTAIN FOREIGN LOSSES.—Paragraph (4) of section 1032(c) of the Tax Reform Act of 1976 (relating to limitation based on deficit in earnings and profits for purposes of the recapture of foreign losses) is amended by adding at the end thereof the following new sentence: "For purposes of the preceding sentence, there shall be taken into account only earnings and profits of the corporation which (A) were accumulated in taxable years of the corporation beginning after December 31, 1962, and during the period in which the stock of such corporation from which the loss arose was held by the taxpayer and (B) are attributable to such stock."

(B) RECAPTURE OF POSSESSION LOSSES DURING TRANSITIONAL PERIOD WHERE TAXPAYER IS ON A PER-COUNTRY BASIS.—

(i) Subsection (c) of section 1032 of the Tax Reform Act of 1976 (relating to effective dates for recapture of foreign losses) is amended by adding at the end thereof the following new paragraph:

"(6) RECAPTURE OF POSSESSION LOSSES DURING TRANSITIONAL PERIOD WHERE TAXPAYER IS ON A PER-COUNTRY BASIS.—

"(A) APPLICATION OF PARAGRAPH.—This paragraph shall apply if—

"(i) the taxpayer sustained a loss in a possession of the United States in a taxable year beginning after December 31, 1975, and before January 1, 1979,

"(ii) such loss is attributable to a trade or business engaged in by the taxpayer in such possession on January 1, 1976, and

"(iii) the taxpayer chooses to have the benefits of subpart A of part III of subchapter N apply for such taxable year and section 904(a)(1) of the Internal Revenue Code of 1954 (as in effect before the enactment of this Act) applies with respect to such taxable year.

"(B) NO RECAPTURE DURING TRANSITION PERIOD.—In any case to which this paragraph applies, for purposes of determining the liability for tax of the taxpayer for taxable years beginning before January 1, 1979, section 904(f) of the Internal Revenue Code of 1954 shall not apply with respect to the loss described in subparagraph (A)(i).

"(C) RECAPTURE OF LOSS AFTER THE TRANSITION PERIOD.—In any case to which this paragraph applies—

"(i) for purposes of determining the liability for tax of the taxpayer for taxable years beginning after December 31, 1978, section 904(f) of the Internal Revenue Code of 1954 shall be applied with respect to the loss described in subparagraph (A)(i) under the principles of section 904(a)(1) of such Code (as in effect before the enactment of this Act); but

"(ii) in the case of any taxpayer and any possession, the aggregate amount to which such section 904(f) applies by reason of clause (i) shall not exceed the sum of the net incomes of all affiliated corporations from such possession for taxable years of such affiliated corporations beginning after December 31, 1975, and before January 1, 1979.

"(D) TAXPAYERS NOT ENGAGED IN TRADE OR BUSINESS ON JANUARY 1, 1976.—In any case to which this paragraph applies but for the fact that the taxpayer was not engaged in a trade or business in such possession on January 1, 1976, for purposes of determining the liability for tax of the taxpayer for taxable years beginning before January 1, 1979, if section 904(a)(1) of such Code (as in effect before the enactment of this Act) applies with respect to such taxable year, the provisions of section 904(f) of such Code shall be applied with respect to the loss described in subparagraph (A)(i) under the principles of such section 904(a)(1).

"(E) AFFILIATED CORPORATION DEFINED.—For purposes of subparagraph (C)(ii), the term 'affiliated corporation' means a corporation which, for the taxable year for which the net income is being determined was not a member of the same affiliated group (within the meaning of section 1504 of the Internal Revenue Code of 1954) as the taxpayer but would have been a member of such group but for the application of subsection (b) of such section 1504."

(ii) Paragraph (3) of section 1031(c) of the Tax Reform Act of 1976 is amended by striking out the last sentence.

(8) LIMITATIONS ON FOREIGN TAX CREDIT WHERE INDIVIDUAL HAS FOREIGN OIL AND GAS EXTRACTION INCOME.—

(A) REDUCTION IN FOREIGN TAX CREDIT FOR CERTAIN INDIVIDUALS HAVING FOREIGN OIL AND GAS EXTRACTION INCOME.—Subsection (a) (as amended by section 301(b)(14) of this Act) of section 907 (relating to special rules in case of foreign oil and gas income) is further amended to read as follows:

"(a) REDUCTION IN AMOUNT ALLOWED AS FOREIGN TAX UNDER SECTION 901.—In applying section 901, the amount of any oil and gas extraction taxes paid or accrued (or deemed to have been paid) during the taxable year which would (but for this subsection) be taken into account for purposes of section 901 shall be reduced by the amount (if any) by which the amount of such taxes exceeds the product of—

"(1) the amount of the foreign oil and gas extraction income for the taxable year,

"(2) multiplied by—

"(A) in the case of a corporation, the percentage which is equal to the highest rate of tax under section 11, or

"(B) in the case of an individual, a fraction the numerator of which is the tax against which the credit under section 901(a) is taken and the denominator of which is the taxpayer's entire taxable income."

(B) APPLICATION OF SECTION 904 SEPARATELY TO FOREIGN OIL RELATED INCOME OF INDIVIDUALS.—Subsection (b) of section 907 (relating to application of section 904 limitation) is amended to read as follows:

"(b) APPLICATION OF SECTION 904 LIMITATION.—The provisions of section 904 shall be applied separately with respect to—

"(1) foreign oil related income, and

"(2) other taxable income."

(C) TECHNICAL AMENDMENT.—Paragraph (4) of section 904(f) (relating to recapture of overall foreign loss) is amended by striking out "In the case of a corporation to which section 907(b)(1) applies" and inserting in lieu thereof "In making the separate computation under this subsection with respect to foreign oil related income which is required by section 907(b)".

(D) EFFECTIVE DATES.—

(i) The amendments made by this paragraph shall apply, in the case of individuals, to taxable years ending after December 31, 1974, and, in the case of corporations, to taxable years ending after December 31, 1976.

(ii) In the case of any taxable year ending after December 31, 1975, with respect to foreign oil related income (within the meaning of section 907(c) of the Internal Revenue Code of 1954), the overall limitation provided by section 904(a)(2) of such Code shall apply and the per-country limitation provided by section 904(a)(1) of such Code shall not apply.

(9) EFFECTIVE DATE FOR DISALLOWANCE OF FOREIGN TAX CREDIT FOR CERTAIN PRODUCTION-SHARING CONTRACTS.—The second sentence of paragraph (3) of section 1035(c) of the Tax Reform Act of 1976 (relating to tax credit for production-sharing contracts) is amended to read as follows: "A contract described in the preceding sentence shall be taken into account under paragraph (1) only with respect to amounts (A) paid or accrued to the foreign government before January 1, 1978, and (B) attributable to income earned before such date."

(10) FOREIGN TAXES ATTRIBUTABLE TO SECTION 911 EXCLUSION.—

(A) IN GENERAL.—The last sentence of section 911(a) (relating to earned income from sources without the United States) is amended to read as follows:

"An individual shall not be allowed as a deduction from his gross income any deductions (other than those allowed by section 151, relating to personal exemptions), to the extent that such deductions are properly allocable to or chargeable against amounts excluded from gross income under this subsection. For purposes of this title, the amount of the income, war profits, and excess profits taxes paid or accrued by any individual to a foreign country or possession of the United States for any taxable year shall be reduced by an amount determined by multiplying the amount of such taxes by a fraction—

"(A) the numerator of which is the tax determined under subsection (d)(1)(B), and

"(B) the denominator of which is the sum of the amount referred to in subparagraph

(A), plus the limitation imposed for the taxable year by section 904(a).".

(B) EFFECTIVE DATE.—The amendment made by subparagraph (A) shall apply to taxable years beginning after December 31, 1976.

(11) SALE OF ASSETS BY A POSSESSIONS CORPORATION.—

(A) IN GENERAL.—Subsection (a) of section 936 (relating to Puerto Rico and possession tax credit) is amended by redesignating paragraph (2) as paragraph (3) and by amending so much of paragraph (1) as precedes subparagraph (A) thereof to read as follows:

"(1) IN GENERAL.—Except as provided in paragraph (3), if a domestic corporation elects the application of this section and if the conditions of both subparagraph (A) and subparagraph (B) of paragraph (2) are satisfied, there shall be allowed as a credit against the tax imposed by this chapter an amount equal to the portion of the tax which is attributable to the sum of—

"(A) the taxable income, from sources without the United States, from—

"(i) the active conduct of a trade or business within a possession of the United States, or

"(ii) the sale or exchange of substantially all of the assets used by the taxpayer in the active conduct of such trade or business, and

"(B) the qualified possession source investment income.

"(2) CONDITIONS WHICH MUST BE SATISFIED.—The conditions referred to in paragraph (1) are:".

(B) INCOME FROM SALE OF CARRYOVER BASIS PROPERTY NOT TAKEN INTO ACCOUNT.—

(i) Subsection (d) of section 936 (relating to definitions) is amended by adding at the end thereof the following new paragraph:

"(3) CARRYOVER BASIS PROPERTY.—

"(A) IN GENERAL.—Income from the sale or exchange of any asset the basis of which is determined in whole or in part by reference to its basis in the hands of another person shall not be treated as income described in subparagraph (A) or (B) of subsection (a)(1).

"(B) EXCEPTION FOR POSSESSIONS CORPORATIONS, ETC.—For purposes of subparagraph (A), the holding of any asset by another person shall not be taken into account if throughout the period for which such asset was held by such person section 931, this section, or section 957(c) applied to such person.".

(ii) The heading of such subsection (d) is amended to read as follows:

"(d) DEFINITIONS AND SPECIAL RULES.—".

(C) EFFECTIVE DATE.—The amendments made by this paragraph shall apply as if included in section 936 of the Internal Revenue Code of 1954 at the time of its addition by section 1051(b) of the Tax Reform Act of 1976.

(12) GAIN ON DISPOSITION OF STOCK IN A DISC.—

(A) DELAY IN EFFECTIVE DATE.—Paragraph (4) of section 1101(g) of the Tax Reform Act of 1976 (relating to effective date for amendment relating to gain or disposition of DISC stock) is amended by striking out "December 31, 1975" and inserting in lieu thereof "December 31, 1976".

(B) TECHNICAL AMENDMENT.—Paragraph (1) of section 995(c) (relating to gain on disposition of stock in a DISC) is amended by adding at the end thereof the following new sentence:

"Subparagraph (C) shall not apply if the person receiving the stock in the disposition has a holding period for the stock which includes the period for which the stock was held by the shareholder disposing of such stock."

(C) EFFECTIVE DATE.—The amendment made by subparagraph (B) shall apply to dispositions made after December 31, 1976, in taxable years ending after such date.

(13) LIMITATION ON PARTNER'S TAX WHERE PARTNER RECEIVES AMOUNT TREATED AS SALE OF SECTION 1248 STOCK.—

(A) IN GENERAL.—Section 751 (relating to unrealized receivables and inventory items) is amended by adding at the end thereof the following new subsection:

"(e) LIMITATION ON TAX ATTRIBUTABLE TO DEEMED SALES OF SECTION 1248 STOCK.—For purposes of applying this section and sections 731, 736, and 741 to any amount resulting from the reference to section 1248(a) in the second sentence of subsection (c), in the case of an individual, the tax attributable to such amount shall be limited in the manner provided by subsection (b) of section 1248 (relating to gain from certain sales or exchanges of stock in certain foreign corporations)."

(B) CROSS REFERENCE.—Section 736 (relating to payments to a retiring partner or a deceased partner's successor in interest) is amended by adding at the end thereof the following new subsection:

"(c) CROSS REFERENCE.—

"For limitation on the tax attributable to certain gain connected with section 1248 stock, see section 751(e)."

(C) EFFECTIVE DATE.—The amendments made by this paragraph shall apply to transfers beginning after October 9, 1975, and to sales, exchanges, and distributions taking place after such date.

(14 EXCISE TAX ON TRANSFERS OF PROPERTY TO FOREIGN PERSONS TO AVOID FEDERAL INCOME TAX.—

(A) TRANSFERS INVOLVING ESTATES.—Section 1491 (relating to tax on transfer to avoid income tax) is amended by striking out "trust" each place it appears therein and inserting in lieu thereof "estate or trust".

(B) CLARIFICATION OF PARAGRAPH (3) OF SECTION 1492.—Paragraph (3) of section 1492 (relating to nontaxable transfers) is amended to read as follows:

"(3) To a transfer described in section 367; or".

(C) EFFECTIVE DATE.—The amendments made by this paragraph shall apply to transfers after October 2, 1975.

(15) ELECTION TO TREAT NONRESIDENT ALIEN INDIVIDUAL AS RESIDENT OF THE UNITED STATES.—

(A) PROVISIONS AFFECTED BY ELECTION.—Paragraph (1) of section 6013(g) (relating to election to treat nonresident alien individual as resident of the United States) is amended to read as follows:

"(1) IN GENERAL.—A nonresident alien individual with respect to whom this subsection is in effect for the taxable year shall be treated as a resident of the United States—

"(A) for purposes of chapters 1 and 5 for all of such taxable year, and

"(B) for purposes of chapter 24 (relating to wage withholding) for payments of wages made during such taxable year."

(B) CONFORMING AMENDMENT.—Paragraph (5) of section 6013(g) (relating to termination of election by Secretary) is amended by striking out "chapter 1" and inserting in lieu thereof "chapters 1 and 5".

(C) YEAR OF RESIDENCY.—Paragraph (1) of section 6013(h) (relating to return for year nonresident alien becomes resident) is amended—

(i) by striking out "chapter 1" and inserting in lieu thereof "chapters 1 and 5", and

(ii) by inserting before the period at the end thereof the following: ", and for purposes of chapter 24 (relating to wage withholding) for payments of wages made during such taxable year."

(D) CERTAIN AMOUNTS WITHHELD UNDER CHAPTER 3 TREATED AS OVERPAYMENTS OF TAX.—Subsection (b) of section 6401 (relating to excessive credits) is amended by adding at the end thereof the following new sentence: "For purposes of the preceding sentence, any credit allowed under paragraph (1) of section 32 (relating to withholding of tax on nonresident aliens and on foreign corporations) to a nonresident alien individual for a taxable year with respect to which an election under section 6013(g) or (h) is in effect shall be treated as an amount allowable as a credit under section 31."

(E) EFFECTIVE DATES.—The amendments made by this paragraph—

(i) to the extent that they relate to chapter 1 or 5 of the Internal Revenue Code of 1954, shall apply to taxable years ending on or after December 31, 1975, and

(ii) to the extent that they relate to wage withholding under chapter 24 of such Code, shall apply to remuneration paid on or after the first day of the first month which begins more than 90 days after the date of the enactment of this Act.

(16) NONRESIDENT ALIEN INDIVIDUAL ALLOWED TO BE TREATED AS RESIDENT OF THE UNITED STATES.—

(A) IN GENERAL.—Paragraph (2) of section 6013(g) (relating to election to treat nonresident alien individual as resident of the United States) is amended by striking out "who, at the time an election was made under this subsection," and inserting in lieu thereof "who, at the close of the taxable year for which an election under this subsection was made,".

(B) EFFECTIVE DATE.—The amendment made by subparagraph (A) shall apply to taxable years beginning after December 31, 1975.

(w) AMENDMENT OF SECTION 1239(a).—

(1) IN GENERAL.—Subsection (a) of section 1239 (relating to gain from sale of depreciable property between certain related taxpayers) is amended by striking out "subject to the allowance for depreciation provided in section 167" and inserting in lieu thereof "of a character which is subject to the allowance for depreciation provided in section 167".

(2) EFFECTIVE DATE.—The amendment made of paragraph (1) shall apply as if included in the amendment made to section 1239 of the Internal Revenue Code of 1954 by section 2129(a) of the Tax Reform Act of 1976.

(x) RECAPTURE OF DEPRECIATION ON PLAYER CONTRACTS.—

(1) IN GENERAL.—Subparagraph (C) of section 1245(a)(4) (defining previously unrecaptured depreciation with respect to contracts transferred) is amended to read as follows:

"(C) PREVIOUSLY UNRECAPTURED DEPRECIATION WITH RESPECT TO CONTRACTS TRANSFERRED.—For purposes of subparagraph (A)(ii), the term 'previously unrecaptured depreciation' means the amount of any deduction allowed or allowable to the taxpayer transferor for the depreciation of any contracts involved in such transfer."

(2) RECAPTURE OF DEPRECIATION WITH RESPECT TO INITIAL CONTRACTS.—Subparagraph (B) of section 1245(a)(4) (defining previously unrecaptured depreciation with respect to initial contracts) is amended—

(A) by inserting "attributable to periods after December 31, 1975," after "depreciation" in clause (i),

(B) by inserting "incurred after December 31, 1975," after "losses" in clause (i), and

(C) by inserting "described in clause (i)" after "amounts" in clause (ii).

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to transfers of player contracts in connection with any sale or exchange of a franchise after December 31, 1975.

(y) TREATMENT OF PENSIONS AND ANNUITIES

FOR 50-PERCENT MAXIMUM RATE ON PERSONAL SERVICE INCOME.—

(1) IN GENERAL.—Subparagraph (A) of section 1348(b)(1) (defining personal service income) is amended by striking out "pension or annuity" and inserting in lieu thereof "pension or annuity which arises from an employer-employee relationship or from tax-deductible contributions to a retirement plan".

(2) TECHNICAL AMENDMENT.—The last sentence of section 1348(b) is amended by striking out "earned income" and inserting in lieu thereof "personal service income".

(3) EFFECTIVE DATE.—The amendments made by paragraph (1) this section shall apply to taxable years beginning after December 31, 1976.

(z) CHANGES IN THE SUBCHAPTER S PROVISIONS.—

(1) GRANTOR TRUST MAY BE TREATED AS PERMITTED SHAREHOLDER AFTER DECEDENT'S DEATH; GRANTOR OR GRANTOR TRUST MUST BE INDIVIDUAL.—Paragraph (1) of subsection (e) of section 1371 (as redesignated by section 341(b)(2) of this Act) is amended to read as follows:

"(1)(A) A trust all of which is treated as owned by the grantor (who is an individual who is a citizen or resident of the United States) under subpart E of part I of subchapter J of this chapter.

"(B) A trust which was described in subparagraph (A) immediately before the death of the grantor and which continues in existence after such death, but only for the 60-day period beginning on the day of the grantor's death. If a trust is described in the preceding sentence and if the entire corpus of the trust is includible in the gross estate of the grantor, the preceding sentence shall be applied by substituting '2-year period' for '60-day period'."

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to taxable years beginning after December 31, 1976.

(aa) WITHHOLDING OF FEDERAL TAXES ON CERTAIN INDIVIDUALS ENGAGED IN FISHING—

(1) IN GENERAL.—Section 1207(f)(4) of the Tax Reform Act of 1976 (relating to effective date of provisions relating to withholding on certain individuals engaged in fishing) is amended by striking out "December 31, 1971" each place it appears and inserting in lieu thereof "December 31, 1954".

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall take effect on October 4, 1976.

(bb) WITHDRAWALS FROM INDIVIDUALS RETIREMENT ACCOUNTS, ETC.—

(1) IN GENERAL.—The last sentence of section 4973(b) (relating to excess contributions to individual retirement accounts, etc.) is amended by striking out "solely because of employer contributions to a plan or contract described in section 219(b)(2)" and inserting in lieu thereof "solely because of ineligibility under section 219(b)(2) or section 220(b)(3)".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply as if included in section 1501 of the Tax Reform Act of 1976 at the time of the enactment of such Act.

(cc) AMENDMENTS RELATING TO DISCLOSURE OF TAX RETURNS.—

(1) DISCLOSURE OF MAILING ADDRESS FOR PURPOSES OF COLLECTING CERTAIN STUDENT LOANS.—

(A) Subsection (m) of section 6103 (relating to disclosure of taxpayer identity information) is amended to read as follows:

"(m) DISCLOSURE OF TAXPAYER IDENTITY INFORMATION.—

"(1) TAX REFUNDS.—The Secretary may disclose taxpayer identity information to the press and other media for purposes of notifying persons entitled to tax refunds when the Secretary, after reasonable effort and lapse of time, has been unable to locate such persons.

"(2) FEDERAL CLAIMS.—Upon written request, the Secretary may disclose the mailing address of a taxpayer to officers and employees of an agency personally and directly engaged in, and solely for their use in, preparation for any administrative or judicial proceeding (or investigation which may result in such a proceeding) pertaining to the collection or compromise of a Federal claim against such taxpayer in accordance with the provisions of section 3 of the Federal Claims Collection Act of 1966.

"(3) NATIONAL INSTITUTE FOR OCCUPATIONAL SAFETY AND HEALTH.—Upon written request, the Secretary may disclose the mailing address of taxpayers to officers and employees of the National Institute for Occupational Safety and Health solely for the purpose of locating individuals who are, or may have been, exposed to occupational hazards in order to determine the status of their health or to inform them of the possible need for medical care and treatment.

"(4) INDIVIDUALS WHO HAVE DEFAULTED ON STUDENT LOANS.—

"(A) IN GENERAL.—Upon written request by the Commissioner of Education, the Secretary may disclose the mailing address of any taxpayer who has defaulted on a loan made from the student loan fund established under part E of title IV of the Higher Education Act of 1965 for use only for purposes of locating such taxpayer for purposes of collecting such loan.

"(B) DISCLOSURE TO INSTITUTIONS.—Any mailing address disclosed under subparagraph (A) may be disclosed by the Commissioner of Education to any educational institution with which he has an agreement under part E of title IV of the Higher Education Act of 1965 only for use by officers, employees or agents of such institution whose duties relate to the collection of student loans for purposes of locating individuals who have defaulted on student loans made by such institution pursuant to such agreement for purposes of collecting such loans."

(B) Paragraph (3) of section 6103(a) is amended by inserting ", subsection (m)(4)(B)," after "subsection (e)(1)(D)(iii)".

(C) Paragraph (2) of section 7213(a) (relating to penalties for unauthorized disclosure of information) is amended—

(i) by striking out "or any local" and inserting in lieu thereof ", any local";

(ii) by inserting ", or any educational institution" after "enforcement agency"; and

(iii) by striking out "section 6103(d) or (l)(6)" and inserting in lieu thereof "subsection (d), (l)(6), or (m)(4)(B) of section 6103".

(2) DISCLOSURE OF TAX RETURN INFORMATION REGARDING SPECIAL FUEL EXCISE TAXES.—Subsection (d) of section 6103 (relating to disclosure to State tax officials) is amended by inserting "31," after "24,".

(3) RETURN INFORMATION OTHER THAN TAXPAYER RETURN INFORMATION.—Paragraph (2) of section 6103(l) (relating to return information other than taxpayer return information) is amended by adding at the end thereof the following new sentence: "For purposes of this paragraph, the name and address of the taxpayer shall not be treated as taxpayer return information."

(4) DISCLOSURE OF RETURN INFORMATION CONCERNING POSSIBLE CRIMINAL ACTIVITIES.—Paragraph (3) of section 6103(l) (relating to disclosure of return information concerning possible criminal activities) is amended by adding at the end thereof the following new sentence: "For purposes of the preceding sentence, the name and address of the taxpayer shall not be treated as taxpayer return information if there is return information (other than taxpayer return information) which may constitute evidence of a violation of Federal criminal law."

(5) DISCLOSURE UNDER TAX CONVENTIONS.—Section 6103(k)(4) (relating to disclosure of return information under income tax conventions) is amended—

(A) by striking out "income" in the caption thereof,

(B) by inserting "or gift and estate tax" after "income tax", and

(C) by inserting ", or other convention relating to the exchange of tax information," after "convention" the first place it appears.

(6) CRIMINAL PENALTY FOR UNAUTHORIZED DISCLOSURE OF INFORMATION.—Section 7213(a) (relating to unauthorized disclosure of information) is amended—

(A) by striking out "to disclose" in paragraphs (1), (2), and (5) and inserting in lieu thereof "willfully to disclose",

(B) by striking out "to thereafter print or publish" in paragraph (3) and inserting in lieu thereof "thereafter willfully to print or publish", and

(C) by striking out "to offer" in paragraph (4) and inserting in lieu thereof "willfully to offer".

(7) NO CIVIL LIABILITY FOR GOOD FAITH BUT ERRONEOUS INTERPRETATION OF DISCLOSURE REQUIREMENTS.—Section 7217 (relating to civil damages for unauthorized disclosure of return and return information) is amended—

(A) by redesignating subsections (b) and (c) as subsections (c) and (d), respectively;

(B) by inserting after subsection (a) the following new subsection:

"(b) NO LIABILITY FOR GOOD FAITH BUT ERRONEOUS INTERPRETATION.—No liability shall arise under this section with respect to any disclosure which results from a good faith, but erroneous, interpretation of section 6103."; and

(C) by striking out "An action" in subsection (d) (as so redesignated) and inserting in lieu thereof "PERIOD FOR BRINGING ACTION.—An action".

(8) EFFECTIVE DATES.—

(A) Except as provided in subparagraph (B), the amendments made by this subsection shall take effect January 1, 1977.

(B) The amendments made by paragraph (6) (7) shall apply with respect to disclosures made after the date of the enactment of this Act.

(dd) AMENDMENTS RELATING TO INCOME TAX RETURN PREPARERS.—

(1) NEGOTIATIONS OF CHECKS BY STATE.—Subsection (f) of section 6695 (relating to negotiations of check) is amended by adding at the end thereof the following new sentence: "The preceding sentence shall not apply with respect to the deposit by a bank (within the meaning of section 581) of the full amount of the check in the taxpayer's account in such bank for the benefit of the taxpayer."

(2) DEFINITION.—Clause (iii) of section 7701(a)(36)(B) (relating to exceptions from the definition of income tax return preparer) is amended to read as follows:

"(iii) prepares as a fiduciary a return or claim for refund for any person, or".

(3) DEFINITION OF RULE.—Section 6694(a) (relating to negligent or intentional disregard of rules and regulations by income tax return papers) is amended by adding at the end thereof the following new sentence: "For purposes of the preceding sentence, the term 'rule' shall not include any revenue ruling, or written determination (as defined in section 6110(b)(1)) unless such written determination directly applies to the return or claim prepared.".

(4) EFFECTIVE DATE.—The amendments made by this subsection shall apply to documents prepared after December 31, 1976.

(ee) CLARIFICATION OF DECLARATION JUDGMENT PROVISIONS WITH RESPECT TO REVOCATIONS OF OR OTHER CHANGES IN THE QUALIFICATIONS OF CERTAIN ORGANIZATIONS.—

(1) QUALIFICATION OF CERTAIN RETIREMENT PLANS.—Subsection (a) of section 7476 (relating to declaratory judgments relating to

qualification of certain retirement plans) is amended by adding at the end thereof the following new sentence: "For purposes of this section, a determination with respect to a continuing qualification includes any revocation of or other change in a qualification."

(2) CLASSIFICATION OF ORGANIZATIONS UNDER SECTION 501(c)(3), ETC.—Subsection (a) of section 7428 (relating to declaratory judgments relating to status and classification of organizations under section 501(c)(3), etc.) is amended by adding at the end thereof the following new sentence: "For purposes of this section, a determination with respect to a continuing qualification or continuing classification includes any revocation of or other change in a qualification or classification."

(3) EFFECTIVE DATE.—The amendments made by paragraphs (1) and (2) shall take effect as if included in section 7476 or 7428 of the Internal Revenue Code of 1954 (as the case may be) at the respective times such sections were added to such Code.

(ff) CONTRIBUTIONS OF CERTAIN GOVERNMENT PUBLICATIONS.—

(1) IN GENERAL.—Paragraph (1) of section 1231(b) (relating to definition of property used in trade or business) is amended—

(A) by striking out "or" at the end of subparagraph (B),

(B) by striking out the period at the end of subparagraph (C) and inserting in lieu thereof a comma and "or", and

(C) by adding at the end thereof the following new subparagraph:

"(D) a publication of the United States Government (including the Congressional Record) which is received from the United States Government, or any agency thereof, other than by purchase at the price at which it is offered for sale to the public, and which is held by a taxpayer described in paragraph (6) of section 1221.".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply with respect to sales, exchanges, and contributions made after October 4, 1976.

(gg) EXEMPTION FOR LIGHT-DUTY TRUCK PARTS.—

(1) IN GENERAL.—Section 4063 (relating to exemption of motor vehicles and parts) is amended by adding at the end thereof the following new subsection:

"(e) PARTS FOR LIGHT-DUTY TRUCKS.—The tax imposed by section 4061(b) shall not apply to the sale by the manufacturer, producer, or importer of any article which is to be resold by the purchaser or in connection with the first retail sale of a light-duty truck, as described in section 4061(a)(2), or which is to be resold by the purchaser to a second purchaser for resale by such second purchaser on or in connection with the first retail sale of a light-duty truck."

(2) CONFORMING AMENDMENTS.—

(A) Section 4221(c) (relating to manufacturer relieved from liability in certain cases) is amended by inserting "4063(e)," after "4063(b),".

(B) Section 4222(d) (relating to registration in the case of tax-free sales) is amended by inserting "4063(e)," after "4063(b),".

(3) EFFECTIVE DATE.—The amendments made by this subsection shall take effect on the first day of the first calendar month beginning more than 20 days after the date of the enactment of this Act.

SEC . TECHNICAL, CLERICAL, AND CONFORMING AMENDMENTS TO ESTATE AND GIFT TAX PROVISIONS.

(a) AMENDMENTS RELATING TO TREATMENT OF SECTION 306 STOCK.—

(1) APPLICATION OF "FRESH START" TO SECTION 306 STOCK.—Subsection (a) of section 306 (relating to dispositions of certain stock) is amended by adding at the end thereof the following new paragraph:

"(3) ORDINARY INCOME FROM SALE OR REDEMPTION OF SECTION 306 STOCK WHICH IS CARRYOVER BASIS PROPERTY ADJUSTED FOR 1976 VALUE.—

"(A) IN GENERAL.—If any section 306 stock was distributed before January 1, 1977, and if the adjusted basis of such stock in the hands of the person disposing of it is determined under section 1023 (relating to carryover basis), then the amount treated as ordinary income under paragraph (1)(A) of this subsection (or the amount treated as a dividend under section 301(c)(1)) shall not exceed the excess of the amount realized over the sum of that—

"(i) the adjusted basis of such stock on December 31, 1976, and

"(ii) any increase in basis under section 1023(h).

"(B) REDEMPTION MUST BE DESCRIBED IN SECTION 302(b).—Subparagraph (A) shall apply to a redemption only if such redemption is described in paragraph (1), (2), or (4) of section 302(b)."

(2) CLARIFICATION THAT SECTION 303 OVERRIDES SECTION 306.—Subsection (b) of section 306 (relating to exceptions) is amended by adding at the end thereof the following new paragraph:

"(5) SECTION 303 REDEMPTIONS.—To the extent that section 303 applies to a distribution in redemption of section 306 stock.".

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to the estates of decedents dying after December 31, 1979.

(b) COORDINATION OF DEDUCTION FOR ESTATE TAXES ATTRIBUTABLE TO INCOME IN RESPECT OF A DECEDENT WITH THE CAPITAL GAIN DEDUCTION, ETC.—

(1) IN GENERAL.—Subsection (c) of section 691 (relating to deduction for estate taxes in the case of income in respect of decedents) is amended by adding at the end thereof the following new paragraph:

"(4) COORDINATION WITH CAPITAL GAIN DEDUCTION, ETC.—For purposes of section 1201, 1202, and 1211, and for purposes of section 57(a)(9), the amount of any gain taken into account with respect to any item described in subsection (a)(1) shall be reduced (but not below zero) by the amount of the deduction allowable under paragraph (1) of this subsection with respect to such item."

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply with respect to decedents dying after the date of the enactment of this Act.

(c) AMENDMENTS RELATING TO CARRYOVER BASIS.—

(1) Amendments relating to the postponement of the effective date of carryover basis provisions.—

(A) FAIR MARKET VALUE WHERE FARM VALUATION ELECTED.—Subsection (a) of section 1014 (relating to basis of property acquired from a decedent) is amended to read as follows:

"(a) IN GENERAL.—Except as otherwise provided in this section, the basis of property in the hands of a person acquiring the property from a decedent or to whom the property passed from a decedent shall, if not sold, exchanged, or otherwise disposed of before the decedent's death by such person, be—

"(1) the fair market value of the property at the date of the decedent's death, or

"(2) in the case of an election under either section 2032 or section 811(j) of the Internal Revenue Code of 1939 where the decedent died after October 21, 1942, its value at the applicable valuation date prescribed by those sections, or

"(3) in the case of an election under section 2032A, its value determined under such section."

(B) The second sentence of section 2614(a) (relating to basis adjustments in connection with generation-skipping transfers) is amended to read as follows: "If property is transferred in a generation-skipping transfer subject to tax under this chapter which occurs at the same time as, or after, the death of the deemed transferor, the basis of such property shall be adjusted—

"(1) in the case of such a transfer occurring after June 11, 1976, and before January 1, 1980, in a manner similar to the manner provided under section 1014(a), and

"(2) in the case of such a transfer occurring after December 31, 1979, in a manner similar to the manner provided by section 1023 without regard to subsection (d) thereof (relating to basis of property passing from a decedent dying after December 31, 1979)."

(2) MINIMUM CARRYOVER BASIS FOR TANGIBLE PERSONAL PROPERTY.—

(A) IN GENERAL.—Subsection (h) of section 1023 (relating to adjustment to basis for December 31, 1976, fair market value) is amended by adding at the end thereof the following new paragraph:

"(3) MINIMUM BASIS FOR TANGIBLE PERSONAL PROPERTY.—

"(A) IN GENERAL.—If the holding period for any carryover basis property which is tangible personal property includes December 31, 1976, then, for purposes of determining gain and applying this section, the adjusted basis of such property immediately before the death of the decedent shall be treated as being not less than the amount determined under subparagraph (B).

"(B) AMOUNT.—The amount determined under this subparagraph for any property is—

"(i) the value of such property (as determined with respect to the estate of the decedent without regard to section 2032), divided by

"(ii) 1.0066 to the nth power where n equals the number of full calendar months which have elapsed between December 31, 1976, and the date of the decedent's death."

(B) CONFORMING AMENDMENT.—Paragraph (3) of section 1023(g) (relating to decedent's basis unknown) is amended by striking out "to the person acquiring such property from the decedent" and inserting in lieu thereof "and cannot be reasonably ascertained".

(3) TREATMENT OF INDEBTEDNESS.—

(A) IN GENERAL.—Paragraph (1) of section 1023(g) (defining fair market value) is amended by inserting "(without regard to whether there is a mortgage on, or indebtedness in respect of, the property)" after "chapter 11".

(B) TECHNICAL AMENDMENT.—Subsection (g) of section 1023 (relating to other special rules and definitions) is amended by striking out paragraph (4).

(4) ONLY ONE FRESH START WITH RESPECT TO CARRYOVER BASIS PROPERTY HELD ON DECEMBER 31, 1976.—Subsection (h) of section 1023 (relating to adjustment to basis for December 31, 1976, fair market value) is amended by adding at the end thereof the following new paragraph:

"(4) ONLY ONE FRESH START.—There shall be no increase in basis under this subsection by reason of the death of any decedent if the adjusted basis of the property in the hands of such decedent reflects the adjusted basis of property which was carryover basis property with respect to a prior decedent."

(5) AUTOMATIC LONG-TERM STATUS FOR GAINS AND LOSSES ON CARRYOVER BASIS PROPERTY.—Subparagraph (A) of section 1223(11) is amended by inserting "or 1023" after "section 1014".

(6) CLARIFICATION THAT ADJUSTED BASIS IS INCREASED FOR STATE ESTATE TAXES.—

(A) Subsection (c) of section 1023 (relating to increase in basis for Federal and State estate taxes attributable to appreciation) is amended to read as follows:

"(c) INCREASE IN BASIS FOR FEDERAL AND STATE ESTATE TAXES ATTRIBUTABLE TO APPRECIATION.—

"(1) FEDERAL ESTATE TAXES.—The basis of appreciated carryover basis property (determined after any adjustment under subsection (h)) which is subject to the tax imposed by section 2001 or 2101 in the hands

of the person acquiring it from the decedent shall be increased by an amount which bears the same ratio to the Federal estate taxes as—

"(A) the net appreciation in value of such property, bears to

"(B) the fair market value of all property which is subject to the tax imposed by section 2001 or 2101.

"(2) STATE ESTATE TAXES.—The basis of appreciated carryover basis property (determined after any adjustment under subsection (h)) which is subject to State estate taxes in the hands of the person acquiring it from the decedent shall be increased by an amount which bears the same ratio to the State estate taxes as—

"(A) the net appreciation in value of such property, bears to

"(B) the fair market value of all property which is subject to the State estate taxes."

(B) The second sentence of paragraph (2) of section 1023(f) (defining net appreciation) is amended by striking out "For purposes of subsection (d)," and inserting in lieu thereof "For purposes of paragraph (2) of subsection (c), such adjusted basis shall be increased by the amount of any adjustment under paragraph (1) of subsection (c), for purposes of subsection (d),".

(C) Paragraph (3) of section 1023(f) (defining Federal and State estate taxes) is amended to read as follows:

"(3) FEDERAL AND STATE ESTATE TAXES.—For purposes of subsection (c)—

"(A) FEDERAL ESTATE TAXES.—The term 'Federal estate taxes' means the tax imposed by section 2001 or 2101, reduced by the credits against such tax.

"(B) STATE ESTATE TAXES.—The term 'State estate taxes' means any estate, inheritance, legacy, or succession taxes, for which the estate is liable, actually paid by the estate to any State or the District of Columbia."

(7) CLARIFICATION OF INCREASE IN BASIS FOR CERTAIN STATE SUCCESSION TAXES.—Paragraph (2) of section 1023(e) (relating to further increase in basis for certain State succession tax paid by transferee of property) is amended by striking out "for which the estate is not liable".

(8) CLARIFICATION OF APPLICATION OF FRESH START.—Paragraphs (1) and (2)(A) of section 1023(h) (relating to adjustment to basis for December 31, 1976, fair market value) are each amended by striking out "for purposes of determining gain" and inserting in lieu thereof "for purposes of determining gain and applying this section".

(9) TECHNICAL AMENDMENT WITH RESPECT TO CERTAIN TERM INTERESTS.—Paragraph (1) of section 1001(e) (relating to certain term interests) is amended by striking out "section 1014 or 1015" and inserting in lieu thereof "section 1014, 1015, or 1023".

(10) EFFECTIVE DATE.—The amendments made by this subsection shall take effect as if included in the amendments and additions made by, and the provisions of, section 2005 of the Tax Reform Act of 1976.

(d) AMENDMENTS RELATING TO VALUATION OF CERTAIN FARM, ETC., REAL PROPERTY.—

(1) CLARIFICATION THAT SPECIAL VALUATION APPLIES ONLY TO INTERESTS PASSING TO QUALIFIED HEIRS.—Paragraph (1) of section 2032A (b) (defining qualified real property) is amended by striking out "real property located in the United States" and inserting in lieu thereof "real property located in the United States which was acquired from or passed from the decedent to a qualified heir of the decedent and".

(2) PROPERTY RECEIVED IN SATISFACTION OF PECUNIARY BEQUEST.—Subsection (e) of section 2032A (relating to definitions and special rules for farm valuation property) is amended by adding at the end thereof the following new paragraph:

"(9) PROPERTY ACQUIRED FROM DECEDENT.—Property shall be considered to have been acquired from or to have passed from the decedent if—

"(A) such property is so considered under section 1014(b) (relating to basis of property acquired from a decedent),

"(B) such property is acquired by any person from the estate in satisfaction of the right of such person to a pecuniary bequest, or

"(C) such property is acquired by any person from a trust in satisfaction of a right (which such person has by reason of the death of the decedent) to receive from the trust a specific dollar amount which is the equivalent of a pecuniary bequest."

(3) USE OF FARM VALUATION PROPERTY TO SATISFY PECUNIARY BEQUEST.—Section (a) of section 1040 (relating to use of certain appreciated carryover basis property to satisfy pecuniary bequest) is amended by inserting "(determined without regard to section 2032A)" after "chapter 11".

(4) TREATMENT OF CERTAIN COMMUNITY PROPERTY.—Subsection (e) of section 2032A is amended by adding at the end thereof the following new paragraph:

"(10) COMMUNITY PROPERTY.—If the decedent and his surviving spouse at any time held qualified real property as community property, the interest of the surviving spouse in such property shall be taken into account under this section to the extent necessary to provide a result under this section with respect to such property which is consistent with the result which would have obtained under this section if such property had not been community property."

(5) SUBSTITUTION OF BOND FOR PERSONAL LIABILITY OF QUALIFIED HEIR FOR THE RECAPTURE TAX WITH RESPECT TO FARM VALUATION PROPERTY.—

(A) IN GENERAL.—Paragraph (6) of section 2032A (c) is amended to read as follows:

"(6) LIABILITY FOR TAX; FURNISHING OF BOND.—The qualified heir shall be personally liable for the additional tax imposed by this subsection with respect to his interest unless the heir has furnished bond which meets the requirements of subsection (e)(11)."

(B) BOND REQUIREMENTS.—Subsection (e) of section 2032A is amended by adding at the end thereof the following new paragraph:

"(1) BOND IN LIEU OF PERSONAL LIABILITY.—If the qualified heir makes written application to the Secretary for determining of the maximum amount of the additional tax which may be imposed by subsection (c) with respect to the qualified heir's interest, the Secretary (as soon as possible, and in any event within 1 year after the making of such application) shall notify the heir of such maximum amount. The qualified heir, on furnishing a bond in such amount and for such period as may be required, shall be discharged from personal liability for any additional tax imposed by subsection (c) and shall be entitled to a receipt or writing showing such discharge."

(6) EFFECTIVE DATE.—

The amendments made by this subsection shall apply to the estates of decedents dying after December 31, 1976.

(e) AMOUNT OF SECURITY FOR EXTENDED PAYMENT PROVISIONS FOR CLOSELY HELD BUSINESSES.—

(1) IN GENERAL.—

(A) Paragraph (2) of section 6324A(e) (defining aggregate interest amount) is amended to read as follows:

"(2) REQUIRED INTEREST AMOUNT.—The term 'required interest amount' means the aggregate amount of interest which will be payable over the first 4 years of the deferral period with respect to the deferred amount (determined as of the date prescribed by section 6151(a) for the payment of the tax imposed by chapter 11)."

(B) Subparagraph (B) of section 6324A (b)(2) (relating to maximum value of required property) is amended by striking out "aggregate interest amount" and inserting in lieu thereof "required interest amounts".

(C) Paragraph (5) of section 6324A(d) (relating to special rules) is amended by striking out "aggregate interest amount" and inserting in lieu thereof "required interest amount".

(D) Paragraph (4) of section 6324A(e) (relating to application of definitions in case of deficiencies) is amended by striking out "aggregate interest amount" and inserting in lieu thereof "required interest amount".

(2) EFFECTIVE DATE.—The amendments made by this section shall apply to the estates of decedents dying after December 31, 1976.

(f) CLARIFICATION OF THE $3,000 ANNUAL EXCLUSION FROM THE RULE INCLUDING IN GROSS ESTATE TRANSFERS WITHIN 3 YEARS OF DEATH.—

(1) AMENDMENT OF SECTION 2035(b).—Subsection (b) of section 2035 (relating to adjustments for gifts made within 3 years of decedent's death) is amended to read as follows:

"(b) EXCEPTIONS.—Subsection (a) shall not apply—

"(1) to any bona fide sale for an adequate and full consideration in money or money's worth, and

"(2) to any gift to a donee made during a calendar year if the decedent was not required by section 6019 to file any gift tax return for such year with respect to gifts to such donee.

Paragraph (2) shall not apply to any transfer with respect to a life insurance policy."

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to the estates of decedents dying after December 31, 1976, except that it shall not apply to transfers made before January 1, 1977.

(g) AMENDMENTS RELATING TO ESTATE TAX MARITAL DEDUCTION.—

(1) DEDUCTION NOT REDUCED FOR GIFT TO SPOUSE WHICH IS INCLUDED IN DONOR'S ESTATE BY REASON OF SECTION 2035.—Subparagraph (B) of section 2056(c)(1) (relating to adjustment to estate tax marital deduction for certain gifts to spouse) is amended by adding at the end thereof the following new sentence:

"For purposes of this subparagraph, a gift which is includible in the gross estate of the donor by reason of section 2035 shall not be taken into account."

(2) REDUCTION FOR GIFT TAX MARITAL DEDUCTION IN EXCESS OF 50 PERCENT OF THE VALUE OF GIFTS TO A SPOUSE.—Clause (ii) of section 2056(c)(1)(B) (relating to adjustment to estate tax marital deduction for certain gifts to spouse) is amended by inserting "required to be included in a gift tax return" after "with respect to any gift".

(3) EFFECTIVE DATE.—The amendment made by this subsection shall apply to the estates of decedents dying after December 31, 1976.

(h) COORDINATION OF SECTIONS 2513 AND 2035.—

(1) IN GENERAL.—Section 2001 (relating to imposition and rate of estate tax) is amended by adding at the end thereof the following new subsection:

"(e) COORDINATION OF SECTIONS 2513 AND 2035.—If—

"(1) the decedent's spouse was the donor of any gift one-half of which was considered under section 2513 as made by the decedent, and

"(2) the amount of such gift is includible in the gross estate of the decedent's spouse by reason of section 2035,

such gift shall not be included in the adjusted taxable gifts of the decedent for purposes of subsection (b)(1)(B), and the aggregate amount determined under subsection (b)(2) shall be reduced by the amount (if any) determined under subsection (d) which was treated as a tax payable by the decedent's spouse with respect to such gift."

(2) CONFORMING AMENDMENT.—Subparagraph (C) of section 2602(a)(1) (relating to amount of tax on generation-skipping transfers) is amended by striking out "section 2001(b))" and inserting in lieu thereof "section 2001(b), as modified by section 2001(e))".

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply with respect to the estate of decedents dying after December 31, 1976, except that such amendments shall not apply to transfers made before January 1, 1977.

(i) INCLUSION IN GROSS ESTATE OF STOCK TRANSFERRED BY THE DECEDENT WHERE THE DECEDENT RETAINS OR ACQUIRES VOTING RIGHTS.—

(1) IN GENERAL.—Section 2036 (relating to transfers with retained life estate) is amended by redesignating subsection (b) as subsection (c) and by inserting after subsection (a) the following new subsection:

"(b) VOTING RIGHTS.—

"(1) IN GENERAL.—For purposes of subsection (a)(1), the retention of the right to vote (directly or indirectly) shares of stock of a controlled corporation shall be considered to be a retention of the enjoyment of transferred property.

"(2) CONTROLLED CORPORATION.—For purposes of paragraph (1), a corporation shall be treated as a controlled corporation if, at any time after the transfer of the property and during the 3-year period ending on the date of the decedent's death, the decedent owned (with the application of section 318), or had the right, (either alone or in conjunction with any person) to vote, stock possessing at least 20 percent of the total combined voting power of all classes of stock.

"(3) COORDINATION WITH SECTION 2035.—For purposes of applying section 2035 with respect to paragraph (1), the relinquishment or cessation of voting rights shall be treated as a transfer of property made by the decedent."

(2) CONFORMING AMENDMENT.—Subsection (t) of section 2036 is amended by striking out the last sentence thereof.

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to transfer made after June 22, 1976.

(j) AMENDMENTS RELATING TO INDIVIDUAL RETIREMENT ACCOUNTS, ETC., FOR SPOUSE.—

(1) APPLICATION OF ESTATE TAX EXCLUSION TO INDIVIDUAL RETIREMENT ACCOUNTS, ETC., FOR SPOUSE.—Subsection (e) of section 2039 (relating to exclusion of individual retirement accounts, etc.) is amended by striking out "section 219" each place it appears and inserting in lieu thereof "section 219 or 220".

(2) TRANSFERS TO INDIVIDUAL RETIREMENT ACCOUNTS, ETC., FOR SPOUSE TREATED AS TRANSFERS OF PRESENT INTEREST.—Section 2503 (relating to taxable gifts) is amended by adding at the end thereof the following new subsection:

"(d) INDIVIDUAL RETIREMENT ACCOUNTS, ETC., FOR SPOUSE.—For purposes of subsection (b), any payment made by an individual for the benefit of his spouse—

"(1) to an individual retirement account described in section 408(a),

"(2) for an individual retirement annuity described in section 408(b), or

"(3) for a retirement bond described in section 409, shall not be considered a gift of a future interest in property to the extent that such payment is allowable as a deduction under section 220".

(3) EFFECTIVE DATES.—

"(A) The amendment made by paragraph (1) shall apply to the estate of decedents dying after December 31, 1976.

(B) The amendment made by paragraph (2) shall apply to transfers made after December 31, 1976.

(k) PROVISIONS RELATING TO TREATMENT OF JOINT INTERESTS.—

(1) REMOVAL OF REQUIREMENT OF ACTUARIAL COMPUTATIONS FOR JOINT INTERESTS IN PERSONAL PROPERTY.—

(A) IN GENERAL.—Subchapter (B) of chapter 12 (relating to transfers for purposes of the gift tax) is amended by inserting after section 2515 the following new section:

"SEC. 2515A. TENANCIES BY THE ENTIRETY IN PERSONAL PROPERTY.

"(a) CERTAIN ACTUARIAL COMPUTATIONS NOT REQUIRED.—In the case of—

"(1) the creation (either by one spouse alone or by both spouses) of a joint interest of a husband and wife in personal property with right of survivorship, or

"(2) additions to the value thereof in the form of improvements, reductions in the indebtedness thereof, or otherwise,

the retained interest of each spouse shall be treated as one-half of the value of their joint interest.

"(b) EXCEPTION.—Subsection (a) shall not apply with respect to any joint interest in property if the fair market value of the interest or of the property (determined as if each spouse had a right to sever) cannot reasonably be ascertained except by reference to the life expectancy of one or both spouses."

(B) CHANGING IN SECTION 2515 HEADING.—The heading for section 2515 is amended to read as follows:

"SEC. 2515. TENANCIES BY THE ENTIRETY IN REAL PROPERTY."

(C) CLERICAL AMENDMENTS.—The table of sections for subchapter 8 of chapter 12 is amended by striking out the item relating to section 2515 and inserting in lieu thereof the following:

"Sec. 2515. Tenancies by the entirety in real property."

"Sec. 2515A. Tenancies by the entirety in personal property."

(D) EFFECTIVE DATE.—The amendments made by this paragraph shall apply to joint interests created after December 31, 1976.

(2) EXTENSION OF FRACTIONAL INTEREST RULE TO CERTAIN JOINT INTERESTS IN REAL OR PERSONAL PROPERTY CREATED BEFORE 1977.—Section 2040 (relating to joint interests) as amended by section 504 of this Act, is further amended by adding at the end thereof the following new subsections:

"(d) JOINT INTERESTS OF HUSBAND AND WIFE CREATED BEFORE 1977.—Under regulations prescribed by the Secretary—

"(1) IN GENERAL.—In the case of any joint interest created before January 1, 1977, which (if created after December 31, 1976) would have constituted a qualified joint interest under subsection (b)(2) (determined without regard to clause (ii) of subsection (b)(2)(B)), the donor may make an election under this subsection to have paragraph (1) of subsection (b) apply with respect to such joint interest.

"(2) TIME FOR MAKING ELECTION.—An election under this subsection with respect to any property shall be made for the calendar quarter in 1977, 1978, or 1979 selected by the donor in a gift tax return filed within the time prescribed by law for filing a gift tax return for such quarter. Such an election may be made irrespective of whether or not the amount involved exceeds the exclusion provided by section 2503(b); but no election may be made under this subsection after the death of the donor.

"(3) TAX EFFECTS OF ELECTION.—In the case of any property with respect to which an election has been made under this subsection, for purposes of this title—

"(A) the donor shall be treated as having made a gift at the close of the calendar quarter selected under paragraph (2), and

"(B) the amount of the gift shall be determined under paragraph (4).

"(4) AMOUNT OF GIFT.—For purposes of paragraph (3)(B), the amount of any gift is one-half of the amount—

"(A) which bears the same ratio to the excess of (i) the value of the property on the date of the deemed making of the gift under paragraph (3)(A), over (ii) the value of such property on the date of the creation of the joint interest, as

"(B) the excess of (i) the consideration furnished by the donor at the time of the creation of the joint interest, over (ii) the consideration furnished at such time by the donor's spouse, bears to the total consideration furnished by both spouses at such time.

"(5) SPECIAL RULE FOR PARAGRAPH (4)(A).—For purposes of paragraph (4)(A)—

"(A) in the case of real property, if the creation was not treated as a gift at the time of the creation, or

"(B) in the case of personal property, if the gift was required to be included on a gift tax return but was not so included, and the period of limitations on assessment under section 6501 has expired with respect to the tax (if any) on such gift,

then the value of the property on the date of the creation of the joint interest shall be treated as zero.

"(6) SUBSTANTIAL IMPROVEMENTS.—For purposes of this subsection, a substantial improvement of any property shall be treated as the creation of a separate joint interest.

"(e) TREATMENT OF CERTAIN POST-1976 TERMINATIONS.—

"(1) IN GENERAL.—If—

(A) before January 1, 1977, a husband and wife had a joint interest in property with right of survivorship,

"(B) after December 31, 1976, a joint interest of such husband and wife in such property (or in property the basis of which in whole or in part reflects the basis of such property) was created,

then paragraph (1) of subsection (b) shall apply to the joint interest described in subparagraph (C) only if an election is made under subsection (d).

"(2) SPECIAL RULES.—For purposes of applying subsection (d) to property described in paragraph (1) of this subsection—

"(A) if the creation described in paragraph (1)(C) occurs after December 31, 1979, the election may be made only with respect to the calendar quarter in which such creation occurs, and

"(B) the creation of the joint interest described in paragraphs (4) and (5) of subsection (d) is the creation of the joint interest described in paragraph (1)(A) of this subsection."

(l) AMENDMENTS RELATING TO ORPHANS' EXCLUSION.—

(1) ORPHANS' EXCLUSION WHERE THERE IS A TRUST FOR MINOR CHILDREN.—Section 2057 (relating to bequests, etc., to certain minor children) is amended by redesignating subsection (d) as subsection (e) and by inserting after subsection (c) the following new subsection:

"(d) QUALIFIED MINORS' TRUST.—

"(1) IN GENERAL.—For purposes of subsection (a), the interest of a minor child in a qualified minors' trust shall be treated as an interest in property which passes or has passed from the decedent to such child.

"(2) QUALIFIED MINORS' TRUST.—For purposes of paragraph (1), the term 'qualified minors' trust' means a trust—

"(A) except as provided in subparagraph (D), all of the beneficiaries of which are minor children of the decedent,

"(B) the corpus of which is property which passes or has passed from the decedent to such trust,

"(C) except as provided in paragraph (3), all distributions from which to the beneficiaries of the trust before the termination of their interests will be pro rata,

"(D) on the death of any beneficiary of which before the termination of the trust, the beneficiary's pro rata share of the corpus and accumulated income remains in the trust for the benefit of the minor children of the decedent who survive the beneficiary or vests in any person, and

"(E) on the termination of which, each beneficiary will receive a pro rata share of the corpus and accumulated income.

"(3) CERTAIN DISPROPORTIONATE DISTRIBUTIONS PERMITTED.—A trust shall not be treated as failing to meet the requirements of paragraph (2)(C) solely by reason of the fact that the governing instrument of the trust permits the making of disproportionate distributions which are limited by an ascertainable standard relating to the health, education, support, or maintenance of the beneficiaries.

"(4) TRUSTEE MAY ACCUMULATE INCOME.—A trust which otherwise qualifies as a qualified minors' trust shall not be disqualified solely by reason of the fact that the trustee has power to accumulate income.

"(5) COORDINATION WITH SUBSECTION (c).—In applying subsection (c) to a qualified minors' trust, those provisions of section 256(b) which are inconsistent with paragraph (3) or (4) of this subsection shall not apply.

"(6) DEATH OF BENEFICIARY BEFORE YOUNGEST CHILD REACHES AGE 23.—Nothing in this subsection shall be treated as disqualifying an interest of a minor child in a trust solely because such interest will pass to another person if the child dies before the youngest child of the decendent attains age 23."

(2) AGE 23 FOR TERMINABLE INTEREST RULE IN THE CASE OF ORPHANS' EXCLUSION.—The second sentence of subsection (c) of section 2057 (relating to limitation in the case of life estate or other terminable interest) is amended by striking out "21" and inserting in lieu thereof "23".

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to the estates of decedents dying after December 31, 1976.

(m) DISCLAIMER BY SURVIVING SPOUSE WHERE INTEREST PASSES TO SUCH SPOUSE.—

(1) IN GENERAL.—Paragraph (4) of section 2518 (b) (defining qualified disclaimer) is amended to read as follows:

"(4) as a result of such refusal, the interest passes without any direction on the part of the person making the disclaimer and passes either—

"(A) to the spouse of the decedent, or

"(B) to a person other than the person making the disclaimer."

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to transfers creating an interest in the person disclaiming made after December 31, 1976.

(n) AMENDMENTS RELATING TO TAX ON GENERATION-SKIPPING TRANSFERS.—

(1) EFFECTIVE DATE OF GENERATION-SKIPPING TRANSFER PROVISIONS.—Section 2006(c) of the Tax Reform Act of 1976 (relating to effective date of generation-skipping transfer provisions) is amended by striking out "April 30, 1976" each place it appears and inserting in lieu thereof "June 11, 1976".

(2) CERTAIN POWERS OF INDEPENDENT TRUSTEES NOT TREATED AS POWERS.—Subsection (e) of section 2613 (relating to definitions for purposes of the tax on generation-skipping transfers) is amended to read as follows:

"(e) CERTAIN POWERS NOT TAKEN INTO ACCOUNT.—

"(1) LIMITED POWER TO APPOINT AMONG LINEAL DESCENDANTS OF THE GRANTOR.—For purposes of this chapter, an individual shall be treated as not having any power in a trust if such individual does not have any present or future power in the trust other than a power to dispose of the corpus of the trust or the income therefrom to a beneficiary or a class of beneficiaries who are lineal descendants of the grantor assigned to a generation younger than the generation assignment of such individual.

"(2) POWERS OF INDEPENDENT TRUSTEES.—

"(A) IN GENERAL.—For purposes of this chapter, an individual shall be treated as not having any power in a trust if such individual—

"(i) is a trustee who has no interest in the trust,

"(ii) is not a related or subordinate trustee, and

"(iii) does not have any present or future power in the trust other than a power to dispose of the corpus of the trust or the income therefrom to a beneficiary or a class of beneficiaries designated in the trust instrument.

"(B) RELATED OR SUBORDINATE TRUSTEE DEFINED.—For purposes of subparagraph (A), the term 'related or subordinate, trustee' means any trustee who is assigned to a younger generation that the grantor's generation and who is—

"(i) the spouse of the grantor or of any beneficiary,

"(ii) the father, mother, lineal descendant, brother, or sister of the grantor of any beneficiary,

"(iii) an employee of a corporation in which the stockholdings of the grantor, the trust, and the beneficiaries of the trust are significant from the viewpoint of voting control,

"(iv) an employee of a corporation in which the grantor or any beneficiary of the trust is an executive."

"(iv) a partner of a partnership in which the interest of the grantor, the trust, and the beneficiaries of the trust are significant from the viewpoint of operating control or distinctive share of partnership income,".

"(v) an employee of a corporation in which the grantor or any beneficiary of the trust is an executive, or

"(vi) an employee of a partnership in which the grantor or any beneficiary of the trust is a partner.".

(3) CLARIFICATION OF SECTION 2613(b)(2)(B).—Subparagraph (B) of section 2613(b)(2) defining taxable termination for purposes of the tax on generation-skipping transfer) is amended—

(A) by striking out "an interest and a power" and inserting in lieu thereof "a present interest and a present power", and

(B) by striking out "interest or power" and inserting in lieu thereof "present interest or present power".

(4) ALTERNATE VALUATION IN CERTAIN CASES WHERE THERE IS A TAXABLE TERMINATION AT DEATH OF OLDER GENERATION BENEFICIARY.—

(A) IN GENERAL.—Subparagraph (A) of section 2602(d)(1) (relating to alternate valuation) is amended by inserting "(or at the same time as the death of a beneficiary of the trust assigned to a higher generation than such deemed transferor)" after "such deemed transferor".

(B) SPECIAL RULES.—Subparagraph (A) of section 2602(d)(2) (relating to special rules for alternate valuation) is amended by inserting "(or beneficiary)" after "the deemed transferor".

(5) EFFECTIVE DATE.—

(A) Except as provided in subparagraph (B), the amendments made by this subsection shall take effect as if included in chapter 13 of the Internal Revenue Code of 1954 as added by section 2006 of the Tax Reform Act of 1976.

(B) The amendment made by paragraph (1) shall take effect on October 4, 1976.

(o) ADJUSTMENT IN INCOME TAX ON ACCUMULATION DISTRIBUTIONS FOR PORTION OF ESTATE AND GENERATION-SKIPPING TRANSFER TAXES.—

(1) IN GENERAL.—Subsection (b) of section 667 (relating to tax on accumulation distribution) is amended by adding at the end thereof the following new paragraph:

"(6) ADJUSTMENT IN PARTIAL TAX FOR ESTATE AND GENERATION-SKIPPING TRANSFER TAXES ATTRIBUTABLE TO PARTIAL TAX.—

"(A) IN GENERAL.—The partial tax shall be reduced by an amount which is equal to the predeath portion of the partial tax multiplied by a fraction—

"(i) the numerator of which is that portion of the tax imposed by chapter 11 or 13, as the case may be, which is attributable (on a proportionate basis) to amounts included in the accumulation distribution, and

"(ii) the denominator of which is the amount of the accumulation distribution which is subject to the tax imposed by chapter 11 or 13, as the case may be.

"(B) PARTIAL TAX DETERMINED WITHOUT REGARD TO THIS PARAGRAPH.—For purposes of this paragraph, the term 'partial tax' means the partial tax imposed by subsection (a)(2) determined under this subsection without regard to this paragraph.

"(C) PRE-DEATH PORTION.—For purposes of this paragraph, the pre-death portion of the partial tax shall be an amount which bears the same ratio to the partial tax as the portion of the accumulation distribution which is attributable to the period before the date of the death of the decedent or the date of the generation-skipping transfer bears to the total accumulation distribution."

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply—

(A) in the case of the tax imposed by chapter 11 of the Internal Revenue Code of 1954, to the estates of decedents dying after December 31, 1979, and

(B) in the case of the tax imposed by chapter 13, to any generation-skipping transfer (within the meaning of section 2611(a) of such Code) made after June 11, 1976.

(p) RELIEF OF EXECUTOR FROM PERSONAL LIABILITY IN THE CASE OF RELIANCE ON GIFT TAX RETURNS.—

(1) IN GENERAL.—Section 2204 (relating to discharge of fiduciary from personal liability) is amended by adding at the end thereof the following new subsection:

"(d) GOOD FAITH RELIANCE ON GIFT TAX RETURNS.—If the executor in good faith relies on gift tax returns furnished under section 6103(e)(3) for determining the decedent's adjusted taxable gifts, the executor shall be discharged from personal liability with respect to any deficiency of the tax imposed by this chapter which is attributable to adjusted taxable gifts which—

"(1) are made more than 3 years before the date of the decedent's death, and

"(2) are not shown on such returns.".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply with respect to the estates of decedents dying after December 31, 1976.

(q) AMENDMENT OF GOVERNING INSTRUMENTS TO MEET REQUIREMENTS FOR GIFTS OF SPLIT INTEREST TO CHARITY.—In the case of deductions under sections 170, 2055, and 2522 of the Internal Revenue Code of 1954 to which the limitations of sections 170(f)(2), 2055(e)(2)(B), and 2522(c)(2) of such Code apply, provisions comparable to section 2055(e)(3) of such Code shall apply except that the date "1978" shall be substituted for "1977" wherever it appears in section 2055(e)(3) of such Code.

(r) INDEXING OF FEDERAL TAX LIENS.—

(1) IN GENERAL.—Paragraph (4) of section 6323(f) (relating to indexing of tax liens) is amended to read as follows:

"(4) INDEXING REQUIRED WITH RESPECT TO CERTAIN REAL PROPERTY.—In the case of real property, if—

"(A) under the laws of the State in which the real property is located, a deed is not valid as against a purchaser of the property who (at the time of purchase) does not have actual notice or knowledge of the existence of such deed unless the fact of filing of such deed has been entered and recorded in a public index at the place of filing in such a

manner that a reasonable inspection of the index will reveal the existence of the deed, and

"(B) there is maintained (at the applicable office under paragraph (1)) an adequate system for the public indexing of Federal tax liens,

then the notice of lien referred to in subsection (a) shall not be treated as meeting the filing requirements under paragraph (1) unless the fact of filing is entered and recorded in the index referred to in subparagraph (B) in such a manner that a reasonable inspection of the index will reveal the existence of the lien.".

(2) REFILING OF NOTICE OF LIEN.—Section 6323(g)(2)(A) (relating to refiling of notice of lien) is amended to read as follows:

"(A) if—

"(i) such notice of lien is refiled in the office in which the prior notice of lien was filed, and

"(ii) in the case of real property, the fact of refiling is entered and recorded in an index to the extent required by subsection (f)(4); and".

(3) EFFECTIVE DATE.—

(A) The amendments made by this subsection shall apply with respect to liens, other security interests, and other interests in real property acquired after the date of the enactment of this Act.

(B) If, after the date of the enactment of this Act, there is a change in the application (or nonapplication) of section 6323(f)(4) of the Internal Revenue Code of 1954 (as amended by paragraph (1)) with respect to any filing jurisdiction, such change shall apply only with respect to liens, other security interests, and other interests in real property acquired after the date of such change.

(s) CLERICAL AMENDMENTS.—

(1) CLERICAL AMENDMENTS WITH RESPECT TO SECTION 6694.—

(A) IN GENERAL.—Section 6694 (relating to failure to file information with respect to carryover basis property) which was added by section 2005(d)(2) of the Tax Reform Act of 1976 is redesignated as section 6698.

(B) DEFICIENCY PROCEDURES NOT TO APPLY.—Section 6698 (as redesignated by subparagraph (A)) is amended by adding at the end thereof the following new subsection:

"(c) DEFICIENCY PROCEDURES NOT TO APPLY.—Subchapter B of chapter 63 (relating to deficiency procedures for income, estate, gift, and certain excise taxes) shall not apply in respect of the assessment or collection of any penalty imposed by subsection (a)."

(C) TABLE OF SECTIONS.—The table of sections for subchapter B of chapter 68 is amended by striking out

"Sec. 6694. Failure to file information with respect to carryover basis property."

and inserting in lieu thereof the following:

"Sec. 6698. Failure to file information with respect to carryover basis property."

(2) CLERICAL AMENDMENT TO SECTION 2051.—Section 2051 (defining taxable estate) is amended by striking out "exemption and".

(3) CLERICAL AMENDMENT TO SECTION 1016(a).—Subsection (a) of section 1016 (relating to adjustments to basis) is amended by redesignating paragraph (23) as paragraph (21).

(4) CLERICAL AMENDMENT TO SECTION 6324B(b).—Subsection (b) of section 6324B (relating to period of lien for additional estate tax attributable to farm, etc., valuation) is amended by striking out "qualified farm real property" and inserting in lieu thereof "qualified real property".

(5) EFFECTIVE DATE.—The amendments made by this subsection shall apply to estates of decedents dying after December 31, 1976.

SEC. . CORRETIONS OF PUNCTUATION, SPELLING, INCORRECT CROSS REFERENCES, ETC.

(a) ERRONEOUS CROSS REFERENCE IN INVESTMENT CREDIT.—

(1) AMENDMENT OF SECTION 46(f)(8).—The first sentence of paragraph (8) of section 46(f) is amended by striking out "subsection (a)(6)(D)" and inserting in lieu thereof "subsection (a)(7)(D)".

(2) AMENDMENT OF SECTION 46(g)(5).—Paragraph (5) of section 46(g) (relating to definitions) is amended by striking out "Merchant Marine Act, 1970" and inserting in lieu thereof "Merchant Marine Act, 1936".

(3) AMENDMENT OF SECTION 48(d)(1)(B).—Subparagraph (B) of section 48(d)(1) is amended by striking out "section 46(a)(5)" and inserting in lieu thereof "section 46(a)(6)".

(4) AMENDMENT OF SECTION 84(d)(4)(D).—Subparagraph (D) of section 48(d)(4) is amended by striking out "section 57(c)(2)" and inserting in lieu thereof "section 57(c)(1)(B)".

(b) PREPAID LEGAL SERVICES.—

(1) Paragraph (2) of section 2134(e) of the Tax Reform Act of 1976 is amended by striking out "section 120(d)(6)" and inserting in lieu thereof "section 120(d)(7)".

(2) Paragraph (20) of section 501(c) is amended by striking out "section 501(c)(20)" and inserting in lieu thereof "this paragraph".

(c) AMENDMENTS RELATING TO SECTIONS 219 AND 220.—

(1) AMENDMENT OF SECTION 219(c)(4).—Paragraph (4) of section 219(c) (relating to participation in governmental plans by certain individuals) is amended by striking out "subsection (b)(3)(A)(iv)" each place it appears and inserting in lieu thereof "subsection (b)(2)(A)(iv)".

(2) AMENDMENT OF SECTION 220(b)(1)(A).—Subparagraph (A) of section 220(b)(1) (relating to retirement savings for certain married individuals) is amended by striking out "amount paid to the account or annuity, or for the bond" and inserting in lieu thereof "amount paid to the account, for the annuity, or for the bond".

(3) AMENDMENT OF SECTION 220(b)(4).—Paragraph (4) of section 220(b) is amended by inserting "described in subsection (a)" after "any payment".

(4) AMENDMENT OF SECTION 408(d)(4).—Subparagraph (A) of section 1501(b)(5) of the Tax Reform Act of 1976 is amended to read as follows:

"(A) by inserting 'or 220' after '219' each place it appears, and".

(5) EFFECTIVE DATE.—The amendments made by this subsection shall apply to taxable years beginning after December 31, 1976.

(d) ACCRUAL ACCOUNTING FOR FARM CORPORATIONS.—Subsections (a) and (g)(2) of section 447 are each amended by striking out "preproductive expenses" and inserting in lieu thereof "preproductive period expenses."

(e) AMENDMENT OF SECTION 911.—Subsection (c) of section 911 is amended by redesignating paragraph (8) as paragraph (7).

(f) TRANSITION RULE FOR PRIVATE FOUNDATIONS.—Subparagraph (F) of section 101(1)(2) of the Tax Reform Act of 1969 (relating to private foundations savings provisions) is amended by striking out the period at the end of clause (i) and inserting in lieu thereof a comma.

(g) LOBBYING BY PUBLIC CHARITIES.—

(1) LOBBYING NONTAXABLE AMOUNT.—Paragraph (2) of section 4911(c) (defining lobbying nontaxable amount) is amended by striking out "proposed expenditures" in the heading of the table contained in such paragraph and inserting in lieu thereof "exempt purpose expenditures".

(2) TECHNICAL AMENDMENTS RELATING TO SECTION 501.—

(A) Section 2(a) of Public Law 94-568 is amended by striking out "subsection (h) as subsection (i) and by inserting after subsection (g)" and inserting in lieu thereof "subsection (i) as subsection (j) and by inserting after subsection (h)".

(B) Subsection (g) of section 501 of the Internal Revenue Code of 1954 (as inserted by section 2(a) of Public Law 94-568) is redesignated as subsection (i).

(C) The amendments made by this paragraph shall take effect on October 20, 1976, as if included in Public Law 94-568.

(h) AMENDMENTS TO FOREIGN TAX PROVISIONS.—

(1) Paragraph (2) of section 1035(c) of the Tax Reform Act of 1976 (relating to tax credit for production-sharing contracts) is amended—

(A) by inserting "(as defined in section 907(c) of such Code)" after "gas extraction income" in subparagraph (A), and

(B) by striking out "(as defined in section 907(c)(1) of such Code)" in subparagraph (B) and inserting in lieu thereof "(as so defined)".

(2) Paragraph (1) of section 999(c) (relating to international boycott factor) is amended by striking out "995(b)(3)" and inserting in lieu thereof "995(b)(1)(F)(ii)".

(3) Paragraph (2) of section 999(c) is amended by striking out "995(b)(1)(D)(ii)" and inserting in lieu thereof "995(b)(1)(F)(ii)".

(i) AMENDMENTS TO DISC PROVISIONS.—

(1) The last two sentences of section 995(b)(1) (relating to deemed distributions to shareholders of a DISC) are amended—

(A) by striking out "gross income (taxable income in the case of subparagraph (D))" and inserting in lieu thereof "income"; and

(B) by striking out "subparagraph (E)" and inserting in lieu thereof "subparagraph (G)".

(2) Subparagraph (G) of section 995(b)(1) is amended by striking out "subsection (D)" and inserting in lieu thereof "subsection (d)".

(3) Paragraph (2) of section 996(a) (relating to qualifying distributions) is amended by striking out "section 995(b)(1)(E)" and inserting in lieu thereof "section 995(b)(1)(G)".

(4) Paragraph (5) of section 1101(g) of the Tax Reform Act of 1976 is amended by striking out "section 993(e)(3)" and inserting in lieu thereof "section 995(e)(3)".

(j) AMENDMENTS RELATING TO DEADWOOD PROVISIONS.—

(1) TAX EXEMPT GOVERNMENTAL OBLIGATIONS.—

(A) The heading of paragraph (1) of section 103(b) is amended to read as follows:

"(1) SUBSECTION (a)(1) OR (2) NOT TO APPLY.—".

(B) Paragraph (1) of section 103(c) is amended by striking out "(a)(1) or (4)" each place it appears (including in the paragraph heading) and inserting in lieu thereof "(a)(1) or (2)".

(C) Subparagraph (A) of section 103(c)(2) is amended by striking out "subsection (a)(1) or (2) or (4)" and inserting in lieu thereof "subsection (a)(1) or (2)".

(D) Paragraph (5) of section 103(c) is amended by striking out "subsection (d)(2)(A)" and inserting in lieu thereof "paragraph (2)(A)".

(E) Subsection (d) of section 103 is amended by striking out "subsection (c)(4)(G)" and inserting in lieu thereof "subsection (b)(4)(G)".

(2) AMENDMENTS RELATING TO SECTION 311(d)(2).—

(A) Subsection (b) of section 2 of the Bank Holding Company Tax Act of 1976 is amended—

(i) by striking out "subparagraph (F)" and inserting in lieu thereof "subparagraph (E)", and

(ii) by striking out "subparagraph (G)" and inserting in lieu thereof "subparagraph (F)".

(B) Subparagraph (H) of section 311(d)(2) is redesignated as subparagraph (G).

(C) The amendments made by this paragraph shall take effect as if included in section 2(b) of the Bank Holding Company Tax Act of 1976.

(3) AMENDMENT TO SECTION 453(c).—Paragraph (3) of section 453(c) is amended—

(A) by striking out "(or by the corresponding provisions of prior revenue laws)" in the first sentence, and

(B) by striking out the last sentence.

(4) AMENDMENT OF SECTION 801(g).—Paragraphs (1)(B)(ii) and (7) of section 801(g) are each amended by striking out "subparagraph (A) (B), (C), (D), or (E) of section 805(d)(1)" and inserting in lieu thereof "any paragraph of section 805(d)".

(5) AMENDMENT OF SECTION 1033(a)(2).—Clause (ii) of section 103(a)(2)(A) is amended by striking out "subsection (c)" and inserting in lieu thereof "subsection (b)".

(6) AMENDMENT OF SECTION 1375(a).—Paragraph (2) of section 1375(a) is amended by striking out "such excess" each place it appears and inserting in lieu thereof "such gain".

(7) AMENDMENT OF SECTION 1561(b)(3).—Paragraph (3) of section 1561(b) is amended by striking out "804(a)(4)" and inserting in lieu thereof "804(a)(3)".

(8) AMENDMENTS OF SECTION 1402.—

(A) The last paragraph of section 1402(a) of the Internal Revenue Code of 1954 (definition of net earnings from self-employment) is amended by striking out "subsection (i)" each place it appears and inserting in lieu thereof "subsection (h)".

(B) Section 1402(c)(6) of such Code (definition of trade or business) is amended by striking out "subsection (h)" and inserting in lieu thereof "subsection (g)".

(9) AMENDMENT TO SECTION 46(a).—Subparagraph (C) of section 1901(b)(1) of the Tax Reform Act of 1976 is amended by striking out "Section 46(a)(3)" and inserting in lieu thereof "Section 46(a)(4)".

(10) AMENDMENT RELATING TO SECTION 6504.—Subparagraph (D) of section 1901(b)(37) of the Tax Reform Act of 1976 is amended by striking out "6515" and inserting in lieu thereof "6504."

(11) TERRITORIES.—Subsection (c) of section 1901 of the Tax Reform Act of 1976 (relating to Territories) is amended by striking out paragraph (1) thereof.

(12) ESTATE AND GIFT TAXES EFFECTIVE DATE.—Subsection (c) of section 1902 of the Tax Reform Act of 1976 is amended to read as follows:

"(c) EFFECTIVE DATES.—

"(1) ESTATE TAX AMENDMENTS.—The amendments made by paragraphs (1) through (8), and paragraphs (12) (A), (B), and (C), of subsection (a) and by subsection (b) shall apply in the case of estates of decedents dying after the date of the enactment of this Act, and the amendment made by paragraph (9) of subsection (a) shall apply in the case of estates of decedents dying after December 31, 1970.

"(2) GIFT TAX AMENDMENTS.—The amendments made by paragraphs (10), (11), and (12) (D) and (E) of subsection (a) shall apply with respect to gifts made after December 31, 1976."

(13) EFFECTIVE DATE FOR AMENDMENT MADE BY SECTION 190(a)(22)(A).—Notwithstanding section 1904 (d) of the Tax Reform Act of 1976, the amendment made by section 1904(a)(22)(A) of such Act shall take effect on the date of the enactment of such Act.

(14) AMENDMENTS TO SOCIAL SECURITY ACT.—

(A) Section 202(v) of the Social Security Act is amended by striking out "section 1402(h)" each place it appears and inserting in lieu thereof "section 1402(g)".

(B) Section 205(p)(3) of such Act is amended by striking out "Secretary of the Treasury" and inserting in lieu thereof "Secretary of Transportation".

(C) Section 210(a)(6)(B)(v) of such Act is amended by striking out "Secretary of the Treasury" and inserting in lieu thereof "Secretary of Transportation".

(D) Section 211(a)(2) of such Act is amended by striking out "(other than interest described in section 35 of the Internal Revenue Code of 1954)".

(E) Section 211(c)(6) of such Act is amended by striking out "section 1402(h)" and inserting in lieu thereof "section 1402(g)".

(k) CAPITAL LOSS CARRYOVERS.—Clause (ii) of section 1212(a)(1)(C) (relating to capital loss carryovers for foreign expropriation losses) is amended by striking out "exceeding the loss year" and inserting in lieu thereof "succeeding the loss year".

(l) AMENDMENTS RELATING TO CERTAIN AIRCRAFT MUSEUMS.—

(1) Paragraph (2) of section 4041(h) (defining aircraft museum) is amended by striking out "term 'aircraft' means" and inserting in lieu thereof "term 'aircraft museum' means".

(2) Subsection (i) of section 4041 (as added by section 1904(a)(1)(C) of the Tax Reform Act of 1976) is redesignated as subsection (j).

(3) Subsection (d) of section 6427 (relating to repayment of tax on fuels used by certain aircraft museums) is amended by striking out "Secretary or his delegate" and inserting in lieu thereof "Security".

(4) Paragraph (1) of section 7609(c) (defining summons to which section applies) is amended by striking out "6427(e)(2)" and inserting in lieu thereof "6427(f)(2)".

(m) INSPECTION BY COMMITTEE OF CONGRESS.—Paragraph (2) of section 6104(a) (relating to inspection by committee of Congress) is amended by striking out "Section 6103(d)" and inserting in lieu thereof "Section 6103(f)".

(n) AMENDMENT OF SECTION 6501.—Subsections (h), (j), and (o) of section 6501 are each amended by striking out "section 6213(b)(2)" and inserting in lieu thereof "section 6213(b)(3)".

(o) CONFORMING AMENDMENTS TO NEW DEFINITION OF TAXABLE INCOME.—

(1) Subparagraph (A) of section 443(b)(2) (relating to computation based on 12-month period) is amended—

(A) by striking out "taxable income" the second and third places it appears in clause (i) and inserting in lieu thereof "modified taxable income", and

(B) by amending clause (ii) to read as follows:

"(ii) the tax computed on the sum of the modified taxable income for the short period plus the zero bracket amount."

(2) Paragraph (1) of section 443(b) is amended by striking out "gross income for such short period (minus the deductions allowed by this chapter for the short period, but only the adjusted amount of the deductions for personal exemptions)" and inserting in lieu thereof "modified taxable income for such short period".

(3) Subsection (b) of section 443 is amended by adding at the end thereof the following new paragraph:

"(3) MODIFIED TAXABLE INCOME DEFINED.—For purposes of this subsection the term 'modified taxable income' means, with respect to any period, the gross income for such period minus the deductions allowed by this chapter for such period (but, in the case of a short period, only the adjusted amount of the deductions for personal exemptions)."

(4) The amendments made by this subsection shall apply to taxable years beginning after December 31, 1976.

(p) CONFORMING AMENDMENTS TO REPEAL OF SECTION 317 OF TRADE EXPANSION ACT OF 1962.—

(1) AMENDMENTS OF SECTION 172.—

(A) Subparagraph (A) of section 172(b)(1) (relating to years to which loss may be carried) is amended to read as follows:

"(A) Except as provided in subparagraphs (D), (E), (F), and (G), a net operating loss for any taxable year shall be a net operating loss carryback to each of the 3 taxable years preceding the taxable year of such loss."

(B) Paragraph (3) of section 172(b) (relating to special rules) is amended by striking out subparagraphs (A) and (B) and by redesignating subparagraphs (C), (D), and (E) as subparagraphs (A), (B), and (C) respectively

(C) Subparagraph (B) of section 172(b)(3) (as redesignated by subparagraph (B)) is amended by striking out "subparagraph (C)(iii)" each place it appears and inserting in lieu thereof "subparagraph (A)(iii)".

(2) AMENDMENT OF SECTION 6501(h).—Subsection (h) of section 6501 (relating to net operating loss or capital loss carryback) is amended by striking out the last sentence.

(3) AMENDMENT OF SECTION 6511(d)(2).—The first sentence of section 6511(d)(2)(A) (relating to special period of limitation for net operating loss or capital loss carrybacks) is amended by striking out "except that—" and all that follows down through the period at the end of such sentence and inserting in lieu thereof the following: "except that with respect to an overpayment attributable to the creation of, or an increase in, a net operating loss carryback as a result of the elimination of excessive profits by a renegotiation (as defined in section 1481(a)(1)(A), the period shall not expire before the expiration of the 12th month following the month in which the agreement or order for the elimination of such excessive profits becomes final."

(4) EFFECTIVE DATE.—The amendments made by this subsection shall apply with respect to losses sustained in taxable years ending after the date of the enactment of this Act.

(q) CONFORMING AMENDMENT TO REPEAL OF SECTION 2 OF THE EMERGENCY INSURED STUDENT LOAN ACT OF 1969.—

(1) IN GENERAL.—Paragraph (5) of section 103(d) (relating to arbitrage bonds) is amended by striking out "section 2 of the Emergency Insured Student Loan Act of 1969" and inserting in lieu thereof "section 438 of the Higher Education Act of 1965".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply with respect to payments made by the Commissioner of Education after December 31, 1976.

(r) EFFECTIVE DATE.—Except as otherwise provided, the amendments made by this section shall take effect on October 4, 1976.

Mr. HATHAWAY. Mr. President, earlier this year the Senate Finance Committee reported the technical corrections bill, H.R. 6715. This bill contains technical, clerical, and clarifying amendments to provisions enacted by the Tax Reform Act of 1976. Most of these changes are urgently needed by taxpayers, practitioners, and the Internal Revenue Service. In light of the need for prompt enactment of these provisions, I propose to add the provisions as an amendment to H.R. 13511.

Basically, my amendment contains the technical corrections bill as approved by the Finance Committee. My amendment differs in only several minor respects.

Since H.R. 13511 as reported by the committee already provides for the postponement of the carryover basis provi-

sions until 1980. the comparable provision of the technical corrections bill has been deleted from my amendment.

In addition. the amendment postpones for 1 year changes to the retirement income credit for couples in community property States so that the changes will not apply retroactively. Another change would reflect the Finance Committee's decision in H.R. 13511 to make sure that the minimum tax preference for excess itemized deductions will not apply retroactively to certain charitable lead trusts. Clarifving changes would also be made to make sure that testamentary charitable lead trusts are not subject to the minimum tax for charitable distributions.

Another change would make it clear that a U.S. citizen who resides abroad would not be considered subject to the foreign convention rules when attending a convention held in the country in which he or she resides.

Another change would make it clear that the real estate exception from the partnership at risk provisions applies to the operation of hotels, motels, and similar establishments.

Since the time prescribed under H.R. 6715 for making conforming changes to governing instruments has already expired, my amendment would permit the correction of governing instruments for certain charitable split-interest trusts to be made through the end of 1978 in order to comply with the requirements for charitable deductions under the income, gift, and estate tax laws. However. since charitable remainder trusts have already had since 1969 to conform governing instruments, my amendment would not apply to charitable remainder trusts for purposes of the estate tax charitable deductions.

Two limited changes are made to the provisions of the bill dealing with historic structures. First, retroactive decertification of buildings without historic significance is allowed in certain limited situations where the owner of the building did not know of the decertification requirement and. second, it eliminates certain technical limitations with respect to rehabilitations of buildings by long-term lessees.

Finally, clarifying changes would be made for the purpose of defining a "subordinate trustee" for purposes of the generation-skipping tax provisions.

Other than these changes. the amendment reflects the technical corrections bill as reported by the Finance Committee.

Mr. LONG. Mr. President, if I understand, there is no objection to the amendment.

Mr. HATHAWAY. That is correct.

Mr. LONG. The Treasury supports it, and apparently this proposal is already in the technical corrections bill?

Mr. HATHAWAY. The Senator is correct.

Mr. LONG. Which bill passed the House.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Maine.

Mr. DOLE. Mr. President, may I ask a question? What does the amendment do?

Mr. HATHAWAY. The amendment is a technical and clarifying amendment to the act we passed in 1976 which I would be glad to read to the Senator. [Laughter.]

Mr. DOLE. Does it defer the carryover basis?

Mr. HATHAWAY. Since that is already in the bill it has been stricken from the technical corrections bill.

Mr. KENNEDY. I understand the Treasury has no objection.

Mr. HATHAWAY. The Treasury not only has no objection but favors the bill.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Maine.

The amendment was agreed to.

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

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from North Carolina.

AMENDMENT NO. 3689

(Purpose: To provide tax-exempt status for certain organizations established in 1968 to provide reserve funds for, and to insure share or deposits in, credit unions and building and loan associations)

Mr. MORGAN. Mr. President, I call up my amendment No. 3689 which is at the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from North Carolina (Mr. MORGAN), for himself, Mr. HELMS, Mr. MATHIAS, and Mr. SARBANES, proposes an amendment numbered 3689.

Mr. MORGAN. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed.

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

The amendment is as follows:

At the appropriate place, insert the following new section:

SEC. . TAX-EXEMPT STATUS OF CERTAIN RESERVE FUND AND SHARE AND DEPOSIT INSURANCE ORGANIZATIONS.

(a) IN GENERAL.—Paragraph (14) of section 501(c) (relating to lists of exempt organizations) is amended—

(1) by striking out "September 1, 1957", in subparagraph (B) and inserting in lieu thereof "January 1, 1969";

(2) by striking out "or" at the end of clause (ii) of subparagraph (B);

(3) by striking out the period at the end of clause (iii) of subparagraph (B) and inserting in lieu thereof a comma and "or"; and

(4) by adding at the end of subparagraph (B) the following:

"(iv) both credit unions described in subparagraph (A) and domestic building and loan associations described in clause (i).".

(b) EFFECTIVE DATE.—The amendment made by subsection (a)(1) shall apply to taxable years ending after December 31, 1967, and the other amendments made by subsection (a) shall apply to taxable years ending after the date of the enactment of this Act.

Mr. MORGAN. Mr. President, I offer this amendment on behalf of Mr. HELMS, Mr. MATHIAS, and Mr. SARBANES, and it has to do with deposit guarantee funds that have been established in several States to protect and insure deposits in State-chartered savings and loan associations. Although the Federal Savings and Loan Insurance Corporation (FSLIC) insures deposits in all Federal savings and loan associations, Federal insurance is not available for all State savings and loan associations. Many smaller, neighborhood associations are unable to obtain FSLIC insurance for their customers' deposits. Thus, in many cases, State savings and loans which are the most conveniently located and which serve areas neglected by Federal savings and loans cannot secure Federal insurance to protect their customers' deposits.

In order to provide maximum protection for deposits, some States have established deposit guaranty funds and, in some cases, have made insurance of accounts mandatory. The deposit guaranty funds are nonprofit organizations which are designed to protect depositors in two wavs. First, the funds provide financial assistance to member savings and loan associations which are in financial difficulty and pay off depositors if a member association is liquidated. Second, the funds provide liquidity assistance for their members.

These mutual deposit guaranty funds are exempt from income taxation if they are operated for the purpose of providing reserve funds for, and insurance of shares or deposits in, domestic building and loan associations, cooperative banks, and mutual savings banks, but only if the guaranty funds were established before September 1, 1957. Thus, the tax exemption applies only to the Cooperative Central Bank of Massachusetts and the Ohio Deposit Guarantee Fund.

When the statute was first enacted, a tax exemption was available only to funds organized before September 1, 1951, Subsequently, this provision was amended to include funds organized before September 1, 1957. The amendment was enacted solely to provide tax exemption for the Ohio Deposit Guaranty Fund organized in December of 1956. The last legislative change occurred in 1966 when tax exempt status was extended to the New York State Savings & Loan Bank, which provided a reserve fund for member savings and loan associations but did not provide insurance of shares or deposits of its members and thus only met some of the purposes required in the existing statutes.

In 1967, the North Carolina Legislature passed chapter 54, article 7A of the Session Laws of 1967, authorizing the creation of mutual deposit guaranty associations to insure the deposits of State savings and loan associations and credit unions. The statutory scheme created closely resembles the Ohio program.

Pursuant to North Carolina law, the guaranty was formed on December 14, 1967. At its inception, it insured the deposits of 10 members with assets of $1.5 million. As of December 31, 1977, it insured the deposits of 20 savings and loan associations and 22 credit unions with assets totalling $831,408,160. The guaranty currently provides $50,000 of insurance to all depositors of member institutions—$10,000 over current FSLIC insur-

ance amounts. It also guarantees public deposits in member institutions up to $100,000. The guaranty has lines of credit to enable it to provide for its members' liquidity needs. In addition, the guaranty has recently signed a reinsurance contract with Aetna Casualty and Surety for coverage amounting to $12 million with a $6 million deductible.

The guaranty has not suffered any losses or been involved in any liquidation actions since its inception. This can be attributed, in part, to the fact that the guaranty is under the direct supervision of the supervisor of Savings and Loan Associations for the State of North Carolina. The supervisor conducts annual examinations of member savings and loan associations and credit unions. In addition, members with assets over $10 million are required to have an annual audit by a certified public accountant.

As of December 31, 1977, the guaranty had a 1.44 ratio of member equity to savings accounts of member institutions. This compares most favorably with the 1.29 ratio maintained by the FSLIC as of December 31, 1977. In order to preserve this equity reserve, members are presently required to contribute 1¼ percent of withdrawable accounts. Provisions exist to increase this contribution if necessary.

Presently, three board members of the guaranty represent the public interest. This affords the guaranty an awareness of public needs and allows it to respond accordingly.

Presently, approximately one-fourth of the equity reserve is invested in securities of the U.S. Government and agencies while the remaining portion is invested in tax-exempt obligations of States and municipalities. The primary reason for this investment in State and municipal obligations is the guaranty's present tax status.

The guaranty itself is audited annually by a certified public accountant. Operations for the year ending December 31, 1977, yielded $295,818 in net income. These healthy earnings provide additional protection to savers.

The guaranty has the confidence of the State savings associations in North Carolina. Since December 31, 1977, 11 savings and loans have joined the guaranty, bringing the total membership of savings and loan associations up to 31 as of June 6, 1978. In addition, three applications for membership will be considered this week.

The structure and operations of NCSGC are essentially identical to the funds which are tax exempt. It was patterned after the tax exempt Ohio Deposit Guaranty Fund. Both are managed by a board of directors elected by the member associations. Passage of this bill will remove the basic inequity of treatment between the deposit guaranty funds.

NCSGC's success has been independently studied and evaluated. The State of Texas recently commissioned the Lyndon Baines Johnson Graduate School of the University of Texas to analyze and evaluate the five presently existing State authorized insurance programs, including NCSGC. The study judged all of the funds "to have been financially successful" and recommended that Texas establish a similar fund.

Tax exemption for NCSGC and other State guaranty funds is necessary to enable such funds to accumulate assets so that, in the event a member cannot meet its obligations, the fund will not be exhausted by covering a loss. Depositors in savings and loan associations are entitled to maximum protection of their accounts and to the highest possible return on their investments in the form of interest. Both of these objectives are accomplished by the accumulation of assets in State guaranty funds.

The establishment of State deposit guaranty funds should be encouraged in order to assure the greatest protection of deposits. Throughout the history of the savings and loan industry, the necessity for retaining a dual Federal and State system of savings and loan associations has been recognized. State savings and loan associations are innovative and are able to meet the special needs of the citizens in the States where they are located. The needs of citizens in Alaska may be quite different from those in the State of North Carolina. State savings and loan associations are able to meet these special needs. In the same way, State savings and loan insurance funds are able to be more responsive to the special needs of their member associations, than a Federal insurance fund.

Since its creation, NCSGC has been highly successful in protecting deposits of the citizens of North Carolina. On the basis of its performance and the services it renders to the citizens of North Carolina, NCSGC should be accorded equal treatment under section 501(c)(14)(b) of the Internal Revenue Code.

Mr. President, all that my amendment does is to move the date from September 1, 1957, and insert in lieu thereof December 31, 1967, which would have the effect of adding the State of Maryland and the State of North Carolina to the bill which, for all practical purposes, exempts those established before September 1, 1957, and which exempts Massachusetts and Ohio.

I wonder if the Senator from Louisiana would be willing to accept it now?

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. LONG. Mr. President, this is an amendment that the Senate agreed to in the previous Congress. The Treasury did not favor the amendment then and does not favor the amendment now, but the Senate agreed to it, and the amendment does have merit.

The House would not accept the amendment in conference so we were not able to persuade the House to vote on it. But I think the Senate, having previously supported the amendment, will do so again, and if that be the judgment of the Senate that we should take the amendment to conference at this point why, certainly, it is agreeable to the manager of the bill. Otherwise I would suggest that the Senator offer the amendment later on if there is objection to voting on it at this time.

Mr. MORGAN. Unless there are some objections, Mr. President, I might say to my colleagues I understand that the House has had hearings on it this year and might be more agreeable than they were a few years ago.

The PRESIDING OFFICER. Does the Senator from Ohio seek recognition?

Mr. METZENBAUM. Yes, Mr. President.

Will the Senator from North Carolina indicate what the revenue impact, if any, will be to the Treasury of this amendment.

Mr. MORGAN. Very insignificant. We do not have an exact figure, but it is a very insignificant amount. There are only two States involved, and the only two States that have it are the Senator's State and the State of the Senator from Massachusetts.

It just seems equitable to me that we ought to either repeal it for all of the States or make it applicable to all of the States.

There is a very small amount involved.

Mr. LONG. It is estimated that the bill would result in a decrease of budget revenues of approximately $5 million in fiscal year 1979.

Mr. METZENBAUM. Five million dollars?

Mr. LONG. Five million dollars in fiscal year 1979, and less than $1 million per year thereafter.

Mr. METZENBAUM. Would the Senator from Louisiana indicate the reason for the House's continuing opposition to the measure?

Mr. MORGAN. I think I can answer that. It was never offered before in the House, and the House took the position that they did not want to agree to it unless there had been some hearings on it. This time there have been hearings, and I understand the committee will mark it up Monday or Tuesday. If they do mark it up favorably, I think they would be inclined to accept it. If they do not, I think we would have the same impasse.

Mr. METZENBAUM. Does the Senator from North Carolina know why the Treasury continues to be opposed to it?

Mr. MORGAN. The only thing I can say to the Senator from Ohio is that anytime I have approached them on any matter that had a decrease in revenue, they opposed it.

Mr. METZENBAUM. That does not sound too bad.

Mr. MORGAN. I do not think so. Would the Senator be willing to amend it to delete Ohio and Massachusetts?

Mr. METZENBAUM. I must say that I have not heard any comment at all from anyone in Ohio either for or against the amendment. When the Senator from North Carolina brought it up this evening is the first time I ever heard about it. But if the Senator from North Carolina were to do that, I just might be agreeable.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I would hope it would go over based on the opposition of the Treasury. I would hope we would not consider it at this time.

Mr. LONG. Mr. President, we had agreed we would not have a rollcall vote tonight. Any Senator has the right to insist on a rollcall vote, and under the circumstances I think it would be best

if you offered the amendment tomorrow or at some future point when we could vote on it.

Mr. MORGAN. Mr. President, under the circumstances I would ask unanimous consent that I be allowed to withdraw it without prejudice to offering it tomorrow for a rollcall vote, or whenever I can seek recognition.

The PRESIDING OFFICER. The Senator does not need unanimous consent. He is allowed to withdraw his amendment.

Mr. LONG. Mr. President, in view of the fact that we do expect to have a vote on cloture, and this amendment is a narrowly drafted amendment involving a situation existing in two States, with regard to State chartered organizations, I would ask unanimous consent that it be in order that the amendment be regarded as germane for purposes of cloture in the event that cloture is voted by the Senate.

Mr. METZENBAUM. Objection.

The PRESIDING OFFICER. Objection is heard.

Mr. MORGAN. Mr. President, I will seek an opportunity to offer it tomorrow. But I must say that the Senators from the two States that receive the majority of the benefits are the ones that object, and the only two States. It strikes me that now that their States have these guaranty funds set up to protect the funds in small savings and loans, they now see fit to object to the extension of it to the two States that now have it.

Mr. METZENBAUM. Mr. President, the Senator from North Carolina may have a very valid point. I indicated to him earlier that I am not familiar with this particular provision. His point may have validity, that there is no reason for the State of Ohio and the State of Massachusetts to be advantaged by this provision.

I would like to look into the matter, and will look into it, and will agree that there ought to be equality across the country; but until such time as I do that, I would not be prepared to accept this amendment nor to consider it to be germane to the pending measure.

Mr. MORGAN. That is the Senator's prerogative.

I ask unanimous consent that the distinguished Senator from Hawaii (Mr. INOUYE) be added as a cosponsor to amendment 3689.

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

UP AMENDMENT NO. 2010

(Purpose: Treatment of certain payments for credit for household and dependent care expenses)

Mr. DOLE. Mr. President, I send an unprinted, uncontroversial amendment to the desk and ask that it be stated.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Kansas (Mr. DOLE) proposes an unprinted amendment numbered 2010:

Insert the following in the appropriate place:

Mr. DOLE. 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:

Insert the following in the appropriate place:

That (a) paragraph (6) of section 44A(f) of the Internal Revenue Code of 1954 (relating to payments to related individuals) is amended to read as follows:

"(6) PAYMENTS TO RELATED INDIVIDUALS.—No credit shall be allowed under subsection (a) for any amount paid by the taxpayer to an individual—

"(A) with respect to whom, for the taxable year, a deduction under section 151(e) (relating to deduction for personal exemptions for dependents) is allowable either to the taxpayer or his spouse, or

"(B) who is a child of the taxpayer (within the meaning of section 151(e)(5)) who has not attained the age of 19 at the close of the taxable year.

"For purpose of this paragraph, the term 'taxable year' means the taxable year of the taxpayer in which the service is performed."

(b) The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 1978.

Mr. DOLE. Let me say I think this is a noncontroversial amendment. It makes the day care tax credit do what most of us thought we had enacted in the first place. The substance of this amendment has already been passed by the House and has been reported favorably by the Finance Committee. The administration has no objections to its enactment. Because the change does not become effective until January, the fiscal 1979 revenue impact is minimal—only some $3 million.

This legislation is necessary to enable working parents to claim the day care tax credit when one of their parents—their children's grandparents—is the babysitter. As you may recall, when the section 44A day care tax credit was enacted in the 1976 Tax Reform Act, we decided to allow this nonrefundable credit no matter whether relatives, neighbors, strangers, or day care centers did the babysitting. However, in drafting this provision, it was cross-referenced to the definition of employment under the Social Security Act in such a way that babysitting done by grandparents virtually never qualifies for the tax credit.

What my amendment does is simply to delete this cross reference and rewrite the part of section 44A pertaining to relatives so that it does what we had originally intended—allow the tax credit when the grandparents are the babysitters. The amendment does not change the present rule which denies the credit for amounts paid to dependents, nor is the credit allowed for amounts paid to one's own spouse or minor children.

Some 44 percent of mothers with children under age 6 now work outside the home—trying to keep up with inflation and taxes. Family life is undergoing revolutionary changes these days. We need to be especially sensitive that our laws do not discourage strong bonds and cooperation among family members. This amendment makes a minor, inexpensive adjustment to the tax system that removes a financial disincentive to employing grandparents as babysitters instead of outsiders or day care centers. If we are truly committed to creating a pro-family climate in the United States, then measures like this need to be enacted to remove impediments to family cooperation.

I urge Senators to support this amendment.

Mr. LONG. Mr. President, some years ago there was a very interesting article in the Washington Post entitled "IRS is Unfair to Grandma." It made the point that the law discriminates against grandmothers if they look after a child.

The point was that if the parents need to find someone to babysit or to look after a child, no one would give the child more tender loving care other than the parents themselves other than the grandmother. But the law discriminated against grandmothers doing babysitting for grandchildren.

Since that time we have made enough progress that the parents can deduct the expense of paying grandma for babysitting a child providing grandma sits in grandma's house; but if grandma sits in the parents' house, the parents cannot deduct the expense of paying grandma to care for the child.

Obviously that is one more situation in which IRS is unfair to grandmas. They could hire somebody else to babysit the child, and have the child care credit, but not if grandma sits with the child; and obviously grandma has a more devoted interest in the child, certainly has more love and affection for the child and more interest in the child than a stranger.

The House has passed and the Senate committee has recommended that IRS quit discriminating against grandmas and that is what the Senator from Kansas is trying to do, or trying to make IRS do, quit being so cruel and brutal to grandmothers.

Mr. DOLE. If the Senator will yield, it does not change the general rules for allowing credit for the babysitter; it is just what the Senator has said, it is a "fairness to grandparents" amendment, to provide what we intended in the first place.

Mr. LONG. I am told, Mr. President, that the Treasury no longer opposes it, and is willing to remove the discrimination against grandmas. So now there seems to be no objection to the amendment.

Mr. DOLE. As the chairman knows, section 151 of H.R. 13511 contains my proposal to allow a deduction for certain employee retirement savings contributions as a needed incentive for employees to plan for their retirement and to assist in the continuation of pension plans. When the Committee on Finance adopted my proposal, I intended that an employee would have the full discretion to direct his employer, if the employee wished it, to make deposits for him either in the employer's pension plan or to an individual retirement account established either by the employer or the employee. In any case, this would be done solely at the discretion of the employee. The employer could not refuse to accept a contribution to go

into an individual retirement account. Is that the chairman's understanding of the committee amendment?

Mr. LONG. That is correct. The Committee on Finance, when it adopted the Senator's proposal, intended that an employee may, at his sole election, have the employer transfer a voluntary contribution made by the employee to an IRA and the employee may choose whatever IRA he or she wants. The only requirement of this sort imposed by the legislation is that the funds must be transferred by the employer. Consequently, all the employees need to do is designate to the employer the IRA to which the contribution should be made. The employer cannot prohibit the employee from making contributions to the IRA.

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

The amendment was agreed to.

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

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

The motion to lay on the table was agreed to.

UP AMENDMENT NO. 2011

(Purpose: To add tuition tax credits to H.R. 13511)

Mr. PACKWOOD. 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 Oregon (Mr. PACKWOOD) proposes an unprinted amendment numbered 2011.

Mr. PACKWOOD. 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 Committee amendment, add the following:

SEC. 2. CREDIT FOR CERTAIN TUITION.

(a) IN GENERAL.—Subpart A of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1954 (relating to credits allowable) is amended by inserting before section 45 the following new section:

"SEC 44C. CERTAIN TUITION.

"(a) GENERAL RULE.—In the case of an individual, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to 35 percent of the tuition paid by him for the calendar year in which such taxable year begins to one or more eligible educational institutions for himself, his spouse, or any of his dependents (as defined in section 152).

"(b) MAXIMUM DOLLAR AMOUNT.—The maximum dollar amount allowable as a credit under subsection (a) with respect to tuition for any individual shall not exceed the applicable amount determined under the following table:

Calendar year:	Applicable amount
1978	$100
1979	150
1980 or 1981	250

"(c) APPICATION WITH OTHER CREDITS.—The credit allowed by subsection (a) shall not exceed the tax imposed by this chapter for the taxable year, reduced by the sum of the credits allowable under a section of this subpart having a lower number or letter designation than this section, other than the credits allowable by sections 31, 39, and 43.

"(d) PAYMENTS TAKEN INTO ACCOUNT.—

"(1) WHEN PAYMENTS MUST BE MADE AND EDUCATION FURNISHED.—Payments shall be treated as paid for any calendar year—

"(A) FOR 1978.—In the case of calendar 1978, only if such payments—

"(i) are made on or after August 1, 1978, and before February 1, 1979, and

"(ii) are for education furnished on or after August 1, 1978, and before January 1, 1979, or

"(B) FOR 1978 OR THEREAFTER.—In the case of any calendar years after 1978, only if such payments—

"(i) are made during such calendar year or during the 1-month period before the 1-month period after such year, and

"(ii) are for education furnished during such calendar year.

"(2) TUITION MUST BE FOR GENERAL COURSE OF INSTRUCTION.—

"(A) IN GENERAL.—Tuition attributable to a course of instruction which is not a general course of instruction shall not be taken into account under subsection (a).

"(B) GENERAL COURSE OF INSTRUCTION DEFINED.—For purposes of subparagraph (A), the term 'general course of instruction' means a course of instruction for which credit is allowable toward—

"(i) a baccalaureate or associate degree by an institution of higher education, or

"(ii) a certificate of required course work at a vocational school,

but does not include any course of instruction which is part of the graduate program of the individual.

"(3) INDIVIDUAL MUST BE FULL-TIME STUDENT OR (FOR CALENDAR YEARS AFTER 1979) A QUALIFIED HALF-TIME STUDENT.—

"(A) IN GENERAL.—Amounts paid for the education of an individual shall be taken into account under subsection (a)—

"(i) for calendar year 1978 or 1979, only if such individual is a full-time student for such calendar year, or

"(ii) for any calendar year after 1979, only if such individual is a full-time student or a qualified half-time student for such calendar year.

"(B) FULL-TIME AND QUALIFIED HALF-TIME STUDENT DEFINED.—For purposes of this section—

"(i) The term 'full-time student' means any individual who, during any 4 calendar months during the calendar year, is a full-time student at an eligible educational institution.

"(ii) The term 'qualified half-time student' means any individual who, during any 4 calendar months during the calendar year, is a half-time student (determined in accordance with regulations prescribed by the Secretary) at an eligible educational institution. Regulations prescribed for purposes of the preceding sentence with respect to the determination of whether an individual is a half-time student shall not be inconsistent with regulations prescribed by the Commissioner of Education under section 411(a)(2)(A)(ii) of the Higher Education Act of 1965 for purposes of part A of title IV of such Act.

"(e) TUITION DEFINED.—

"(1) IN GENERAL.—For purposes of this section, the term 'tuition' means tuition and fees required for the enrollment or attendance of a student at an eligible educational institution, including required fees for courses.

"(2) CERTAIN AMOUNTS NOT INCLUDED.—The term 'tuition' does not include any amount paid, directly or indirectly, for—

"(A) books, supplies, or equipment for courses of instruction, or

"(B) meals, lodging, transportation, or similar personal, living, or family expenses.

"(3) AMOUNTS NOT SEPARATELY STATED.—If an amount paid for tuition includes an amount for any item described in subparagraph (A) or (B) of paragraph (2) which is not separately stated, the portion of such amount which is attributable to such item shall be determined under regulations prescribed by the Secretary.

"(f) ELIGIBLE EDUCATIONAL INSTITUTION.—For purposes of this section—

"(1) ELIGIBLE EDUCATIONAL INSTITUTION.—The term 'eligible educational institution' means—

"(A) an institution of higher education, or

"(B) a postsecondary vocational school.

"(2) INSTITUTION OF HIGHER EDUCATION.—The term 'institution of higher education' means an institution described in section 1201(a) or 491(b) of the Higher Education Act of 1965 (as in effect on January 1, 1978).

"(3) POSTSECONDARY VOCATIONAL SCHOOL.—The term 'postsecondary vocational school' means—

"(A) an area vocational education school as defined in subparagraph (C) or (D) of section 195(2) of the Vocational Education Act of 1963 (as in effect on January 1, 1978), which

"(B) is located in any State.

"(4) MARITAL STATUS.—The determination of marital status shall be made under section 143.

"(g) SPECIAL RULES.—

"(1) TREATMENT OF CERTAIN SCHOLARSHIPS AND VETERANS' BENEFITS.—

"(A) OFFSET AGAINST TUITION DOLLAR FOR DOLLAR.—For purposes of this section, any amount received as a nontaxable scholarship or educational assistance allowance for any period shall be treated—

"(i) as used for tuition attributable to such period, and

"(ii) as tuition not paid by the taxpayer.

"(B) NONTAXABLE SCHOLARSHIP OR EDUCATIONAL ASSISTANCE ALLOWANCE DEFINED.—For purposes of subparagraph (A), the term 'nontaxable scholarship or educational assistance allowance' means—

"(i) a scholarship or fellowship grant (within the meaning of section 117(a)1)) or similar award which is not includable in gross income, and

"(ii) an educational assistance allowance under chapter 32, 34, or 35 of title 38, United States Code.

"(2) TAXPAYER WHO IS A DEPENDENT OF ANOTHER TAXPAYER.—No credit shall be allowed to a taxpayer under subsection (a) for amounts paid for any calendar year for tuition for the taxpayer if such taxpayer is a dependent of any other person for a taxable year beginning in the calendar year in which the taxable year of the taxpayer begins.

"(3) SPOUSE.—No credit shall be allowed under subsection (a) for amounts paid for any calendar year for tuition for the spouse of the taxpayer unless—

"(A) the taxpayer is entitled to an exemption for his spouse under section 151(b) for the taxable year beginning in such calendar year, or

"(B) the taxpayer files a joint return with his spouse under section 6013 for such taxable year.

"(h) DISALLOWANCE OF CREDITED EXPENSES AS CREDIT OR DEDUCTION.—No deduction or credit shall be allowed under any other section of this chapter for amount paid for tuition for any individual except to the extent that such amount exceeds the amount necessary for the allowance of the maximum amount which may be allowed under this section for tuition for such individual for the taxable year. The preceding sentence shall not apply to any amount paid for tuition by any taxpayer who, under regulations prescribed by the Secretary, elects not to apply the provisions of this section with respect to such tuition for the taxable year.

"(i) TERMINATION.—No credit shall be al-

lowed under this section for education furnished after December 31, 1981."

(b) LIMITATION ON EXAMINATION OF BOOKS AND RECORDS.—Section 1605 of such Code (relating to time and place examination) is amended by adding at the end thereof the following new subsection:

"(d) EXAMINATION OF BOOKS AND RECORDS OF CHURCH-CONTROLLED SCHOOLS.—Nothing in section 44C (relating to credit for tuition) shall be construed to grant additional authority to examine the books of account, or the activities, of any school which is operated, supervised, or controlled by or in connection with a church or convention or association of churches (or the examination of the books of account or religious activities of such church or convention or association of churches) except to the extent necessary to determine whether the school is an eligible educational institution within the meaning of section 44C(f)(1)."

(c) TAX CREDIT NOT TO BE CONSIDERED AS FEDERAL ASSISTANCE TO INSTITUTION.—Any educational institution which enrolls a student for whom a tax credit is claimed under this Act shall not be considered to be a recipient of Federal assistance under this Act.

(d) EXPEDITED REVIEW OF CONSTITUTIONALITY OF TUITION CREDIT.—

(1) CERTIFICATION OF QUESTIONS OF CONSTITUTIONALITY.—In any action brought in a district court of the United States, including an action for declaratory judgment or injunctive relief, concerning the constitutionality of any provision of section 44C of the Internal Revenue Code of 1954 (relating to credit for certain tuition) or any other provision of such Code relating to such section, the district court shall certify immediately all questions of constitutionality of such provision to the United States Court of Appeals for the circuit involved, which shall hear the matter sitting en banc.

(2) APPEAL TO SUPREME COURT.—Notwithstanding any other provisions of law, any decision on a matter certified under paragraph (1) shall be reviewable by appeal directly to the Supreme Court of the United States. Such appeal shall be brought no later than 20 days after the decision of the Court of Appeals.

(3) EXPEDITED CONSIDERATION.—It shall be the duty of the Court of Appeals and of the Supreme Court of the United States to advance on the docket and to expedite to the greatest possible extent the disposition of any matter certified under paragraph (1).

(4) SEPARABILITY.—If any provision of section 44C of the Internal Revenue Code of 1954 (or any other provision of such Code relating to such section), or the application thereof to any person or circumstances, is held invalid, the remainder of such provisions, and the application of such provisions to other persons or circumstances, shall not be affected.

(e) DISREGARD OF REDUCTION OF TAX LIABILITY.—Any reduction in the income tax liability of any individual by reason of section 44C of the Internal Revenue Code of 1954 (relating to credit for certain tuition) shall not be taken into account for purposes of determining the eligibility of such individual or any other individual for benefits or assistance, or the amount or extent of benefits or assistance, under any Federal program of educational assistance or under any State or local program of educational assistance financed in whole or in part with Federal funds.

(f) CONFORMING AMENDMENTS.—

(1) The table of sections for subpart A of part IV of subchapter A of chapter 1 of such Code is amended by inserting immediately before the item relating to section 45 of the following:

"Sec. 44C. Certain tuition."

(2) Subsection (c) of section 56 of such Code (defining regular tax deduction) is amended by striking out "credits allowable under—" and all that follows and inserting in lieu thereof "credits allowable under subpart A of part IV other than under sections 31, 39, and 43."

(3) Subsection (b) of section 6096 of such Code (relating to designation of income tax payment to Presidential Election Campaign Fund) is amended by striking out "and 44B" and inserting in lieu thereof "44B, and 44C".

SEC. . EFFECTIVE DATE.

The amendments made by section 2 of this Act shall apply to taxable years ending on or after August 1, 1979 with respect to amounts paid on or after such date for education furnished on or after such date.

Mr. PACKWOOD. Mr. President, this is the tuition tax credit amendment and I am simply offering it now as an amendment to the committee amendment, because it was added to the House bill this morning and I did not want to be crowded out in whatever shifting happens when we run up against the budget resolution.

It is identically the same amendment I offered earlier today. It is the amendment which the House adopted. It is within the budget resolution.

I have nothing more to say on it.

Mr. KENNEDY. Mr. President, may I ask the Senator from Oregon, does this amendment include the tax reductions passed by the Senate this morning in the Bumpers-Kennedy amendment?

Mr. PACKWOOD. It does not, because it puts it over the budget and would make it subject to a point of order for the current fiscal year.

Mr. KENNEDY. Mr. President, I would be constrained to object, at least until we are able to work this out with some form of accommodation.

Mr. PACKWOOD. In that case, Mr. President, I can see that we are going to be faced with a number of amendments which would go beyond the budget resolution. I want to leave this amendment pending so that when we finish with the subsequent amendments tomorrow, this will be the pending amendment.

Mr. LONG. Mr. President, the Senator certainly has a right to offer his amendment. I ask unanimous consent that, without prejudice to the Senator's rights, his amendment be the pending amendment when we go back on the bill tomorrow.

I ask unanimous consent that, notwithstanding that fact, that it might be temporarily laid aside so that we might consider some other noncontroversial amendments.

Mr. ROBERT C. BYRD. Mr. President, I am not sure I heard the distinguished manager of the bill. Reserving the right to object, under the order previously entered when the Senate comes in tomorrow the amendment of the Senator from Maine will be pending with an amendment to it by Mr. GLENN.

Mr. LONG. The Senator is correct. As a matter of fact, I better withdraw my unanimous-consent request.

Are there any other amendments to be offered at this point which are noncontroversial?

Mr. PACKWOOD. At the moment, my amendment is pending, is it not?

The PRESIDING OFFICER. The Senator is correct. The unanimous-consent request is not pending.

Mr. LONG. Will the Senator be so kind as to agree that the amendment of the Senator from Oregon be temporarily laid aside to consider an amendment by the Senator from New York, and at the conclusion thereof the amendment of the Senator from Oregon will be the pending amendment?

Mr. PACKWOOD. Yes, that is fine.

The PRESIDING OFFICER. Is there objection to temporarily setting aside the amendment of the Senator from Oregon to consider the amendment of the Senator from New York, at which point the amendment of the Senator from Oregon will be the pending amendment?

Mr. ROBERT C. BYRD. It will be the pending amendment tonight.

The PRESIDING OFFICER. That is correct. Is there objection?

Mr. PACKWOOD. Mr. President, reserving the right to object, I do not want to hold up the Senator from New York. I am perfectly happy to discuss this tomorrow. I am not trying to put a fast one over.

I will ask unanimous consent that this amendment be the pending amendment following the disposition of the amendment of the Senator from Maine, as amended by the Senator from Ohio.

The PRESIDING OFFICER. Is there objection?

Mr. BAKER. Reserving the right to object—

Mr. KENNEDY. Mr. President, I object.

The PRESIDING OFFICER. Objection is heard by the Senator from Massachusetts.

Mr. PACKWOOD. What is the pending business right now, Mr. President?

The PRESIDING OFFICER. The pending business is the amendment of the Senator from New York.

Mr. ROBERT C. BYRD. No, it is not. The amendment of the Senator from Oregon is pending at the moment.

The PRESIDING OFFICER. The Chair is in error. The amendment of the Senator from Oregon is pending.

Mr. KENNEDY. Mr. President, could I suggest the absence of a quorum without the Senator from Oregon losing his right to the floor?

Mr. ROBERT C. BYRD. Will the Senator withhold that?

Mr. KENNEDY. I withhold the suggestion.

Mr. ROBERT C. BYRD. Perhaps we can dispense with some other business, Mr. President, while we are waiting.

MIGRATORY BIRD HUNTING AND CONSERVATION STAMPS

Mr. ROBERT C. BYRD. Mr. President, I ask the Chair to lay before the Senate a message from the House on H.R. 13372.

The PRESIDING OFFICER. The bill will be stated by title.

The legislative clerk read as follows:

A bill (H.R. 13372) to increase the price of migratory-bird hunting and conservation stamps and to provide for consultation by the Secretary of the Interior with State and

local authorities before migratory bird areas are recommended for purchase or rental, and for other purposes.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the bill be considered as having been read the first and second time, and that the Senate proceed to its immediate consideration.

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

The Senate proceeded to consider the bill.

(Mr. INOUYE assumed the chair.)

UP AMENDMENT NO. 2012

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

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Arkansas (Mr. HODGES), for himself and Mr. BELLMON, proposes an unprinted amendment numbered 2012.

Mr. HODGES. 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 1, strike lines 3 through 7 and insert in lieu thereof the following:

"That Section 2 of such Act of March 16, 1934 (16".

On page 2, line 22, strike "(a)", and on page 3, strike lines 10 through 18.

Mr. HODGES. Mr. President, this has been cleared on both sides of the aisle. Senator BELLMON is a cosponsor of the amendment. The bill has passed the House.

Mr. President, I am pleased to manage and express my support for H.R. 13372, the Duck Stamp Act amendments. This legislation is worthwhile and I urge its immediate adoption by my colleagues.

The duck stamp was created by the Migratory Bird Hunting and Conservation Act of 1934. This is the funding mechanism of the U.S. Fish and Wildlife Service's wetlands acquisition program. From the funds collected through the duck stamp the U.S. Fish and Wildlife Service is able to acquire migratory bird refuge lands and waterfowl production areas throughout the United States. It is a very sound process and principle whereby those who do the duck hunting finance the enhancement and preservation of ducks. In addition, hundreds of other species of bird and animal benefit from the lands preserved. Thus, the duck hunter has made a real contribution to the general conservation in our Nation. This program goes hand-in-hand with Ducks Unlimited, which does the same sort of conservation work in Canada and Mexico, again sponsored and financed entirely by those interested in duck hunting.

This bill would authorize an increase in the duck stamp from $5 to $7.50 when the funds derived from the sale of the duck stamp are depleted. Since 1934 the price of the duck stamp has risen from $1 to $5. This increase is necessary to insure the continuation of the valuable work being performed by the Fish and Wildlife Service. As we all know, the price of acquiring land has risen dramatically over the last few years. The rise in land prices has limited the effectiveness of the Service's wetlands acquisition. Further, the wetlands are disappearing at such a rapid rate, that I personally am convinced that what purchases we do not make within the next 10 years will not be available thereafter. Prompt action on H.R. 13372 would relieve some of the pressure on the scarce resources of the Service and allow more acres of breeding and wintering wetlands to be purchased.

The amount of revenue increase predicted by the $2.50 increase in the duck stamp is $3.1 million. This would bring the total revenue from sales of the duck stamp to $14 million in fiscal year 1979.

Mr. President, these funds are derived from the hunters of waterfowl and they are used to conserve and produce this precious resource. Without the support of the moneys derived from the duck stamp, and the unflagging support of Ducks Unlimited, the duck population of this Nation would be too small to hunt. As an avid duck hunter and longtime supporter of Ducks Unlimited I can tell you without equivocation that there are substantially more ducks today than there were in the 1950's and 1960's due directly and entirely to the strong work of the Fish and Wildlife Service and Ducks Unlimited. Hunting pressure is not a real threat to the decline of the duck population. The significant and long-term danger is lack of breeding grounds and wintering habitat, which this bill is designed to help conserve and preserve.

I am offering an amendment to strike the portion from the House bill which would reduce the minimum age for purchase of a duck stamp from 16 to 14. I strongly believe, perhaps naively, that whatever can be done to encourage young people to participate in outdoor activities, particularly with their families, should be encouraged. I know many fathers take their children duck hunting only once or twice a season, and the added expense of a duck stamp could be an inhibiting factor. Because of that, I would far prefer to see somewhat less revenue and more young people participating in duck hunting.

No one who is an avid duck hunter would dispute the fact that we are slightly unbalanced. We sit for long hours in subfreezing temperatures, often have to break ice to get out at all, frequently do not even shoot, spend inordinate amounts of money, and love every minute of it. One either is or is not a duck hunter. Because it is expensive, and because it does depend on migratory waterfowl who must have substantial breeding grounds far north of where most of us hunt, this $2.50 increase would be endorsed by an overwhelming majority of those who duck hunt.

I strongly urge my colleagues to join in immediate approval.

Mr. President, the amendment itself will strike provisions that are in the House bill that are objectionable to those here in the Senate. It strikes a provision that would have restricted the right of the Governor to veto purchases, which was opposed by Senator WALLOP and others. We are taking that feature and other features out of the bill that are objectionable.

I believe as a duck hunter and a conservationist, it is an excellent measure. We are hopeful that the measure will then be approved in the House.

Mr. President, I yield to my friend and colleague from Oklahoma.

Mr. BELLMON. Mr. President, I strongly support the amendment of the Senator from Arkansas. The bill as it came from the House would lower the age of young people required to buy duck stamps from 16 to 14. That provision has been removed as well as other provisions. The proceeds from duck stamps, as Members of the Senate know, are used to acquire wetlands and wildlife refuges. It has come to be a major program so far as preserving the wildlife resources, particularly migratory waterfowl, in the country.

This amendment will help provide funds to speed up the acquisition of the wetlands and the refuge areas.

Mr. President, I consider this to be an important amendment and urge its adoption.

Mr. BAKER. Will the Senator yield?

Mr. HODGES. I yield.

● Mr. McCLURE. Mr. President, I would like to express my concern with the hasty manner with which this legislation is being approved. It is generally my opinion that before legislation of this magnitude is approved by the Senate, an opportunity should be given to affected parties to comment on the legislation.

Such an opportunity has not been provided by the Environment and Public Works Committee.

I was particularly concerned that two of the provisions in H.R. 11372 have not been the subject of review by the Senate Committee on Environment and Public Works. The first is the change in the age requirement for those who must purchase a migratory bird stamp from 16 to 14 years of age. The second relates to a requirement in the Wetlands Loan Act that no land can be acquired with migratory bird conservation account money unless the acquisition is approved by the Governor or appropriate State agency of the State in which the area to be purchased lies. Both of these provisions constitute major changes in the management of our migratory bird conservation programs. I therefore, could not agree that the Senate act on these provisions without having given the public an opportunity to comment on them. I was thus pleased to see that the committee decided to drop these two controversial provisions from the bill and include only a provision increasing the duck stamp price before requesting that the Senate approve this legislation by unanimous consent.

Thus, while I would have preferred full hearings on the bill, I will support the legislation before us today which increases funding for the Duck Stamp Act by increasing the price of migratory bird stamp, because I understand that the upward spiral in rural land prices which has occurred in recent years has obstructed this program's ability to meet its projected acquisition goals. Therefore, I will not oppose the legislation before us today, but did feel obliged to express my concern that the Senate has

not thoroughly investigated this matter.●

Mr. STEVENS. Mr. President, the Senate is now considering legislation to amend the Migratory Bird Hunting and Conservation Act, or as it is commonly known, the Duck Stamp Act. This act since its enactment in 1934 has been beneficial to most all that have been concerned; hunters, conservationists, and State and local governments. The most important aspect of the act has been the careful development and conservation of one of our most precious natural resources, migratory waterfowl. Migratory waterfowl is of vital importance to my State of Alaska. Citizens of Alaska not only depend on the utilization of waterfowl for recreation and pleasure, many Alaskans' very food supply must come from the harvesting of migratory birds.

This legislation could not be of greater importance to me and my State. However, H.R. 13372, the duck stamp amendments that is now before this body causes me concern. The impact of this legislation if it is not changed could be devastating on the people of not only my State but all the States of the Nation that enjoy the full utilization of migratory birds. This body should carefully review this legislation before we hastily agree to any provisions that we might later regret.

The Members of the House of Representatives have proposed that we lower the age minimum for the purchase of duck stamps. No longer would the age requirement be set at 16, but the House would have us lower it to 14 years of age. My State of Alaska is one of the strongest conservationist-minded States in the Union. Proper utilization of our resources is not an avocation for my State—it is a way of life for us. The State of Alaska Department of Fish and Game now requires that all people who have reached the age of 16 who wish to hunt or fish must possess a valid hunting and fishing license. The current law with respect to duck stamps coincides with existing State statutes effectively. The legislation that is now before us would only complicate the license process. We would no longer have one standard age requirement for hunting regulations if we adopt this measure.

H.R. 13372 would open up an even larger can of worms that potentially threatens all States where migratory birds nest, travel through, or use as wintering grounds. The House would have us accept legislation which would dissolve the right of the States to cooperate in the proper management of migratory waterfowl. H.R. 13372 would give the Department of the Interior the right to purchase lands from landowners that are "willing sellers." This purchase could take place over the objections of the State or local governments. This situation is simply unacceptable to Western States. We cannot tell at this time what pressure might come to bear on a private landowner who possesses lands that the Department of the Interior wishes to buy. It is not hard to imagine the Department restricting a private landholder's use so greatly that he would be forced to be a "willing seller." I do not foresee the Department of the Interior going into my State and trying to strong-arm the private landowners or native corporations who have their land titles into selling their lands. But I do feel we must preserve the checks and balances that now exist in the law. The Governor of a State must continue to have the right to coordinate migratory waterfowl protection with the Federal Government. By allowing the Governor to maintain his veto power we insure that this will continue to take place.

Finally, legislation that is now before us would raise the cost for duck stamps from $5 to $7.50. What Senator from a State that depends heavily on the hunting of migratory waterfowl would be pleased by such an increase? This is a 50-percent increase that we would legislate.

I am the first to state that these funds are used to benefit all States. It is well known that the demand on the Wetlands Loan Act funding far exceeds the available duck stamp money. This money goes for the purchase of wetlands that are vital for the continued strength of the growing migratory waterfowl population. This fund saves lands which might otherwise be developed for a lesser use. Despite the fact that no lands on the Department of the Interior's list of priority waterfowl wetlands are located in my State, the need for these additional funds can be recognized.

It is for this reason that I find myself urging my colleagues to support the compromise version of H.R. 13372 that has been presented to this body. The Senate version as it has been explained to me would maintain the existing 16-year-old age requirment and would raise the duck stamp fee from $5 to $7.50. This version would also delete the House language with respect to the purchase of lands by the Department of the Interior. I have checked with the State of Alaska Department of Fish and Game and with hunter associations and interest groups in Alaska. They too find this language acceptable to our long-term needs and goals. I urge my colleagues to review this legislation and move for the adoption of the Senate version of the duck stamp amendments.

Let me commend the Senator from Arkansas and the Senator from Oklahoma for having taken the action to remove the provisions in this bill which we find objectionable and at the same time present to the Senate a bill that will increase the funding for the acquisition of lands under the Migratory Conservation Act.

Mr. HODGES. Mr. President, I move the adoption of the amendment.

Mr. BELLMON. Mr. President, before we adopt the amendment, I believe the course chosen by the Senator from Arkansas is wise because, due to the lateness of the date of this bill being sent to the Senate by the House, there is simply no way we could have held hearings and approved the bill in the condition that it reached the Senate with the action of the House. By the action we have taken tonight, we will be certain that the duck hunting stamps which are sold will produce the revenues needed. If we do not act the way the Senator from Arkansas is proposing, this bill would have to wait until next year, and 1 whole year of increased revenues would be lost.

I strongly urge the Senate to accept the amendment of the Senator from Arkansas.

The PRESIDING OFFICER. Without objection, the amendment is agreed to.

Mr. HODGES. Mr. President, I ask that the bill go to third reading.

The PRESIDING OFFICER. If there be no further amendment to be proposed, the question is on the engrossment of the amendment and third reading of the bill.

The amendment was ordered to be engrossed, and the bill to be read a third time.

The bill was read a third time.

Mr. HODGES. Mr. President, I move the adoption of the bill.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall the bill, as amended, pass?

The bill (H.R. 13372), as amended, was passed.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the bill passed.

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

The motion to lay on the table was agreed to.

REVENUE ACT OF 1978

The Senate continued with the consideration of H.R. 13511.

Mr. ROBERT C. BYRD. Mr. President, I believe the distinguished Senator from Oregon is ready to proceed now.

Mr. PACKWOOD. If we are not quite ready to proceed, I am ready to make a unanimous-consent request to set aside the amendment I offered so Senator MOYNIHAN may offer an amendment. My request is that my amendment will then become the pending business when the Senator from New York has completed his.

UP AMENDMENT NO. 2013

(Subsequently numbered amendment No. 4011)

(Purpose: To permit certain public state power authorities to sell power financed by industrial development bonds to private utilities)

Mr. MOYNIHAN. I thank the Senator.

Mr. President, I have a number of matters I believe to be noncontroversial. I send first an unprinted amendment to the desk and ask that it be considered.

The PRESIDING OFFICER (Mr. HODGES). The clerk will state the amendment.

The assistant legislative clerk read as follows:

The Senator from New York (Mr. MOYNIHAN) proposes an unprinted amendment numbered 2013.

Mr. MOYNIHAN. I ask unanimous consent that further reading be dispensed with.

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

The amendment is as follows:

On page 300, line , insert the following: "Sec. 339. To amend Section 103(b)(4)(E) of the Internal Revenue Code.

Section 1. Insert "(i)" before "sewage" and add at the end of subparagraph (E) the following:

"Or, (ii) pumped storage, other hydroelectric facilities or electrical transmission facilities construction of which is completed after October 1, 1977, for the production or transmission of energy by an agency of the government of a state which agency was in existence prior to January 1, 1935, the governing body of which agency is appointed by the governor of said state, and which was duly authorized prior to October 1, 1977 to develop such power projects, *Provided*, That the energy from such facilities is sold to one or more regulated public utilities having customer service areas within the territory of such state, and/or to other customers for whose benefit such agency is authorized to develop such facilities by state law;

"or, (iii) any other facilities for the furnishing of electric energy for which a federal or state agency license or certification to authorize construction was issued or first applied for prior to October 1, 1977 by an agency of the government of a state, which agency was in existence prior to January 1, 1935, the governing body of which agency is appointed by the governor of said state, and which was duly authorized prior to October 1, 1977 to develop power projects, *Provided*, That the energy from such facilities is sold to a regulated electric utility having a customer service territory no greater than a city and one contiguous county and/or to public bodies therein and those customers for whose benefit such agency is authorized to develop such facilities pursuant to state law in effect on October 1, 1977.

SEC. 2. If the issuer so elects, this amendment may apply with respect to obligations issued prior to the date of enactment to finance any facility referred to in Section 1."

Mr. MOYNIHAN. Mr. President, the amendment at the desk is the text of a provision which the Senate has passed, as I understand it, on two previous occasions, most recently as part of H.R. 5263, which we think of as the energy tax bill. In the most recent meeting of the conference on that bill, it was agreed that it would be desirable to transfer that provision to the present tax bill. This is a measure which applies only to the State of New York and only to one situation in the State of New York. It changes a provision in the Internal Revenue Code by which power produced by a public authority capitalized by industrialized development bonds may only be sold to a private utility servicing two contiguous counties.

The purpose of this amendment is to declare New York City to be a county for this purpose. New York City is, in every sense, a unitary government, but a long tradition describes there being five counties within it. This will involve the development of a nuclear or a coal-powered plant that will replace 5 percent of the residual oil imported into the United States. It is an enormous amount of energy involved. It comes to 20 million barrels per year.

The Senate has, several times, agreed to the commonsense arrangement and I hope it might be agreed to put this matter on the tax bill.

Mr. LONG. Mr. President, this is an amendment to which the Senate agreed in the consideration of the energy bill. As I recall, the Treasury opposed the amendment. The Senate, nevertheless, agreed to it. In conference, the indications were that the conferees from the Ways and Means Committee were sympathetic to the amendment but that those who came from the other committees on the ad hoc committee were not sympathetic to the amendment—or not very sympathetic to it. Therefore, in the conference, it was agreed that the measure should not be insisted upon by the Senate conferees, but that it should be added to this bill, if it be the will of the Senate, and that when a conference recurs on this bill between the Senate and the House, we would then be conferring with those who represent the Ways and Means Committee.

In view of the fact that it is a revenue measure and we would be talking to the taxwriting committee, there would be reason to believe there would be a more sympathetic consideration than there would be in talking to the other committees; therefore, we would seek to offer the same amendment on this bill that the Senate agreed to on the other bill, the purpose being that we would recede from that amendment on the energy bill and seek to add it to this bill.

Mr. METZENBAUM. Will the Senator from Louisiana yield for a question?

Mr. LONG. Yes.

Mr. METZENBAUM. Was this one of those amendments that was accepted by the chairman of the committee when the energy tax measure was being considered?

Mr. LONG. It was a Finance Committee bill, reported by the committee.

Mr. METZENBAUM. What are the revenue implications of this amendment?

Mr. LONG. Might I just answer that the Senator from New York is the best expert on the particular amendment?

Mr. MOYNIHAN. Yes, there will be a revenue loss to the Treasury when these bonds are sold and the matter proceeds. This could be as much as 10 years in the future. The tradeoff is the fact that industrial development bonds will be used. The question of whether there will be any loss is a moot one, because there is no way that this facility would be built by the Consolidated Edison Corp. This is not possible to be done within the confines of the city of New York or outside; only the power authority of the State of New York could do it.

In any other situation, it could sell to a situation such as Westchester County and New York City, but there is this peculiar historical fact that New York City continues to be defined as consisting of five counties. We think of it as five boroughs, but in the laws of New York State, they are referred to as counties.

Mr. METZENBAUM. Can the Senator from New York give us a 1-minute explanation of what this does? I understand the comment with reference to considering the city of New York as a county, but what does the amendment actually do? Does it provide a broader definition of the industrial revenue bonds?

Mr. MOYNIHAN. No.

Mr. METZENBAUM. What is it that it does?

Mr. MOYNIHAN. It does only one thing. It says what now may be done by industrial development bonds; to wit, a public power authority may build a facility and sell its power to private utilities in two contiguous counties; that that existing provision applies to Westchester and New York City.

Mr. METZENBAUM. The question that I asked previously was what will be the revenue loss if you do not have this bill and the project does go forward?

Mr. MOYNIHAN. If we do not have this bill, the project will not go forward. This is a unanimous agreement. This is a 15-year episode. I wish I could absolutely tell the Senator it will go forward now. It should go forward. Five percent of the residual oil of the U.S.-import is involved.

Mr. METZENBAUM. Is that because this will develop nuclear power? Is that the point——

Mr. MOYNIHAN. Coal or nuclear. The original coal plant is already coming under some criticism. It will not develop oil. Oil would be precluded by this.

Mr. METZENBAUM. What kind of facility is it that is to be developed?

Mr. MOYNIHAN. A large powerplant, presumably coal, because the Governor has said no more nuclear. Therefore, a coal-powered plant, probably in the Hudson Valley, as far as Staten Island seems to be the rule now. This only applies to New York City. There is no application to any other facility. The amendment reads—it happens there are only two State power authorities in the country. One is in South Carolina, the other New York. This refers only to power authorities created before January 1, 1935. It is drafted just as that.

Mr. METZENBAUM. Will the Senator from New York indicate why the Treasury Department opposes this in view of his representation that it will not go forward without the bill?

Mr. MOYNIHAN. The Treasury opposition is, first of all, ambivalent. They have been talking about how they might work out something of this kind.

Second, it is a change in their arrangements. That is all.

Mr. GRAVEL. Will the Senator yield on that?

Mr. MOYNIHAN. Yes, I am happy to.

Mr. GRAVEL. I think, as I interpret the Treasury's objection, they are opposed in principle to those type bonds, that type financing.

What the Senator is talking about is just a geographic difference.

So, in principle, I do not think they would be opposed to that facet of it.

Mr. MOYNIHAN. Treasury is no friend of industrial development bonds.

Mr. GRAVEL. This only changes the geographic area in question.

Mr. METZENBAUM. With a situation of this kind, at 11:20 at night, and the Treasury has an objection that very likely that ought to occur, that it go over and bring it up before the full body.

Mr. MOYNIHAN. The Senator can say that, but I have a certain comity in the matter. This has twice passed the Senate, most recently in the energy bill.

Mr. METZENBAUM. I point out to the

Senator, although it passed the Senate before, it was not a matter that was brought to the Senate's attention, at least to the best of my recollection, as a particular issue, and I am frank to say I never heard of the matter before.

It came with the energy bill. There were a lot of things on that bill, many of which were not brought to the attention of many of us.

In view of the Treasury opposition, it certainly seems to me it is not a matter of comity, but a matter of equity and whether it is appropriate to provide this kind of a tax provision without at least giving Treasury an opportunity to be heard.

Mr. GRAVEL. If I might join with my colleague, the Treasury has been heard on the subject. This is not a new area. As the Senator says, even after this bill passes, I am sure we will be able to stand up here next year if this bill comes back up in its entirety and make exactly the same statement.

There is no way every single Member of this body will be able to follow every single detail of every single bill. The issues are handled in a broader fashion than that.

But this matter had hearings in the Finance Committee. It is something that has been an ongoing difference of opinion between the Congress and the Executive, sometimes rising to a high level, sometimes going to a lower level.

They just do not like the idea of having bonds that have a tax exempt feature.

All the municipal bonds, the same thing. They do not like that approach to financing. So if we take the position Treasury is opposed to it, let us wipe out right now and accommodate the Treasury, do what is right, what they tell us to do, and wipe out all tax exempt bonds because they are against that in principle.

But the issue here is just that geographic area, that when somebody first defined this, it was probably something given no attention at all—but we will make it a county. They did not have any knowledge.

We have a situation where the utility is serving more than one county. In this particular case it is absolutely ludicrous, when we know the situation of New York and ConEd that claims if you build a plant it will have to service other borcughs, and the word "borough" is not even there.

So, this is not a big deal. We had it in conference and the conferees had no objection to it. They just wanted to see it on a tax bill, where it belonged. It is more of a germaneness issue.

Mr. METZENBAUM. The other is a tax bill——

Mr. MOYNIHAN. If the Senator will allow the Senator from New York, I will answer the question.

May I put it this way, that, first of all, it was arranged with the Senator from Louisiana that I would not ask reconsideration of this measure in case somebody else wanted to raise the question tomorrow. I am not trying to put anything through here. We are trying to get through the Senate's business.

Second, I put it that the arrangement we are proposing here is available to any contiguous county in the country. It happens to be a technicality that the city of New York continues to define it as containing five counties. It is not.

Mr. LONG. If the Senator will yield for a moment, I think I can help clear this matter up to the benefit of our distinguished colleague.

Mr. MOYNIHAN. I am happy to yield.

Mr. LONG. Under the law, the interest on State and local obligations for this type of purpose is generally exempt, from taxation.

Keep in mind, if this were a State obligation, there would be no problem—it would be exempt. If it were a local obligation, no problem—it would be exempt.

Now, Treasury wrote a regulation that says if more than two contiguous counties, or their political equivalents, are involved, that they are not regarded as local government.

So that now, having written that regulation saying that more than two contiguous counties will be regarded as a local government, then Treasury reaches the conclusion that, since there are five boroughs in New York City, they must regard the five boroughs as five counties and thus not a local government. They are now reconsidering that position.

So, at this moment, the last word I get is that Treasury feels if this only involves New York City, they would be inclined to go along. So they are reconsidering their position.

Basically, what we are talking about is whether the obligations of a company serving New York City and Westchester County is to be regarded as local government. It is not the law that creates the problem, it is the Treasury regulation.

It is a question of whether New York City can claim the same advantage that practically any other city, for example, Los Angeles or New Orleans, can claim. There are a great number of areas where a city has a huge amount of area and can claim the advantage.

But because of the way New York is organized in five boroughs, it gives Treasury some problem with their own regulation.

Mr. METZENBAUM. I would like to ask my friend from Louisiana who is so knowledgeable in these matters, is there not a distinction in this case between a State having its bonds tax exempt, a county having its bonds tax exempt, and this situation which is not really a State or a county, but really has to do with a private corporation and we are providing a tax exemption in this instance indirectly for a private corporation's facilities by use of industrial revenue bonds.

Mr. LONG. Unless they meet certain requirements, industrial development bonds are taxable, but the law gives an exemption for bonds for the local furnishing of electric energy or gas. But, now, the regulations then proceed to interpret what the word "local" means to say. Local means two contiguous counties. Then they proceed to construe the five boroughs of New York as being five counties, and then New York finds it is unable to benefit by the same law available to Los Angeles.

Mr. MOYNIHAN. If I may say to the Senator from Ohio, New York City could be treated like Los Angeles County. Los Angeles County has about five cities, God knows how many villages, but they are one county.

Mr. METZENBAUM. The Senator from New York may have a point. But I think that I would feel better if I inquire further into the subject and we lay the matter over until tomorrow and have a chance to discuss the subject better, by that time, with Treasury representatives. I think that would be an appropriate procedure and I would like to suggest it.

Mr. MOYNIHAN. Mr. President, I have two other small matters.

The PRESIDING OFFICER. The amendment is still pending.

Mr. MOYNIHAN. In that case, I withdraw the amendment.

The PRESIDING OFFICER. The Senator has that right.

Mr. MOYNIHAN. Mr. President, I call up amendment No. 3978.

The PRESIDING OFFICER. The Chair was somewhat incorrect. Under the previous order, the pending business now, with that amendment out of the way, is the amendment by the Senator from Oregon.

UP AMENDMENT NO. 2014

(Subsequently numbered amendment No. 2012)

Mr. PACKWOOD. Mr. President, I withdraw my amendment, and I offer another amendment and send it to the desk for immediate consideration.

The PRESIDING OFFICER. The amendment is withdrawn, and this amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Oregon (Mr. PACKWOOD) proposes an unprinted amendment numbered 2014.

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

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

Mr. PACKWOOD. Mr. President, this amendment is now the tuition tax credit amendment as adopted today with the Bumper-Kennedy amendment on it. There is only one change in the Bumper-Kennedy amendment. We have changed the effective date by 1 month, slipping it 1 month, so that the revenue loss in the first fiscal year is $600 million rather than $900 million. This puts it within the budget resolution.

This amendment simply is to put the tuition tax credit amendment with the Bumper-Kennedy amendment on the Finance Committee committee amendment, rather than an amendment to just the House bill, so that it is not lost in the shuffle as other amendments are offered.

I am prepared to vote.

Mr. LONG. Mr. President, we cannot vote on this matter tonight, because it might be objected to by someone who did not know that this was to be considered this evening. In other words, I anticipate that, while it may not be controversial with those of us here at this moment, it may be controversial to someone who is not here and who might want to protect his position in a similar fashion.

Therefore, Mr. President, in line with what I believe and understand is expected of me, I cannot agree to vote on this amendment at this time.

Mr. PACKWOOD. Mr. President, I ask unanimous consent that when we dispose of the amendment of the Senator from Maine and the Senator from Ohio, or if we put it aside for other business, this amendment be the pending business.

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

The Senator from New York.

UP AMENDMENT NO. 2015

Mr. MOYNIHAN. Mr. President, I call up an unprinted amendment.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from New York (Mr. MOYNIHAN) proposes an unprinted amendment numbered 2015.

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

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

Mr. MOYNIHAN. Mr. President, this is an amendment which would modify certain rules that relate to the ability of shareholders in cooperative housing corporations to deduct their real estate taxes and interest. My proposal would assure that owners of cooperative housing have the same tax treatment as condominium owners.

The present tax law requires that 80 percent of the income of cooperative housing corporations be from tenant stockholders and that only individuals may be tenant stockholders. This has made it difficult for tenant stockholders to obtain financing, because the deductibility of the interest and real estate taxes is not assured.

This situation arises because foreclosures and vacanies jeopardize the 80-percent tax.

In 1976, an amendment was adopted allowing banks to be treated as tenant stockholders for a period of 3 years, which covered the instances in which foreclosures occurred. My amendment would extend the same rules to sponsors of the project as well. This is important to new units under construction.

A similar measure has been introduced in the House, and Treasury has testified in favor of its enactment.

Mr. LONG. Mr. President, the Treasury supports this amendment. The amendment would provide that if a person who conveys the houses, apartment building, or leasehold to a cooperative housing corporation acquires stock in the corporation by purchase or foreclosure, together with a lease or right to occupy the house or apartment, such person would be treated as tenant-stockholder for up to 3 years from the date of acquisition. This provision would apply even though such person or any purchaser from such person could not occupy the apartment or house without prior approval of the corporation or its managing agent.

The proposal would reduce tax liabilities by less than $5 million for calendar year 1979.

Mr. BAKER. Mr. President, I do not have a minority staff man on the floor to advise on this subject, but it was my understanding earlier that there is some question as to whether or not this is controversial, from our standpoint.

I sincerely regret suggesting it, but there are so few people on the floor now, and I am advised by staff that we simply do not know whether this has been cleared on this side, and I hope this measure might go over until tomorrow.

Mr. MOYNIHAN. Mr. President, I am happy to do that.

There is one last matter I have, which I am sure is acceptable.

The PRESIDING OFFICER. Is the Senator withdrawing his amendment?

Mr. MOYNIHAN. Mr. President, I withdraw the amendment.

UP AMENDMENT NO. 2016

(Subsequently numbered amendment No. 4013)

(Purpose: To amend the definition of Vietnam-era veteran for the purposes of the targeted jobs credit)

Mr. MOYNIHAN. Mr. President, I send to the desk an unprinted amendment.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from New York (Mr. MOYNIHAN), for himself and Mr. CRANSTON, proposes unprinted amendment numbered 2016.

The amendment is as follows:

On page 266, beginning with line 13, strike out all through line 2 on page 267 and insert in lieu thereof the following:

"(5) ECONOMICALLY DISADVANTAGED VIETNAM-ERA VETERAN.—The term 'economically disadvantaged Vietnam-era veteran' means any individual who is certified by the designated local agency as—

(A) being a veteran of the Vietnam era as defined in section 2011(2)(A) of title 38, United States Code,".

Mr. MOYNIHAN. Mr. President, in dealing with the job tax credit provisions in the committee bill, through an error on my part—our purpose was to insure that veterans who have received less than honorable discharges would have the benefit of this measure available to them—we extended it to veterans with dishonorable discharges, which was not our intention and never has been the practice of Congress. This simply corrects that error.

Mr. LONG. Mr. President, the amendment modifies the definition of Vietnam veteran in the targeted job tax credit to conform it to the definition used in title 38 of the United State Code, which relates to veterans' benefits.

I am willing to accept the amendment if the Senate wishes to approve it.

Mr. HANSEN. Mr. President, I do not know that there is any objection here, either. Generally, I am in agreement with the philosophy as expressed by my good friend from New York.

May I ask that he withhold momentarily?

Mr. MOYNIHAN. I do.

Mr. HANSEN. Mr. President, earlier the Senator from New York was addressing a small change that would rectify an inadvertency that I think had been made.

Mr. MOYNIHAN. A mistake which I made.

Mr. HANSEN. I see. That was in the jobs tax credit bill, and as I understand the proposal that he offers to the Senate now the effect of which would be to permit the applicability of the jobs credit provision for an employer who hired some veteran with a dishonorable discharge? Am I right about that?

Mr. MOYNIHAN. No. It would be to all veterans save those with dishonorable discharge.

Mr. HANSEN. I see. I have no objection.

Mr. MOYNIHAN. I thank the Senator.

Mr. KENNEDY. Mr. President, as I understand it, an earlier provision says a beneficiary can be an economically disadvantaged convict. So we are leaving an economically disadvantaged convict in, and excluding an economically disadvantaged veteran who has less than an honorable discharge.

Mr. MOYNIHAN. No. If the Senator will yield, it applies to one specific group of people of whom it is my understanding there are not many, which have dishonorable discharges. As to less than honorable, which is a range of such not included, they specifically do have these benefits available to them.

Mr. KENNEDY. But we are leaving disadvantaged convict in?

Mr. MOYNIHAN. Yes.

Mr. KENNEDY. Even though a person who has been dishonorably discharged and mended his ways and is trying as hard to get back on the straight and narrow path as an economically disadvantaged convict? The economically disadvantaged convict would not be excluded, but someone trying to get back on his feet to rehabilitate his life would be excluded under the Senator's amendment. Is that correct?

Mr. MOYNIHAN. I am not arguing the merits of the proposal as such. I am trying to conform to what has been a century-old practice of Congress which I was not here when this change was made.

Mr. KENNEDY. Mr. President, it seems

to me that there is an inconsistency here if we are leaving in the disadvantaged convict. I want to be on record that I certainly would hope that a program could be developed to help rehabilitate individuals. That is what we are attempting to do. We are talking about disadvantaged youth. We are talking about disadvantaged Vietnam-era veterans. We are talking about disadvantaged convicts. The Senator has defined and excluded some members who have been dishonorably discharged.

So I just make a motion to table the Senator's amendment, being willing to have a voice vote on it here tonight. I may be the only one who feels that way, but at least I make a motion to table the Senator's amendment.

Mr. INOUYE. Vote.

The PRESIDING OFFICER. Is the Senator making the motion?

Mr. KENNEDY. Yes.

Mr. GRAVEL. Let me add my voice.

Mr. KENNEDY. All right.

Mr. GRAVEL. Let me add my voice of encouragement to that process. I was on the committee when this was taken up. Senator LONG was the one who brought our attention to the convict situation and we specifically put in convicts because life is such that they are frozen out. No one hires a convict, and if there is any way that a person wants to really get on the straight and narrow, we do it. What we are doing is making a fine distinction here because you have done wrong when you were in the service. But if we are prepared to forgive a person who has done wrong in civilian life, I hope we extend the same measure of warmth and human understanding to a guy who has done wrong when he was in the service, and we are trying to get these people off the welfare rolls, we are trying to get the people out of jail, and we are trying to get them in the mainstream of life.

I commend the Senator. I think he is correct. I know the problem. I think when we deal in the area of patriotism and the area of service—a lot of us have been in the service—we use a little different standard. I would like not to see us use that different standard tonight.

Mr. MOYNIHAN. Mr. President, nothing has been said with which I do not agree. I think practically everyone in the Chamber agrees and if the mood of the Senate is of this order, let us by all means accept it. I withdraw the amendment.

The PRESIDING OFFICER. The Senator has that right.

Mr. LONG. Mr. President, I urge that and propose that we no longer consider amendments to this bill. There may be some motion the majority leader might want to make. I believe this is very late now. It will soon be midnight.

Mr. KENNEDY. Mr. President, will the Senator from Louisiana yield?

Mr. LONG. Let us consider one more statement the Senator wants to make.

Mr. KENNEDY. Mr. President, I have a good one to go out on.

I think the Senator can respond in about 15 seconds to it.

Mr. LONG. Fine.

UP AMENDMENT NO. 2017
(Subsequently Numbered Amendment No. 4014)

(Purpose: To delete Section 333 (The E. F. Hutton Provision))

Mr. KENNEDY. 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 Massachusetts (Mr. KENNEDY) proposes an unprinted amendment numbered 2017.

On page 285, beginning with line 20, delete all through line 11 on page 288.

Mr. KENNEDY. Mr. President, this is the E. F. Hutton amendment, and maybe we can get the Treasury's opinion and then just go ahead and vote on the matter.

Mr. EAGLETON. We will all listen to E. F. Hutton.

Mr. METZENBAUM. We are all going to listen. [Laughter.]

Mr. LONG. Mr. President, this amendment is one proposed by the Senator from Nebraska (Mr. CURTIS). He is not here at this time, and in fairness to the Senator he should be here when the amendment is considered. I hope the Senator will withhold the amendment until the Senator from Nebraska can be here.

Mr. KENNEDY. I withdraw the amendment, but I want to indicate the seriousness of it sometime. I hope to have the opportunity.

Mr. LONG. By all means.

I only say that the Senator who offered the amendment should be present when the motion is made to strike it. I am sure the Senator will want him to be present.

The PRESIDING OFFICER. The amendment is withdrawn.

OLDER AMERICANS ACT—CONFERENCE REPORT

Mr. EAGLETON. Mr. President, I submit a report of the committee of conference on H.R. 12255 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 amendment of the Senate to the bill (H.R. 12255) to amend the Older Americans Act of 1965 to provide that improved programs for older persons, 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 September 22, 1978.)

Mr. EAGLETON. Mr. President, I am pleased to bring before the Senate H.R. 12255, the Comprehensive Older Americans Act amendments of 1978. This legislation extends for 3 additional years, through September 30, 1981, authorizations for programs conducted under the Older Americans Act of 1965.

Before I continue with a summary of the conference agreement, Mr. President, I would like to express my deep appreciation for the excellent work of the members of the Committee on Human Resources and the Subcommittee on Aging in resolving the differences in this important legislative initiative.

I wish to thank the chairman of the committee, Mr. WILLIAMS, and the ranking minority member, Mr. JAVITS, for their efforts in this matter. The members of the Subcommittee on Aging, Mr. KENNEDY, Mr. CRANSTON, Mr. CHAFEE, and HAYAKAWA, have devoted much time and attention to the final resolution. In addition, Mr. HATHAWAY made several major contributions to the bill.

In particular, Mr. President, I wish to express my special appreciation to Senator CHAFEE, ranking minority member of the subcommittee, for his unstinting work to develop the final agreement before us today.

I would also like to thank the House Members for their excellent work; in particular, Mr. PERKINS, chairman of the Education and Labor Committee, and Mr. BRADEMAS, chairman of the Subcommittee on Select Education.

BACKGROUND

The Older Americans Act, as originally enacted in 1965, and amended in 1967, 1969, 1972, 1973, and 1975, has achieved a number of essential goals on behalf of the elderly: It strengthened and increased the visibility of the Administration on Aging within the Department of Health, Education, and Welfare; established, within the framework of titles III, VII, and IX, a comprehensive and coordinated system for the delivery of such services as transportation, employment, well-balanced hot meals served in a congregate setting, services to help older persons live independently in their own homes, and much more; provided grants to train skilled personnel needed in the newly developed programs focused on the elderly; authorized establishment and operation of multipurpose senior centers; implemented a program of research and demonstration projects to test innovative ideas; and amended a number of other acts to assure the participation of the elderly in their programs. In short, Mr. President, the programs authorized under the Older Americans Act have become vital elements in the range of measures through which we seek to improve the lives of older people in this Nation.

I will not attempt to discuss each provision of the conference agreement, but do wish to highlight the major new provisions of the legislation.

AUTHORIZATION

Mr. President, I ask unanimous consent that a table showing the present authorizations, present funding levels, and new authorizations in the bill be printed at this point in the RECORD.

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

OLDER AMERICANS ACT

	Existing authorization	Fiscal year 1978 appropriation	Fiscal year 1979 budget request	Fiscal year 1979 appropriation (deferred due to lack of authorization)	Senate bill authorizations	House bill authorizations	Conference agreement
Federal Council on Aging		$450,000	$450,000			Fiscal year 1979–81 such sums	Fiscal year 1979–81 such sums
Clearinghouse	(1)	2,000,000	2,000,000		Such sums	Such sums	Such sums.
Title III:							
State administration	(2)	19,000,000	19,000,000		(2)	(3)	(2).
Area planning and social service	$287,200,000	153,000,000	153,000,000		Fiscal year 1979, $476,200,000; fiscal year 1980, $527,200,000.	Fiscal year 1979, $250,000,000; fiscal year 1980, $300,000,000; fiscal year 1981, $400,000,000.	Fiscal year 1979, $300,000,000; fiscal year 1980, $360,000,000; fiscal year 1981, $480,000,000.
Congregate meals [4]	275,000,000	250,000,000	287,000,000		Fiscal yea 1979, $375,000,000; fiscal year 1980, $425,000,000.	Fiscal year 1979, $350,000,000; fiscal year 1980, $375,000,000; fiscal year 1981, $400,000,000.	Fiscal year 1979, $350,000,000; fiscal year 1980, $375,000,000; fiscal year 1981, $400,000,000.
Home-delivered meals					Fiscal year 1979, $100,000,000; fiscal year 1980, $120,000,000.	Fiscal year 1979, $80,000,000; fiscal year 1980, $100,000,000; fiscal year 1981, $120,000,000.	Fiscal year 1979, $80,000,000; fiscal year 1980, $100,000,000; fiscal year 1981, $120,000,000.
Multipurpose senior centers [6]	(1)	40,000,000	40,000,000		(7)	Fiscal year 1979, $80,000,000; fiscal year 1980, $100,000,000; fiscal year 1981, $120,000,000.	(7).
Legal services						Fiscal year 1979, $25,000,000; fiscal year 1980, $30,000,000; fiscal year 1981, $35,000,000.	(7).
Ombudsman services					(8)	Fiscal year 1979, $4,000,000; fiscal year 1980, $6,000,000; fiscal year 1981, $8,000,000.	(8).
Title IV: [9]							
Training, research, and model projects	(1)	44,300,000	44,300,000		Such sums	Such sums	Such sums.
Community long-term care programs.					Fiscal year 1979, $10,000,000; fiscal year 1980, $15,000,000.	Fiscal year 1979–81, such sums	Fiscal year 1979–81 such sums.
Title V (formerly title IX)	200,000,000	194,400,000	[10] 228,450,000		Fiscal year 1979, $300,000,000; fiscal year 1980, $350,000,000.	Fiscal year 1979, $400,000,000; fiscal year 1980, $450,000,000; fiscal year 1981, $500,000,000.	Fiscal year 1979, $350,000,000 fiscal year 1980, $400,000,000 fiscal year 1981, $450,000,000.
Title VI (Indians)					Fiscal year 1979, $25,000,000; fiscal year 1980, $30,000,000.	Fiscal year 1979–81, such sums	Fiscal year 1979–81, such sums.
Surplus educational facilities					Fiscal year 1979–80, $3,000,000.		Such sums.
ACTION programs:							
RSVP	22,000,000	20,000,000	15,400,000			Fiscal year 1979, $25,000,000; fiscal year 1979, $55,000,000.	Fiscal year 1979, $25,000,000; fiscal year 1980, $30,000,000; fiscal year 1981, $35,000,000.
Foster Grandparents community services.	43,000,000	34,900,000	35,400,000				Fiscal year 1979 $55,000,000; fiscal year 1980 $62,500,000; fiscal year 1981 $70,000,000.
White House Conference on Aging					Such sums	Such sums	Such sums.
Study on racial and ethnic discrimination.					Do.	do	Do.

[1] Such sums.
[2] State administrative funds contained in general title III authorization.
[3] Allows 7 percent of title III allotment for State administrative costs.
[4] Formerly title VII authority.
[5] Reflects transfer of USDA commodity funding; no program growth.
[6] Existing title V authority.
[7] Contained in social services authority.
[8] Reserves 1 percent of social services allotment.
[9] Includes model project funding formerly authorized under title III.
[10] Reflects increase in minimum wage; no program increase.

Mr. EAGLETON. Mr. President, beyond the sums authorized in the bill before us, it is important to realize that funds under the Older Americans Act are used to help organize existing local resources and to stimulate the provision of new services in unmet areas of need. Recent figures from the Administration on Aging indicate that the total of $372,230,561 allocated to the States for fiscal year 1977 for State and community service programs generated an additional $230,644,198 of pooled cash contributions from State, local, and Federal—non-Older Americans Act—sources.

CONSOLIDATION

Both the Senate and House-passed versions of the bill consolidated the existing State and community grants program—title III—multipurpose senior centers—title V—and nutrition program—title VII—into a single title III under one administrative structure. The House bill retained separate authorizations for the multipurpose senior center program, legal services, and ombudsman program. The conference agreement does not contain these separate authorizations, but adopts the Senate approach of consolidating all social service authorities, with the exception of nutrition, into a single authorization. I would emphasize that deletion of the separate authorizations in no way reflects an intent that these various services be curtailed. Rather, the conference agreement seeks to provide greater flexibility at the local level to determine what amounts should be allocated in these areas.

With respect to multipurpose senior centers, which under present law are administered on a project basis, the conference agreement consolidates it as a part of the State formula program in order to more fully integrate centers. Under the bill, States and area agencies on aging will have increased resources with which to develop and expand center programs. I would also point out that the conference agreement permits the construction of center facilities, where no suitable facility exists, authorizes the use of mobile units to increase centers' outreach, and authorizes staffing costs in centers.

With respect to legal services, the conference agreement includes this program as one of the mandated priority services within each area agency on aging, thus assuring that each agency devote some portion of its funding to assuring adequate legal services to the elderly.

Finally, with respect to the ombudsman program, the conference agreement adopts the Senate provision requiring that each State reserve 1 percent of its allotment to develop and implement an ombudsman program.

In adopting this administrative and authorization consolidation, the conference committee believes that duplicative and overlapping functions can be eliminated, and that the efficiency and effectiveness of area agencies will be increased in each community, thus providing for more effective coordination of community resources for the elderly.

PRIORITIES

The Senate bill required that each area agency on aging allocate at least 50 percent of its funds under the act to three priority service areas: access services—transportation, Outreach, and information and referral; in-home services—homemaker/home health aid, visiting/telephone reassurances and chore maintenance; and legal services. The parenthetical listings following access services and in-home services are intended to be inclusive, not illustrative, services within each category. The House bill gave authority to the Commissioner on Aging to establish priorities.

The conference agreement retains the priority provisions of the Senate bill. The conference agreement also adopts the

Senate bill's waiver provision recognizing that some areas may already be meeting the needs in these three categories of service. If the area agency can demonstrate that the needs for one or more of the priority services are being met, the 50-percent targeting requirement may be reduced to an agreed-upon percentage level.

FORMULA

The Senate bill adopted a new formula, offered as a floor amendment, adding a new rural weight to the title III allotment formula. The House bill retained existing law, distributing funds on the basis of the relative population aged 60 or over in each State.

The conference agreement retains the existing formula, but includes a requirement that each State reserve from its allotment an additional 5 percent above the amount currently being spent for services in rural areas, to better serve the rural elderly.

The conference committee felt that more detailed data was necessary prior to making a major change in the basic allotment formula. Thus, the legislation requires the Commissioner on Aging to undertake a study of urban and rural services.

The conference committee was concerned by the absence of vital data in determining the differences in delivering services to urban and rural elderly. The Administration on Aging is expected to develop the kind of detailed data base that will enable future Congresses to look at these issues from a more knowledgeable vantage point. The study will include the needs of the rural and urban elderly; the amount of funding which is now going to meet the needs of the urban and rural elderly; the development of programs in rural areas and urban areas designed to meet the needs of the elderly; and the relative cost of services to rural elderly and urban elderly.

The Administration on Aging is expected to work closely with various components at the U.S. Department of Agriculture, which have some expertise in this area, such as the Agricultural Research Service, the old Rural Development Service which has now been reorganized, and various private and research organizations which have been involved in collecting data in this area.

NUTRITION SERVICES

The conference agreement retains the Senate's two separate authorizations for congregate meals and home-delivered meals. Although separate authorizations are retained, the administration of the nutrition program is consolidated, thus assuring coordination of nutrition services within the overall network of social services for the elderly. The conference report contains a provision of the House bill which assures that existing nutrition projects which meet the requirements of the new act continue to receive funds.

Like the Senate bill, the conference report deletes all reference to meals-on-wheels groups. As I indicated at the time of Senate passage of this legislation, there is nothing in this legislation which requires any meals-on-wheels groups to accept Federal funds. I applaud the volunteer efforts of the meals-on-wheels groups and have taken steps to insure that nothing in this legislation would in any way jeopardize that voluntary effort.

TRAINING, RESEARCH, AND DISCRETIONARY PROJECTS

The conference agreement retains the provision in the Senate bill requiring the Administration on Aging to develop a national manpower policy on aging. It also retains the special emphasis in the Senate bill on training minorities.

The conference report broadens the existing model project authority in the act to emphasize special research and demonstration projects in long-term care. Similar to the provisions in the Senate bill, the Commissioner on Aging is authorized to make grants to programs which would provide a continuum of services designed to support alternatives to institutional settings.

Mr. President, I believe this new model project authority could be the key to developing a truly comprehensive and coordinated service system which would allow the elderly to live with dignity within their own homes. The conferees intend the Commissioner on Aging to play a significant role in the formulation, coordination and implementation of all Federal long-term care policies and programs as they affect the elderly.

The conference agreement also retains the Senate provision requiring special demonstration projects on legal services for older Americans. Although this legislation requires that each area agency on aging devote some portion of its allocation to providing legal services for the elderly, the conferees believe that the elderly will never receive adequate legal services until the private bar is made aware of the special legal needs of the elderly and special support programs are developed.

COMMUNITY SERVICE EMPLOYMENT

The conference report, like the Senate bill, requires a greater degree of coordination between community service employment programs operated by the national contractors and those operated by the States. In addition, the conference agreement expands eligibility under the program by allowing elderly individuals with incomes up to 125 percent of the poverty level to participate; and requires that programs operated by the national contractors be maintained at fiscal year 1978 levels, and that from funds available above the fiscal year 1978 level, 55 percent be allowed to the States and 45 percent to the national contractors.

INDIAN TRIBES

The conference agreement retains the Senate approach of providing a separate title for grants to Indian tribes to develop their own services for elderly Indians. For this purpose, such sums as may be necessary are authorized for fiscal years 1979 through 1981, with the proviso that at least $5 million must be appropriated before the separate title becomes effective. This "trigger" provision is included to insure that adequate funds are available to implement a new program.

STUDY OF RACIAL AND ETHNIC DISCRIMINATION

The conference report contains the Senate provision requiring the U.S. Commission on Civil Rights to undertake a study of discrimination based on race and ethnic background in federally assisted programs affecting older people.

AGE DISCRIMINATION

The conference agreement amends the Age Discrimination Act of 1975 to specifically authorize a private right of action allowing those who believe they have been the victims of age discrimination to seek judicial redress only after administrative remedies have been exhausted; to allow the Secretary of Health, Education, and Welfare to bypass State agencies found in violation of the act and award program funds to other appropriate public or private nonprofit agencies; to delete the word "unreasonable" in the statement of purpose; to include new reporting requirements for all agency heads for the purpose of determining if the agency is in compliance with the Age Discrimination Act of 1975; and to require HEW to approve other agencies' regulations under the act.

Mr. President, the administration has consistently opposed these final two provisions of the Age Discrimination Act amendments retained in the final version of the bill: the requirement that HEW approve other agencies' regulations under the Age Discrimination Act; and the requirement that every agency gather specific age data on its programs, submit such data to HEW, and that HEW submit a report to Congress evaluating each agency's report.

The administration feels strongly that it is not appropriate for HEW to clear the regulations of other agencies, and that the data and reporting requirements will substantially increase both costs and paperwork burdens.

However, the conferees agreed that the Secretary of HEW, charged with the primary responsibility to implement the prohibition against age discrimination, should play an important coordinating role to assure a uniform Federal policy in this regard.

I am confident of the administration's willingness to enforce the Age Discrimination Act, and I can assure the Department that the Subcommittee on Aging will monitor this situation closely to determine if future legislative action is necessary.

DOMESTIC VOLUNTEER SERVICE ACT PROGRAMS

The Senate bill extending the Older Americans Act did not contain amendments to the older American volunteer programs authorized by title II of the Domestic Volunteer Service Act of 1973, having considered these programs in the "Domestic Volunteer Service Act Amendments of 1978" which passed the Senate on July 21, 1978. The House of Representatives considered these programs within the Older Americans Act amendments.

The conference report, like the Senate ACTION amendments, extend the authorization of these programs for 3 years.

MEANS AND INCOME TESTS

Finally, Mr. President, I would like to address the issue of means and income tests. The programs authorized under the Older Americans Act have never depended upon income as a criterion for eligibility. The Congress does not intend to impose income as a determinant of eligibility for the comprehensive, coordinated

services provided under this legislation. Congressional intent has been clear since 1965 that the programs which the Older Americans Act makes possible have never been intended as "welfare" efforts. Accordingly, no means or income test should be imposed except where explicitly authorized in the title V senior community employment program.

However, in view of the fact that some 7 million older Americans have incomes which either fall below the poverty threshold or within the "near poor" category, the Congress intends that until needed services are available for all older Americans, the State agencies, in dividing States into planning and service areas and developing comprehensive, coordinated service programs, give special consideration to the needs of the low-income elderly.

Similarly, since older members of minority groups tend to have special social problems and needs, these, too, warrant special consideration.

I urge all of my colleagues to support this measure to insure continuation of services to all our elderly citizens.

Mr. BELLMON. Mr. President, during floor consideration of this bill, I offered an amendment—which the managers of the bill accepted—to require a study by GAO of the relationship between programs funded under this act and other Federal programs which serve older Americans; and to require a one-time report by the Secretary of HEW on the relationship between planning systems for programs under this act and planning systems for title XX programs.

I was—and remain—particularly concerned about unnecessary duplication and overlap between programs. I am also concerned that programs under the Older Americans Act may cause other Federal programs to serve older Americans to a lesser extent than might otherwise be the case.

The conference report indicates that the conferees agreed that the GAO study called for by my amendment should be done—but that they did not feel it needed to be written into the act. The report indicates that the responsible committees in the two Houses will request this study.

I am pleased that the conferees agree that this GAO analysis is important. I believe it will be useful in congressional oversight activities as well as when this act is next reauthorized.

I would like to congratulate the Senate conferees for their hard work on this bill; and to thank them for supporting the GAO study contemplated by my amendment.

I did notice that the conference report does not make clear whether the conferees intend to request the report from the Secretary of HEW on the relationships between the planning systems for Older Americans Act programs and for title XX programs.

Is it the intent of the Human Resources Committee to request both the GAO study and the one time report by the Secretary of HEW?

Mr. EAGLETON. That is correct. I intend to request both studies next week.

● Mr. KENNEDY. Mr. President, I am pleased to see the Senate take its last step on the road to reauthorization of the Older Americans Act, by passing the conference report on the bill.

Mr. President, I was honored to serve on the conference committee. I believe that the work performed by the conference committee under the able leadership of Senator EAGLETON on our side and Congressmen PERKINS and BRADEMAS for the House, has produced a superior bill. Both houses worked hard to combine the best features of the legislation passed by each.

The legislation that now goes to the President contains a variety of programs which are of great interest to me. We have a separate authorization for meals for the homebound elderly. We have mandated that every area agency will expend funds on legal services for the elderly and have set aside a larger amount for national demonstration projects and resource centers. The community services employment title has been made more flexible and responsive to different economic conditions in different communities. The role of the Federal Council on Aging has been strengthened. We have strengthened the language of the Age Discrimination Act and allow new causes of action under it.

Mr. President, I do not propose to elaborate on these programs now. Many of my thoughts on this bill were contained in my remarks when the Senate considered the authorization on July 24.

But, in sum, this reauthorization helps insure that we are making the effort to provide for the older people of America that to which they are entitled: The health, the honor, the dignity, the fulfillment which is so much theirs after the great efforts that they have made in building a better Nation for us.●

● Mr. DOMENICI. Mr. President, I am pleased to join with the distinguished chairman of the Senate Subcommittee on Aging (Mr. EAGLETON), and the ranking minority member on that subcommittee (Mr. CHAFEE), in urging our colleagues to give overwhelming approval to H.R. 12255, the 1978 amendments to the Older Americans Act.

As the ranking minority member on the Special Committee on Aging, I have a special interest in and commitment to the task of improving the quality of life for older Americans. On February 28, 1978, I introduced S. 2609, the first comprehensive bill offered in the 95th Congress designed to extend and expand the programs authorized under the Older Americans Act. This measure was drafted with the close cooperation of my distinguished colleagues on the Special Committee on Aging, Senators BROOKE and PERCY, and it received the additional cosponsorship of Senators DOLE, SCHMITT, MARK HATFIELD, and BELLMON. I am pleased that a number of the innovations contained in S. 2609 have been incorporated in the legislation we are considering today.

The conference report retains my provision which is designed to ease the paperwork burden on State and area agencies on aging by requiring the administration on aging to continually reexamine the nature and frequency of all agency requests for information. In addition, H.R. 12255 expands the definition of social services to include health screening, and preretirement, and second career counseling. By adding health screening to the list of social services that can be offered under this act we are seeking to involve the aging network in efforts to prevent, detect, and/or treat those illnesses—such as high blood pressure, diabetes, and glaucoma—which needlessly disable or kill tens of thousands of older persons each year. The local aging units can coordinate this undertaking with a number of existing community-based organizations, such as the Red Cross, the Heart Association, et cetera, at relatively little cost. Not only would such a program improve the health of a large number of senior citizens, but it would also produce significant savings in the medicare, medicaid, and title XX programs. The addition of preretirement and second career counseling reflects a growing need for these services among many middle aged and older workers. Earlier this year the Congress, with my active support, increased job opportunities for middle aged and older workers by limiting mandatory retirement. As the demographic pattern of our society changes, we are going to find greater demand for older workers in more and more areas of our economy. Mr. President, I believe that this trend will give older persons the opportunity to remain active contributing members of their community. In order to help expedite this transition we need to provide additional counseling and training programs to help people embark upon second careers, and to enable older workers to better plan for their retirement years. I believe that the language contained in this conference report will begin the process of expanding these services as part of the overall aging network.

I am also pleased that the conferees retained language I offered as an amendment which will expand the role of senior centers. In the Older Americans Comprehensive Services Amendments of 1973, primary emphasis was placed on strengthening of the Administration on Aging and the State offices on aging, and the development of the new area agencies on aging. The 1973 act failed to incorporate senior centers as an integral part of the overall aging network. S. 2609, and now H.R. 12255, have sought to correct that oversight by urging area agencies to incorporate multipurpose senior centers as community focal points for the delivery of social and nutritional services. It may not be possible to establish such a focal point in each community, but movement in that direction will certainly help to reach many older Americans who are presently without services. The colocation of programs envisioned in this bill tends to improve access to the services, and makes for a more efficient use of the limited resources available under this act. In addition, senior centers can be an ideal component in the outreach effort which is so vital if we are to reach those people who need these services but are currently not receiving them. I am also pleased to note that the joint explanatory statement, following a concept originally enunciated in S. 2609, urges the States and area

agencies to place appropriate emphasis on the development and expansion of senior centers. The conference report also authorizes the construction of senior centers in areas where no existing structure is suitable for that purpose.

The conferees retained my suggestion that the Secretary of Labor be allowed to develop some demonstration programs on how we can help participants in the public service employment program make the transition to jobs in the private sector. If we are able to move more of the title V employees to the private sector, we can open up new job and training opportunities for other disadvantaged older workers.

H.R. 12255 retains language that would give the State greater responsibility for setting the pace of program consolidation during the first 2 years of this legislation. This amendment, which was offered during the floor debate on July 24, was never intended to thwart the intent of Congress to bring about the consolidation of titles III. V, and VII. Its purpose was to give the States maximum flexibility in accomplishing this goal. I wanted the States, who are dealing on a day-to-day basis with the area agencies and the title VII nutrition projects, to have greater flexibility in the exercise of their waiver authority. In addition, I thought it was important for us to establish legislative history, making it clear that the waiver need not be statewide. It may be limited to one or two area agencies within the State. With this provision, I see no reason why full consolidation cannot be achieved smoothly and with no disruption to the various programs by fiscal year 1981.

I advocated in both S. 2609 and in a floor amendment to S. 2850 that larger urban areas should have a right to serve and to establish their offices on aging as the local Area Agency on Aging. The conference report on H.R. 12255 would permit any unit of general purpose local government with a population of 100,000 or more to seek designation as a planning and service area. If that designation is denied, they will be allowed to appeal the State's decision to the Commissioner on Aging. The commissioner could then review the data and decide whether or not the State's decision was appropriate.

Mr. President, before I conclude my remarks, I would like to focus attention on two other provisions which have been incorporated into this conference report. The first is a new direct funding mechanism for Indian tribes, which is embodied in the new title VI of this conference report. This provision parallels very closely title VIII in S. 2609, and it constitutes a major step forward in providing vitally needed social and nutritional services for older Indians. As a Senator from New Mexico, I represent a State that contains the second largest Indian population of any State in this country. The need for an expanded program of supportive services for older Indians is long overdue. There are almost 300 federally and State recognized tribes who have a special sovereign relationship with the Federal Government, and I have worked to develop a direct funding that will give the tribal governments the wherewithal to deliver the social and nutritional services mandated in the Older Americans Act. Title VI also provides for the conversion of surplus Bureau of Indian Affairs for the conversation of surplus Bureau of Indian Affairs educational facilities into senior centers, community centers, nutrition sites, extended care facilities, and the delivery points for other social services. I am pleased that this approach, which I drafted earlier this year, will be enacted as part of H.R. 12255.

During the July 24 debate in the Senate I offered an amendment which would add a rural factor to the interstate formula. My goal was to expand the delivery of social, nutrition, transportation, legal services, and so forth, to disadvantaged elderly persons living in isolated rural locations. I would like to thank Senators EAGLETON and JAVITS and the other Senate conferees for inviting me to sit in on that part of the conference which focused on this issue. This was a gracious gesture on the part of the Senate conferees, all of whom opposed my formula change during the floor debate. The amendment was designed to give rural State the wherewithal to better meet the needs of their elderly. This goal would have been accomplished under my amendment by giving an additional weight to the rural elderly in determining the State's allocation under this act. The conferees were unwilling to accept this provision even though it had passed the Senate by an overwhelming vote. A compromise was reached, however, which I believe will help to expand the aging network and services it provides in rural America. The compromise will require each State to increase by 5 percent, the effort it is already making to expand services in rural areas. In addition, the conferees retained a number of other rural provisions offered by myself and other members. Among these provisions is a requirement that there be greater cooperation between rural Area Agencies on Aging and the Economic Development Administration's district offices. An effort will be made to expand the training program for rural service providers, develop demonstration projects for service delivery techniques in rural areas, and add rural membership to the Federal Council on Aging. Although we were not able to retain the Senate's interstate rural funding formula, I believe we have made significant progress in our efforts to improve the quantity and quality of services delivered to our Nation's rural elderly.

Another important provision in this bill is the mandating of a comprehensive study on urban/rural services. The conferees were clearly concerned by the lack of hard data in determining the differing costs in delivering services to rural and urban elderly. It is my hope that the Administration on Aging will develop the kind of detailed data base that will enable future Congresses to look at these issues from a more knowledgeable vantage point. The study should include: First, the needs of the rural and urban elderly; second, the amount of funding which is now going to meet the needs of the urban and rural elderly; third, the development of programs in rural areas and urban areas designed to meet the needs of the elderly; and fourth, the relative cost of services delivered to rural elderly and urban elderly. I believe it is only reasonable for us to expect that the Administration on Aging will work closely with various components of the U.S. Department of Agriculture which have some expertise in this area, such as the Agricultural Research Service and the old Rural Development Service, which has been recently reorganized. In addition, a number of private organizations and research groups have become involved in collecting data on rural America.

I am confident that the enactment of the 1978 amendments to the Older Americans Act will be a significant step forward in our efforts to reach and serve older rural Americans in a manner which is equitable to their urban counterparts.

Mr. President, in closing I would like to once again compliment the members of the Subcommittee on Aging for their diligence over many months in shaping this important legislation. In the almost 6 years I have served in this Senate, Mr. President, I have watched the Older Americans Act grow and mature and become an increasingly vital force in our ongoing effort to better meet the needs of older Americans. H.R. 12255 is a major step forward in our effort to improve the quality of life of older Americans, and I hope that the President will sign this bill promptly.●

Mr. JAVITS. Mr. President, as the ranking minority member of the Human Resources Committee, as an original sponsor of the Older Americans Act of 1966, and every subsequent reauthorization, and as a conferee, I urge the Senate's support of the conference report on H.R. 12255, the Comprehensive Older Americans Act Amendments of 1978.

The conference agreement provides for a 3-year reauthorization of programs under the Older Americans Act. It retains the critical provisions of the Senate amendment which will improve the operation of the range of programs serving older persons by consolidating and streamlining the administration of these programs at the Federal, State, and Area Agency level. This consolidation and refinement of the existing title III (State and community services), title V (Multipurpose Senior Centers), and title VII (Nutrition Services) into a single administrative title will ameliorate the currently fragmented and occasionally duplicative approach which Federal, State, and local governments have taken in confronting the problems of the elderly.

The conference agreement provides for a strengthened program of nutrition services, both for meals served in congregate settings, and for home-delivered meals. The agreement retains the Senate provision which I authorized to insure continued emphasis in he nutrition programs on hot nutritious meals for our older Americans.

The amendments agreed to by the conferees provide new and expanded authority for legal services for older Americans and ombudsman services for residents of long-term care facilities. Moreover, the agreement retains the provisions of the Senate amendment which

establishes distinct Federal priorities for a broad range of services to older persons. These priorities, which address three of the greatest needs of the elderly—for transportation, in-home services, and legal services—will be implemented within each Area Agency on Aging.

The conference agreement also expands support for the senior community service employment program, which has provided meaningful jobs to thousands of older Americans since its enactment in 1965. Under the agreement, more low-income older persons with otherwise poor employment prospects will become eligible for employment.

The conferees have also agreed to retain the 90–10 Federal/non-Federal matching requirement for the delivery of social services in fiscal year 1979 and fiscal year 1980. In fiscal year 1981, this ratio will reduce the Federal share to 85 percent. Although the Senate amendment provided an 85–15 match in fiscal year 1980, this 1-year delay will give States additional time to plan for the allocation of additional funds for these services.

The conferees also incorporated provisions of both the House bill and the Senate amendment to give additional attention and emphasis to the special needs of older Americans residing in rural areas. The agreement retains the existing interstate allotment formula, but provides that each State reserve from its allotment an additional 5 percent above its current expenditure on services to elderly in rural areas to augment such services, where appropriate.

Finally, Mr. President, I would like to commend the tireless and productive work of Senator EAGLETON, the chairman of the Subcommittee on Aging, and of Senator CHAFEE, the ranking minority member of the subcommittee, and to express my appreciation to the chairman of the House Education and Labor Committee, Mr. PERKINS, and Mr. BRADEMAS, the chairman of the Subcommittee on Select Education, whose hard work and cooperation assisted so greatly in arriving at this excellent conference agreement. I would also like to note the special contributions to this legislation of Senator DOMENICI, the ranking minority member of the Special Committee on Aging, whose tireless efforts on behalf of older Americans have earned him the respect and gratitude of all our colleagues. Through their work, and that of the other conferees, we have achieved legislation which will enhance and enrich the lives of all our older citizens.

I believe the conference agreement merits the support of my colleagues, and urge its adoption by the Senate.

● Mr. CHAFEE. Mr. President, the conference agreement on extension of the Older Americans Act represents an important commitment to improving the quality of life of our older citizens.

The problems of an aging America represent one of the greatest challenges this Nation faces today, but it is a challenge we should approach with some sense of satisfaction. The problems are actually a mark of the success of a society whose advances in medicine, science, education, and standard of living have allowed more and more people to live longer. In 1950, there were about 12 million people over 65. By the year 2,000, there will be more than 31 million people over 65, and 45 percent of those will be over 75. Although these encouraging facts are bringing with them some new problems, and will require some major societal adjustments, I do not believe they should be viewed with alarm.

Now is the time we should begin to work toward improving the quality of life as well as extending life. We should attack these problems with the same energy, determination, engenuity, and optimism which America has always exhibited in dealing with rapid societal changes.

None of us can help but be moved by the plight of many older people today, living on fixed incomes, faced with rising inflation, waning physical health, and isolation. In response to these problems, with a little help and a sensitive ments have responded to these special needs with numerous programs to help older people. Many of these programs assume that older people are dependents, and not necessarily productive members of society or continuing participants in community life.

More and more, we are realizing that while older people have unique problems, with a litle help and a sensitive support system, they can live independent, dignified, and productive lives.

I believe the Older Americans Act builds on this philosophy and provides community-based programs and services which allow older persons to remain in their homes and function as an intergral part of their own communities.

The bill which has been approved by the conferees expands support for these services which fill the special needs of older people. It also makes some significant changes in the Older Americans Act which should make this program more effective and efficient, and eliminate waste and duplication. While providing direct service support, it also strengthens the network of community-based systems which assist older people to take advantage of existing local resources.

The bill consolidates several titles of the Older Americans Act enabling local agencies to establish priorities and plan for services which respond to local needs. It provides that area agencies on aging shall be the focal point for social services programs, including nutrition projects and senior centers which had previously been administered through State agencies and the Federal aging agency. This should allow for more efficient organization and linkages of these programs with other title III services such as information and referral, transportation, in-home assistance, and legal services. I believe this is a very important improvement, and will allow us to stretch our resources much further.

The act also requires that States and local planning agencies take special consideration of those elderly persons with the greatest economic and social needs. This is in no way meant to restrict those programs, but recognizes that we must help those first who need help most.

The bill significantly expands support for delivery of nutritious meals to the home-bound elderly, but allows local flexibility by allowing transfer of funds between the congregate meals program, which has proven so valuable, and home-delivered meals programs.

The bill also includes some improvements in the Community Service Employment for Older Americans program. It allows for better coordination of distribution of jobs, includes an emphasis on innovative job opportunities through work sharing and other experimental methods, and encourages transition of public service jobs to the private sector. It also raises the income eligibility criterion to 125 percent of the poverty index and increases the authorization levels over the next 3 years. I believe this program deserves particular support and attention, because it demonstrates the value of older workers to all employers and can change people's attitude about employment of older people.

The conference report also includes an extension of three important programs which are administered by the ACTION Agency, the Foster Grandparents program, Senior Companions program, and the Retired Senior Volunteer program (RSVP). These programs provide a modest amount of Federal support for voluntary activities of older persons, and provide society an opportunity to benefit from valuable contributions older people can make.

Mr. President, these programs provide certain services which are essential to many older Americans, but they also provide programs which represent an enlightened attitude toward aging, one which I hope will be the attitude of the future. This is an attitude which recognizes that older people are not a burden upon society, but important contributors to the well-being of all of us. They are not a duty simply to be attended to, but a valuable human resource to be tapped and allowed to reach full potential as productive members of society.●

● Mr. CHURCH. Mr. President, I support the conference report on the Comprehensive Older Americans Act Amendments of 1978, H.R. 12255. The amendments signify an important expansion and improvement of the Older Americans Act and other legislation affecting the elderly.

Mr. President, these amendments tie up many loose ends which have existed in several programs since 1965. Area agencies on aging, which were created in 1973, are given greater responsibility as the focal point in communities for coordination of services to our elderly.

CONSOLIDATION

These added responsibilities are emphasized in the consolidation of the titles. I am particularly pleased that the House and Senate conferees approved a consolidation similar to the approach incorporated in my bill, S. 2969, to extend the Older Americans Act. This consolidation of the major services titles under one comprehensive title III will enhance the effectiveness and efficiency of the act by requiring the States and area agencies to have one comprehensive plan which would include all the services under title

III. In addition, it will help to alleviate unnecessary paperwork and administration duplication for State and area agency personnel.

Moreover, the conference bill incorporates several other provisions I have advanced.

HOME-DELIVERED MEALS

The conference bill will help considerably to emphasize the home-delivered meals program by providing a separate authorization for it. This represents an important step forward to broadening the home-delivered meals program so that more homebound elderly will benefit from a good meal. The Senate Committee on Aging has heard testimony, time and time again, that this program provides a reliable contact with the outside world for the older person. Many older persons have told me personally that the good meal and friendly visitor make their day, or even—to borrow from a current song, "light up their lives."

LEGAL SERVICES

The conference bill gives greater attentention to legal services, although not precisely the way I would have preferred. Nonetheless, I am pleased that the 1978 amendments designate legal services as 1 of 3 priority services under title III. In addition, the bill supports legal services demonstration projects generously under the model projects provision. Existing legal services programs have amply demonstrated that appropriate counseling from an attorney or paralegal can help assure that older Americans are treated equitably on issues involving income, taxes, social security, SSI, pensions, housing, utility bills, and other complex subjects. This is vitally important because older persons—more so than other age groups—are affected by Federal programs.

NURSING HOME OMBUDSMAN PROGRAM

Elderly persons in nursing homes and other group facilities also need assistance to protect their rights. The Administration on Aging has used model project funds to enable States to establish a program to protect the rights of the elderly in long-term care facilities. The 1978 amendments build upon that ombudsman program and require each State to use a portion of its social services allocation to support a nursing home ombudsman. I included an ombudsman program in S. 2969, because I have witnessed the positive effects of this program. My home State of Idaho has been a leader in developing protective procedures for residents of nursing homes, and I am pleased that a national program is being supported.

ADVOCACY

Mr. President, all of the programs under the Older Americans Act can benefit the elderly. Yet, without an advocate at the Federal, State, or local levels, older Americans' needs might go unnoticed. In S. 2969, I recommended that the Administration on Aging, State agencies on aging, and area agencies on aging should be visible and effective advocates for the elderly. I am very pleased that the 1978 amendments contain such a provision for each agency and stress that the agencies should continue an ongoing process of monitoring, evaluating, and commenting upon all programs and policies which affect older Americans.

SENIOR COMMUNITY SERVICE EMPLOYMENT

One of the most popular programs for older persons is the National Senior Service Corps. It has been redesignated as title V under the new amendments, but it will still provide fulfilling community service jobs for persons 55 years or older.

The conference bill also expands the eligibility to include those with incomes up to 125 percent of the poverty guidelines. I recommended this provision in my bill because I feel that there are many instances when an individual with income slightly above the poverty level is in as great a need, if not greater, than a person at or below the poverty line. This increased flexibility and the increased authorizations for title V will give the national contractors and States greater ability to provide a job for more seniors who need and want a job.

DIRECT FUNDING TO INDIANS

H.R. 12255 also establishes a separate title authorizing direct funding for Indian tribes or tribal organizations. This means that the funding for social services, nutrition programs, senior centers, legal services, ombudsman programs, and others can be directly allocated to those tribes making an application demonstrating that they have the capability and need for these programs. Indian tribes receive direct funding under other Federal programs, such as CETA and revenue sharing, and should have the option to develop and manage their own programs under the Older Americans Act.

COMMUNITY LONG-TERM CARE

The amendments also recognize the growing awareness of the need for a comprehensive continuum of care for individuals in long-term care facilities. First, the Commissioner is directed to cooperate and coordinate Older Americans Act programs with programs under the Public Health Service Act to enhance the Federal Government's capability of meeting the special needs of the institutionalized. In addition, the amendments would establish a separately funded demonstration project to provide funds to State agencies on aging, selected area agencies, and other public and private nonprofit agencies to develop a comprehensive long-term care program. These funds cannot be used to support direct services which are now provided under titles XVIII, XIX, and XX, but are to be used to assist in coordinating these services and supporting others which lead to a comprehensive system.

TRAINING AND RESEARCH

I am very pleased that the final bill authorizes the Administration on Aging to develop a national manpower policy on aging to govern the training efforts supported by their agency. Training efforts in the past have often been fragmented and uncoordinated, and I hope that this national policy will enable AOA to identify the manpower needs in the country and direct training programs to meet these needs.

WHITE HOUSE CONFERENCE ON AGING

The amendments include my proposal for a White House Conference on Aging to be held in 1981. The last White House Conference was held in 1971, and many changes have transpired since that time. Another conference is needed in 1981 to take stock of what has occurred since 1971 and to develop an action-oriented national policy on aging.

AGE DISCRIMINATION ACT

Finally, the amendments make important changes in the Age Discrimination Act. This act, which was passed in 1975, will be effective in 1979. It protects persons from discrimination on the basis of age in programs receiving Federal assistance. The amendments strengthen the act to give individuals the right to bring suits on their own after the expiration of 180 days from the filing of an administrative complaint. This act can have far-reaching effects on the elderly as well as other age groups. I applaud the efforts of the Education and Labor Committee and the Human Resources Committee in recognizing the importance of this act and in acting now to make the act more effective before implementation.

Mr. President, the amendments to the Older Americans Act and the Age Discrimination Act are major advances for older Americans. I would like to commend the Senate Subcommittee on Aging—and its chairman, Senator EAGLETON—and the House Subcommittee on Select Education—and its chairman, Representative BRADEMAS—for their leadership in bringing this legislation to the floor for a vote.

This act has become the major vehicle to provide health services, social services, and employment programs for older Americans, and the 1978 amendments improve and expand the act's capability to serve greater numbers of elderly more responsively and effectively.

I ask unanimous consent that the Senate Committee on Aging's more detailed analysis of the 1978 amendments be printed at this point in the RECORD.●

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

MAJOR PROVISIONS IN 1978 OLDER AMERICANS ACT AMENDMENTS (H.R. 12255)

Position of AoA in HEW: Conferees rejected the House proposal to elevate the Commissioner on Aging to be directly responsible to the Secretary and retained existing law (the Commissioner will be responsible to the Office of the Secretary). However, the Secretary assured the conferees that the position of the Commissioner will be maintained at a high level with full access to the Secretary.

Federal Council on the Aging: Senate conferees agreed to the following House provision: (1) the Federal Council would be entitled to independent staff; (2) no full-time Federal employee would be appointed as a member of the Council; and (3) the Council would be entitled to a separate funding authorization. The conferees agreed that the staff (which need not be Civil Service employees) would be small and appointed by the Chairman after consulting with other members. The Senate provision to emphasize urban and rural membership on the Council was accepted.

Reduction of paperwork: House agreed to the Senate provision to direct the Commissioner on Aging to undertake necessary actions to reduce the paperwork burden on State and area agencies on aging.

Effect of senior community service employment wages on other programs: The conferees dropped the House provision which would not count senior community service employment wages for purposes of determining eligibility for Medicaid, Title XX social services, and public housing.

Consolidation: The conference bill authorizes a new comprehensive Title III, consolidating former Title VII (nutrition), Title V (multipurpose senior centers) and Title III (social services) with separate authorizations for social services, congregate meals, and home-delivered meals. The Commissioner would be authorized to waive (up to 1980) consolidation requirements when compliance would reduce or jeopardize the quality of services. The waiver would be granted, through, only when it is demonstrated that progress toward consolidation is being made.

Targeting of funds: Each planning and service area would be required to spend at least 50 percent of its Title III social services allocation on in-home, access (transportation, outreach, information and referral, etc.) and legal services. State agencies on aging would be allowed to grant waivers and reduce the percentage accordingly if the area agency can show that it is meeting the targeted area service needs through other resources.

Planning cycles: The conference agreement extends the Act for three years and allows State and area agencies on aging to submit three-year plans with necessary annual adjustments.

State administration. Conferees rejected the House provision to allow State agencies to use up to 7 percent of their Title III allocations for administration and agreed to retain current law. However, the conferees accepted the House provision to raise the minimum for State administration from $200,000 to $400,000 (from $62,500 to $75,000 for each territory, as in the Senate bill).

Area Agency administration: Each area agency on aging would be permitted to spend up to 8.5 percent of its total Title III allocation for paying 75 percent of its administrative costs.

Rural allocation: the conferees agreed to require each State to spend an additional 5 percent (above what the State was spending in fiscal 1978) of its Title III social services allotment in rural areas. A waiver is authorized (1) for States with insufficient numbers of rural elderly to warrant additional expenditures or (2) if the needs of the rural elderly are already being adequately met.

Legal services: Conferees accepted the Senate provision to designate legal services as one of three priority services under Title III. Legal services would be provided through (1) a Legal Services Corporation project or (2) other legal services provider agreeing to coordinate its services with a Legal Services Corporation project in the area in order to concentrate the use of funds on older persons with the greatest need who are not eligible for legal assistance under the Legal Services Corporation Act. The conference report states, "no project shall, in any way, give a means test or asset test to any applicant." The Commissioner would be directed to conduct a study concerning the need for a separate legal services program under the Older Americans Act. At least $5 million of model project funding would be authorized for legal services demonstration projects for older Americans.

Ombudsman program: Conferees accepted the Senate provision to require States to reserve 1 percent or $20,000, whichever is greater, of their Title III social services allotments to support a statewide long-term care ombudsman program.

Nutrition program: The conference agreement requires (1) each nutrition project to provide meals in a congregate setting; (2) home-delivered meals to be based on a determination of need; (3) each project to establish outreach activities; (4) the Commissioner to issue guidelines concerning charges for meals; (5) funds realized from meal charges to be used to increase the number of meals served; and (6) area agencies on aging to continue funding existing nutrition projects meeting the requirements established in Title III. In addition, the agreement codifies the existing regulation permitting up to 20 percent (50 percent in States with unusually high supportive services costs) of the State's nutrition allotment to be used for recreational activities, information, health and welfare counseling, and referral services for a two-year period. Nutrition projects will be fully integrated into the social services network after two years, and supportive services will be funded through the social services allotment. States would also be permitted (with approval by the Commissioner) to transfer funds between the congregate meal allocation and the home-delivered meal allocation. The minimum level of assistance from the surplus commodities program would be increased from 25c to 30c per meal for fiscal years 1979, 1980, and 1981. The conference report makes it clear that any organization wishing to limit its application to the cost of food may do so.

Limited construction of senior centers: States would be permitted to use Title III social services funding for limited construction of senior centers. The State agency would make the determination after full consideration of the views of the area agency on aging.

Staffing and operational costs for senior centers: States would be permitted to use Titel III social services funding for personnel and operating costs of senior centers.

Direct funding of Indian tribal organizations: The conference bill would establish a separate title to authorize the Commissioner to make funding directly available to Indian tribal organizations to pay all of the cost for delivering social and nutritional services to Indians 60 years or older. In addition, surplus educational facilities could be used for multipurpose senior centers. At least $5 million must be appropriated before the direct funding mechanism would become operational.

National manpower policy: The Administration on Aging would be directed to develop a national manpower policy on aging and make training grants in accordance with this policy.

National impact demonstrations: The conferees agreed to the Senate provision which authorizes the Commissioner to support model projects which have national significance in demonstrating methods of expanding or improving social services, nutrition services, multipurpose senior centers, "or otherwise promoting the well-being of older individuals."

Special projects in long-term care: The final bill authorizes the AoA to fund State agencies, area agencies, local offices on aging, and private non-profit organizations to support the development of comprehensive, coordinated systems of long-term care for older persons.

Eligibility for senior community service employment: Conferees agreed to the House provision to expand eligibility to Title V (senior community service employment) to 125 percent of the poverty guidelines.

Allocation for national contractors and States: The final bill would authorize the national contractors to retain at least the number of positions they supported during fiscal year 1978 and requires that additional funding after fiscal year 1978 be allocated at 55 percent for the States and 45 percent for the national contractors.

Innovative work modes: The Secretary of Labor would be directed to develop innovative work modes and provide technical assistance in creating job opportunities through work sharing and other experimental methods to prime sponsors, unions, and employers.

Transition to private employment: The Secretary of Labor would be directed to reserve up to 1 percent of appropriations above the fiscal 1978 level in order to enter into agreements to improve the transition from the Senior Community Service Employment program to private employment.

Environmental improvement and energy conservation projects: The Secretary of Labor is authorized, after consulting with the Environmental Protection Agency and the Department of Energy, to create part-time employment relating to environmental improvement and energy conservation.

Prior consultation with State agencies: National contractors conducting a senior community service employment project within a State must submit a description of the project to the State agency on aging 30 days prior to the project's starting date.

White House Conference on Aging: The bill would authorize a White House Conference on Aging to be held in 1981.

Study on racial and ethnic discrimination: The conference agreement directs the Civil Rights Commission to conduct a study on racial and ethnic discrimination in federally-assisted programs.

Age Discrimination Act: The conference agreement: (1) deletes the word "unreasonable" in the ADA statute; (2) grants individuals the right to bring a private civil suit after the expiration of 180 days from the filing of an administrative complaint; (3) requires the Secretary of HEW to approve regulations governing the ADA by other agencies and departments; and (4) establishes a reporting system for all agencies and departments to provide information to the Department of HEW.

ACTION's older American volunteer programs: The conference bill (1) provides a three-year extension of the older American volunteer programs (Retired Senior Volunteer Program, Foster Grandparents, and Senior Companions); (2) permits individuals with incomes up to 125 percent of the poverty guidelines to be Foster Grandparents or Senior Companions; (3) conditions the effectiveness of a $2.00 per hour stipend to the enactment of an appropriation sufficient to maintain the number of Foster Grandparents and Senior Companions at a level at least equal to the number participating in fiscal 1978 (if the appropriation is insufficient to increase the stipend to $2.00 per hour, the Director shall increase the stipend to the extent the appropriations would permit). The conferees deleted the House provisions to tie the stipend to increases in the Consumer Price Index.

Mr. CRANSTON. Mr. President, as chairman of the Child and Human Development Subcommittee which has jurisdiction over the Older Americans Volunteer programs, as ranking majority member of the Aging Subcommittee, and as a conferee, I support the enactment of the proposed "Comprehensive Older American Act Amendments of 1978." On July 21 of this year, the Senate passed and forwarded to the House S. 2617, the proposed "Domestic Volunteer Service Act Amendments of 1978." At that time, I discussed the Older American Volunteer programs. On August 24, I made a detailed statement on the Senate's action on S. 2850, the Senate's version of reauthorization of the Older Americans Act. I am pleased that the Older Americans Act Amendments conference report on the reauthorization of the Older American Volunteer programs includes

most of the provisions I outlined in both of those statements.

I would like to highlight a number of aspects of the conference agreement which are of particular interest to me—the Older American Volunteer programs, which I authored in the Senate—and legal services and private rights of action under the Age Discrimination Act of 1975—provisions with which I was deeply involved in conference.

ACTION'S OLDER AMERICAN VOLUNTEER PROGRAMS

Mr. President, the conference report contains provisions extending the authorizations of appropriations for the Older American Volunteer Programs—RSVP, Foster Grandparents, and Senior Companions—authorized by title II of the Domestic Volunteer Service Act of 1973, as well as provisions amending various sections of that title. Provisions similar to those adopted were contained in the Senate-passed bill, S. 2617, the proposed "Domestic Volunteer Service Act Amendments of 1978" which I authored and which was pending in the House of Representatives at the time of the conference on the Older Americans Act Amendments of 1978. The House-passed bill (H.R. 12255) amending the Older Americans Act also contained a number of amendments to the Domestic Volunteer Service Act of 1973 identical to those in S. 2617.

FOSTER GRANDPARENT AND SENIOR COMPANION STIPENDS AND ALLOWANCES

I am pleased that the conferees agreed on the need for an increase in the stipend paid to participants in the Foster Grandparent/Senior Companion Program. The conference report authorizes increases in the stipend up to $2 per hour from the present level of $1.60 per hour.

The Foster Grandparent Program was initiated in 1965 as one of the war-on-poverty programs. It involved assigning low-income older Americans to work with underprivileged children or children with exceptional needs for 20 hours per week, at a stipend of $1.60 per hour—then the minimum wage—in institutional and other settings. During that year, under an arrangement between the then Office of Economic Opportunity—now the Community Services Administration—and the Department of Health, Education, and Welfare, HEW's Administration on Aging, using OEO funds, began conducting the Foster Grandparents effort.

Four years later, in 1969, the Foster Grandparent Program was transferred from OEO to the Administration on Aging. In 1971, when the ACTION Agency was created by executive reorganization, the Foster Grandparent Program was transferred again—this time to the new Federal volunteer agency, the ACTION Agency.

Mr. President, Public Law 93–113, the Domestic Volunteer Service Act of 1973, which I authorized and which provides statutory authority for the ACTION Agency, includes in title II provision for the Foster Grandparent Program and for the newer Senior Companions Program which is modeled after Foster Grandparents and enables older, low-income, Americans to work with those other than children having exceptional needs. Participants in the Senior Companions, as do the Foster Grandparents, currently receive a stipend of $1.60 per hour—the same amount established 13 years ago. Today there are nearly 20,000 low-income older Americans serving in these two programs.

Mr. President, for some time now I have been advocating an increase in the Foster Grandparent/Senior Companion stipend. As chairman of the Senate subcommittee responsible for the authorizing legislation for these programs, I have made recommendations to the Appropriations Committee that funding be provided to increase the stipend. However, when funding increases have been appropriated, the additional money has been used to increase the number of projects rather than to increase the amount of the stipend. I believe that both needs can and should be met.

Because of this background, and because the Senate ACTION Agency bill (S. 2617) includes levels of authorizations of appropriations sufficient to accomodate raises in the stipend, I was generally sympathetic to the House bill provision mandating an increase in the stipend to $2 per hour, although I was concerned about the potential problems which might be caused by the House tie-in of the stipend level to future changes in the Consumer Price Index. I support a stipend increase—but not at the expense of reducing funds available to support those currently participating in these programs. A mandated stipend increase in the authorizing legislation without a corresponding appropriation to accommodate it could result in a cutback in current program strength.

Because of my concern about this potential situation, I proposed and the conferees agreed to a compromise which I offered which would condition the effectiveness of the stipend increase on the inclusion in an appropriation act of sufficient funds to maintain the previous year's enrollment level, but with additional funds being used first to increase the stipend up to $2 per hour.

Mr. President, provisions of a similar protective nature were part of the authorizing legislation providing for increases in the stipend for VISTA and Peace Corps volunteers (Public Law 94–130). Participants in both those programs have since had their stipend levels increased to the full amount authorized, without threat of reduction in the numbers of volunteers.

Mr. President, the conferees also agreed to my proposal that the CPI tie-in of the Foster Grandparent/Senior Companion stipend increase should be dropped. I believe that such a tie-in would be an unfortunate precedent to set—none of the stipends for the other ACTION Agency programs are tied in to CPI changes. This is not to say that the Foster Grandparents/Senior Companions stipend should not be adjusted periodically. I believe it should, but not as a result of a statutorily mandated CPI tie-in.

LENGTH AND AMOUNTS OF AUTHORIZATION OF APPROPRIATIONS

Mr. President, I am also pleased that the House agreed to the provisions in the Senate ACTION bill, S. 2617, which provide for a 3-year extension of the authorizations of appropriations for the Older American volunteer programs. The House bill had provided for a 1-year extension. The following levels of appropriations were authorized in the Senate bill and in the conference report:

RSVP	
Fiscal year 1979	$25,000,000
Fiscal year 1980	30,000,000
Fiscal year 1981	35,000,000
Foster Grandparent/Senior Companion.	
Fiscal year 1979	$55,000,000
Fiscal year 1980	62,500,000
Fiscal year 1981	70,000,000

Mr. President, with respect to the RSVP program these levels, if fully appropriated, should provide for additional program support and technical assistance, should enable existing programs to expand—something I view as an important priority—and finally, should provide for new RSVP projects.

With respect to the Foster Grandparents and Senior Companions authorization levels, these levels, if fully appropriated, will allow for a full stipend increase the first year, and thereafter provide for program growth as well. I want to point out, too, that the authorizing committees combined the appropriations authorization for these two programs in order to encourage the development of additional jointly administered projects.

Mr. President, in accepting the Senate ACTION bill provisions concerning the length and amount of authorizations of appropriations, the conferees did so with the understanding, expressed in the joint explanatory statement, that the authorizing committees in both Houses will conduct regular oversight on all facets of the ACTION Agency's administration of the older American volunteer programs, with special scrutiny of the fiscal year 1980 budget request and subsequent budget requests, in order to assess the extent of the ACTION Agency's commitment to these programs, and, if such commitment is found wanting, recommend action legislatively to transfer these programs to the Administration on Aging. Mr. President, I am confident that such oversight will reflect a strong commitment on the part of Sam Brown, Director of the ACTION Agency, and Helen Kelley, a fellow Californian who is the Deputy Assistant Director for the older Americans volunteer programs. At the time when the previous fiscal year's budget submission was proceeding through the administrative process, Helen had not yet come on board, and Sam was concentrating most of his attention on the ACTION Agency programs that the previous administration had neglected—these did not include the older American volunteer programs. I have seen a definite turn for the better over the last several months in the ACTION Agency's advocacy for the older American volunteer programs, and I am very hopeful that the President's fiscal year 1980 budget request will reflect that renewed commitment.

NEAR-POOR PARTICIPATION IN FOSTER GRANDPARENT SENIOR COMPANION PROGRAMS

Mr. President, the House bill extended the eligibility for participation in the Foster Grandparents and Senior Com-

panions programs to individuals with an income not greater than 125 percent of the poverty level. Certainly, eligibility is tied to the poverty level index, with flexibility for regional differences. The Senate ACTION bill had no comparable provision.

Mr. President, as I indicated earlier in my remarks, the Foster Grandparents program began as one of the war-on-poverty efforts as a program to assist needy older Americans while providing services to children in special circumstances. The ACTION Agency estimates that the number of those who would like to participate in Foster Grandparents and Senior Companions is close to 400,000, or 10 percent of the 4.2 million low-income older Americans in our country. Presently nearly 20,000 low-income persons are enrolled. Since the universe of those who would like to be involved and who are now eligible to be involved in these programs is as great as it is, I did not feel that it was wise just to open up participation to the near-poor without certain priorities for participation of those who are low-income persons. Hence, I proposed and the conferees agreed to provide for near-poor participation, but to provide special consideration for participation to persons whose income levels are at or below the poverty line.

Mr. President, in addition to these provisions on which the conferees reached agreement, the Senate ACTION bill and the House bill included in common three additional provisions which are included in the conference report.

PROGRAM REVIEW PERIOD

Both bills amended section 201 of the Domestic Volunteer Service Act of 1973—the RSVP authority—to reduce from 60 to 45 days the time which is given to State agencies on aging to comment on proposed RSVP programs. This is the same time period permitted for review of Foster Grandparent and Senior Companion Program project applications.

NONEMPLOYEE STATUS OF RSVP PARTICIPANTS

Both bills added a new provision to the act to make clear that RSVP volunteers are not employees for any purpose which the director of the ACTION Agency finds not to be fully consistent with provisions and in furtherance of the purpose of this title II, part A program.

Mr. President, this clarification was necessary because questions were being raised in several States as to whether RSVP volunteers must be covered by workers' compensation, despite the fact that the ACTION Agency requires that all RSVP volunteers be provided with medical insurance to cover costs associated with any injury to the volunteers, and indeed, makes available a policy of medical insurance for non-self-insured sponsors. RSVP service has never been considered as employment. Application of a State requirement that they be covered by worker's compensation laws would clearly be inconsistent with the purpose and volunteer nature of the program, and would increase the cost of the program, thereby making it available to fewer older persons than are now participating. For this reason, it was important and necessary to the future success of RSVP that the extension legislation provide such a provision.

GRANT PREFERENCES AND REVIEWS FOR FOSTER GRANDPARENT AND SENIOR COMPANION PROGRAMS

Both bills amended section 212 of the Domestic Volunteer Service Act of 1973—the Foster Grandparent and Senior Companion program authority—to provide that grants or contracts be awarded to State agencies on aging and community action agencies in certain specified situations unless there are no such agencies or unless such agencies have had 45 days to examine and make recommendations on other project applications, and by providing that, in order to be approved, applications from other than these two agencies must contain satisfactory assurances that those applications have been developed, and will, as appropriate, be carried out in consultation with these two agencies.

Mr. President, these changes modify provisions in the current law which have tended to result in an absolute preference for the award of Foster Grandparent or Senior Companion grants or contracts to State agencies on aging or community action agencies. In addition, they more nearly approximate the treatment of these agencies for purposes of RSVP project applications. The amended provisions should provide for greater equity and flexibility, while continuing to recognize the special role and involvement of State agencies on aging and community action agencies.

STABILITY FOR ACTION'S OLDER AMERICAN VOLUNTEER PROGRAMS

Mr. President, I am pleased with the outcome of our deliberations on the conference report provisions affecting the Older American Volunteer programs administered by the ACTION Agency. Although I would have preferred that all amendments to the Domestic Volunteer Service Act of 1973, including these title II provisions and the title V extensions having to do with appropriations levels, have been enacted in the same piece of legislation, the Domestic Volunteer Service Act Amendments of 1978, I am quite satisfied with the conference provisions, and am pleased that we were able to work out these agreements and provide for 3 more years of what I know will be vigorous life for ACTION's Older American volunteer programs—RSVP, Foster Grandparents, and Senior Companions.

LEGAL SERVICES

Mr. President, late last year, as part of Public Law 95-222—the Legal Services Corporation Act Amendments of 1977 of which I was a principal author—Congress required the Corporation to adopt procedures for determining and implementing priorities for the provision of legal assistance, including particularly the needs for service on the part of significant segments of the population of eligible clients with special difficulties of access to legal services or special legal problems—including specifically elderly individuals.

Meeting the needs of eligible elderly individuals was regarded by Congress as a fundamental responsibility of the Corporation. That law provided clear recognition that eligible elderly individuals may have special difficulties with respect to access to legal services or special legal problems, and we required implementation of procedures at the local project level for assessing and developing appropriate service priorities.

I believe there is a great risk in creating categorical programs for the provision of legal services to certain groups of poor persons—such as elderly individuals. Our effectiveness in providing legal assistance to the poor generally may be diluted by the creation of special categorical legal-service assistance programs for low-income persons. I believe that the focus of our efforts to provide legal assistance to poor persons should be through the Legal Services Corporation.

Unfortunately, there are many people to serve, and many groups believe—with great justification in many cases—that they are not getting their fair share of services. Thus, as in seeking to augment the Corporation's legal services efforts, the conference report takes into consideration that a structure currently exists—to be funded this year at $270 million—designed to provide legal services to low-income individuals, and that there are substantial needs of other individuals—often called near-poor—that are not being met at all.

Mr. President, I believe that the Older Americans Act should focus legal services funded thereunder on elderly individuals with the following principles in mind:

A program of legal services for aging individuals should be designed to utilize, to the maximum extent possible, the resources and projects of the corporation. There are limited funds available, and duplicative efforts must be avoided.

Second, funding under the Older Americans Act should concentrate generally on those elderly individuals who are not eligible, on the basis of income, for legal services under the Corporation Act but who are comparatively needy—the near poor.

The conference report would seek to accomplish both of those ends.

It is a difficult policy decision—to concentrate resources on groups other than the most needy. I am persuaded, however, that the basic thrust should be to supplement the corporation's efforts for the poor by highlighting the needs of the near-poor elderly—again, I emphasize, a group with needs not generally being met. But I also stress that, under the conference report, we would not preclude area agency on aging funding of services for low-income persons where appropriate coordination is carried out between triple-A grantees and legal services corporation grantees.

Moreover, under the conference provision, it would not be necessary to apply a means test of any kind. Rather, appropriate coordination between an existing legal service corporation and a triple-A grantee would, I believe, be provided by the aging grantee apprising prospective clients of the general ground rules regarding eligibility and, thus, the client can make his or her own initial determination as to where to go for assistance. Another method of meeting the requirements of the proposed modification

would be to assure the referral to the triple-A grantee by a legal services project of appropriate applicants who, as a result of a failure to meet Legal Services Corporation Act income criteria, are found to be not quite eligible for legal services corporation-funded services, and then extend to such individuals special consideration for services in the triple-A project. Other methods of achieving coordination are set forth in the joint explanatory statement.

AGE DISCRIMINATION

Mr. President, included as part of the House version of the Older Americans Act reauthorization was a provision regarding private rights of action under the Age Discrimination Act of 1975.

This provision as included in the conference report as a result of a modification by the Senate is designed to clarify that a private right of action to enforce the Age Discrimination Act is available to recover damages, to enjoin a violation of the act, or for both purposes. Procedures that must be followed by the plaintiff are set forth if action is brought for the purpose of enjoining an alleged violation of the act by any program or activity receiving Federal financial assistance, or to enjoin the violation and seek damages. I stress that the procedures outlined by the section do not deal with the availability of private rights of action brought solely to recover damages.

Under the conference report, procedures are established for an award to the prevailing plaintiff of the costs of the suit, including a reasonable attorney's fee in actions to enjoin violations of the act. In order for a prevailing plaintiff to be eligible, he or she must have included in the notice required to be filed with the Department of Health, Education, and Welfare a statement as to whether or not attorney's fees are being demanded in the event that the plaintiff prevails, and include as part of his demand for relief in his or her complaint a demand to recover a reasonable attorney's fee. These requirements—the notice and the demand in the complaint—are applicable only to actions to enjoin violations of the act or actions to enjoin and seek damages.

The conference report also clarifies that actions to enjoin are prohibited if, at the time of action is brought, the same alleged violation by the same defendant is the subject of a pending action in any U.S. court. The conference change makes specific that the intent of the provision is to bar analogous unresolved enjoining actions being brought against the same defendant.

The conference report also added a provision with respect to exhaustion of administrative remedies. Under the House-passed bill, no provision was made for such exhaustion. Although it is likely that most courts would have required exhaustion of administrative remedies as a prerequisite to court consideration of the controversy, the conferees believed it important to include the requirement. The practical result of such inclusion is the establishment of a time certain for presumption of exhaustion—after the elapsing of 180 days after the complaint is filed with the agency in question or upon the day that the Federal department or agency makes a finding in favor of the recipient of Federal assistance. I stress, Mr. President, that the exhaustion requirement and the provisions with respect to deeming, or presuming, exhaustion are applicable to all private actions brought for relief based on an alleged violation of the Age Discrimination Act, not just actions to enjoin a violation.

CONCLUSION

Mr. President, I congratulate my colleague from Missouri (Mr. EAGLETON), the chairman of the Aging Subcommittee, and the ranking minority member (Mr. CHAFEE) for the fine products which has resulted from their hard work and concern.

I would also like to draw attention to the fine efforts of their staff members, Marsha McCord, Steve Roling, and Fran Paris, and to those of Jack Wickes, Fran Butler, and Shelley Garr on my behalf.

Mr. President, on Saturday night, October 7, the Senate approved the conference report on the Comprehensive Older Americans Act Amendments of 1978, H.R. 12255. It was my privilege, as the ranking majority member of the Aging Subcommittee of the Human Resources Committee to be deeply involved in consideration of this very important legislation in the conference.

The PRESIDING OFFICER. The question is on agreeing to the conference report.

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. INOUYE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

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 with statements limited therein to 2 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. Marks, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session, the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations, which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

ANNUAL REPORT OF THE NATIONAL HOUSING GOAL—MESSAGE FROM THE PRESIDENT—PM 228

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 Banking, Housing, and Urban Affairs:

To the Congress of the United States:

I herewith transmit the Tenth Annual Report on the National Housing Goal as required by Section 1603 of the Housing and Urban Development Act of 1968.

JIMMY CARTER.

THE WHITE HOUSE, *October 6, 1978.*

MESSAGES FROM THE HOUSE

ENROLLED BILLS SIGNED

At 10:46 a.m., a message from the House of Representatives delivered by Mr. Berry, one of its reading clerks, announced that the Speaker has signed the following enrolled bills:

S. 682. An act to amend the Ports and Waterways Safety Act of 1972, and for other purposes;

S. 2801. An act to designate the building known as the Ozark National Forest Headquarters Building in Russellville, Arkansas, as the "Henry R. Koen Forest Service Building";

H.R. 6503. An act to amend the Intercoastal Shipping Act, 1933, and for other purposes;

H.R. 8394. An act to provide for payments to local governments based upon the acreage of the National Wildlife Refuge System which is within their boundaries, and for other purposes;

H.R. 8811. An act to amend section 7477 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;

H.R. 9370. An act to provide for the development of aquaculture in the United States, and for other purposes;

H.R. 9998. An act to provide for the regulation of rates or charges by certain State-owned carriers in the foreign commerce of the United States, and for other purposes;

H.R. 11302. An act to authorize appropriations for environmental research development, and demonstrations for the fiscal year 1979, and for other purposes;

H.R. 11886. An act to amend title 38, United States Code, to provide increases in the rates of disability and dependency and indemnity compensation for disabled veterans and their survivors, to provide for the payment of benefits to surviving spouses and children of certain totally disabled service-connected disabled veterans, to increase the amounts paid for funeral and burial expenses of deceased veterans, and for other purposes;

H.R. 12028. An act to amend title 38, United States Code, to improve the housing benefits program of the Veterans' Adminis-

tration, to authorize the Administrator of Veterans' Affairs to pay an allowance to a State for expenses incurred in the burial of eligible veterans in cemeteries owned and operated by or for such State solely for the interment of veterans, to authorize a program of great assistance to States for the establishment, expansion, and improvement of State veterans' cemeteries, and for other purposes;

H.R. 12930. An act making appropriations for the Treasury Department, the United States Postal Service, the Executive Office of the President, and certain Independent Agencies, for the fiscal year ending September 30, 1979, and for other purposes; and

H.R. 13692. An act granting the consent of Congress to the Historic Chattahoochee Compact Between the States of Alabama and Georgia.

The enrolled bills were subsequently signed by the President pro tempore (Mr. EASTLAND).

At 12:20 p.m., a message from the House of Representatives delivered by Mr. Berry, announced that the House has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 13803. An act to terminate the authorization of the navigation project on the Columbia Slough, Oregon.

The message also announced that the House disagrees to the amendments of the Senate to H.R. 10587, an act to improve the range conditions of the public grazing lands; agrees to the conference requested by the Senate on the disagreeing votes of the two Houses thereon; and that Mr. RONCALIO, Mr. UDALL, Mr. SANTINI, and Mr. JOHNSON of Colorado were appointed managers of the conference on the part of the House.

The message further announced that the House has passed S. 3486, an act to authorize appropriations for fiscal year 1979 for procurement of aircraft, missiles, naval vessels, tracked combat vehicles, torpedoes, and other weapons and for research, development, test and evaluation for the Armed Forces, to prescribe the authorized personnel strength for each active duty component and the Selected Reserve of each Reserve component of the Armed Forces and for civilian personnel of the Department of Defense, to authorize the military training student loads, to authorize appropriations for civil defense, and for other purposes, with an amendment in which it requests the concurrence of the Senate.

ENROLLED BILLS SIGNED

At 4:05 p.m., a message from the House of Representatives delivered by Mr. Hackney, one of its reading clerks, announced that the Speaker has signed the following enrolled bills:

H.R. 10600. An act for the relief of Thomas Joseph Hunter and Rose Hunter;

H.R. 13797. An act to authorize establishment of the Fort Scott National Historic Site, Kansas, and for other purposes;

H.R. 13991. An act to provide for the United States to hold in trust for the Susanville Indian Rancheria of Lassen County, California, approximately one hundred and twenty acres of land; and

H.R. 14026. An act to provide means for the acquisition and retention of title to certain lands by the village corporation organized pursuant to the Alaska Native Claims Settlement Act for the Natives of the village of Kake, Alaska, and for other purposes.

The enrolled bills were subsequently signed by the President pro tempore (Mr. EASTLAND).

The message also announced that the House agrees to the report of the committee of conference on the disageering votes of the two Houses on the amendments of the House to S. 2640, an act to reform the civil service laws; and it recedes from its disagreement to the title of the bill.

The message further announced that the House agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to H.R. 11318, an act to amend the Small Business Act and the Small Business Investment Act of 1958.

The message also announced that the House agrees to the amendment of the Senate numbered 2 and 3 to H.R. 8309, an act authorizing certain public works for navigation, and for other purposes; agrees to the amendment of the Senate numbered 8 to the bill, with an amendment in which it requests the concurrence of the Senate; disagrees to the amendments of the Senate numbered 1, 4, 5, 6, and 7 to the bill, insists upon its amendment to the amendment of the Senate numbered 8 to the bill; insists upon its disagreement to the amendments of the Senate numbered 1, 4, 5, 6, and 7; requests a conference with the Senate on the disagreeing votes of the two Houses thereon; and that Mr. JOHNSON of California, Mr. ROBERTS, Mr. BREAUX, Mr. GINN, Mr. MINETA, Mr. HARSHA, Mr. DON H. CLAUSEN, Mr. ULLMAN, Mr. ROSTENKOWSKI, Mr. BURLESON of Texas, Mr. WAGGONNER, Mr. JONES of Oklahoma, Mr. CONABLE, Mr. FRENZEL, and Mr. BLOUIN (for the consideration of sections 102 and 103 of the bill and modifications thereof committed to conference) as managers of the conference on the part of the Senate.

At 6:25 p.m., a message from the House of Representatives delivered by Mr. Hackney, announced that the House has passed S. 1613, an act to improve access to the Federal courts by enlarging the civil and criminal jurisdiction of United States magistrates, and for other purposes, with an amendment in which it requests the concurrence of the Senate; that the House insists upon its amendment and requests a conference with the Senate on the disagreeing votes of the two Houses thereon; and that Mr. KASTENMEIER, Mr. DANIELSON, Mr. SANTINI, Mr. ERTEL, Mr. RAILSBACK, Mr. BUTLER, and Mr. WIGGINS were appointed managers of the conference on the part of the House.

The message also announced that the House has passed S. 2584, an act to authorize appropriations to the Nuclear Regulatory Commission for fiscal year 1979, and for other purposes, with amendments in which it requests the concurrence of the Senate.

The message further announced that the House has passed S. 791, an act to authorize additional appropriations for the acquisition of lands and interests in lands within the Sawtooth National Recreation Area in Idaho, with an amendment in which it requests the concurrence of the Senate.

ENROLLED BILLS PRESENTED

The Secretary of the Senate reported that on today, October 6, 1978, he presented to the President of the United States the following enrolled bills:

S. 682. An act to amend the Ports and Waterways Safety Act of 1972, and for other purposes; and

S. 2801. An act to designate the building known as the Ozark National Forest Headquarters Building in Russellville, Arkansas, as the "Henry R. Koen Forest Service Building".

ORDER TO PRINT H.R. 11886 AND H.R. 12028

Mr. CRANSTON. Mr. President, I ask unanimous consent that H.R. 11886 and H.R. 12028 be printed with the amendments concurred in by the Senate on last Monday.

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

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. PROXMIRE, from the Committee on Banking, Housing, and Urban Affairs:

Special Report on Allocation of Spending Pursuant to the Congressional Budget Act (Rept. No. 95–1280).

By Mr. RIBICOFF, from the Committee on Governmental Affairs, without amendment, unfavorably:

S. Res. 537. A resolution disapproving Reorganization Plan No. 4 of 1978 (Rept. No. 95–1281).

By Mr. JACKSON, from the Committee on Energy and Natural Resources, with an amendment:

S. 876. A bill to authorize the Secretary of the Interior to amend the contract for the construction, operation, and maintenance of the Vermejo reclamation project between the Vermejo Conservancy District, located in the State of New Mexico, and the United States (Rept. No. 95–1282).

S. 3158. A bill to authorize the investigation to study the feasibility of the Santa Cruz Dam and Reservoir, Santa Cruz Irrigation District, New Mexico, and for other purposes (Rept. No. 95–1283).

By Mr. PELL, from the Committee on Rules and Administration:

Special Report on Allocation of Spending Pursuant to the Congressional Budget Act (Rept. No. 95–1284).

By Mr. MUSKIE, from the Committee on the Budget, with an amendment:

S. Res. 570. A resolution waiving section 402(a) of the Congressional Budget Act with respect to consideration of S. 50 (Rept. No. 95–1285).

By Mr. BUMPERS, from the Committee on Energy and Natural Resources, without amendment:

H.R. 7101. An act to amend certain provisions of law relating to land claims by the United States in Riverside County, Calif., based upon the accretion or avulsion, and for other purposes (Rept. No. 95–1286).

By Mr. BUMPERS, from the Committee on Energy and Natural Resources, with amendments and an amendment to the title:

H.R. 7971. An act to validate the conveyance of certain land in the State of California by the Southern Pacific Transportation Co. (Rept. No. 95–1287).

By Mr. MUSKIE, from the Committee on the Budget, without amendment:

S. Res. 566. A resolution waiving section 402(a) of the Congressional Budget Act of 1974 with respect to the consideration of S. 3392 (Rept. No. 95–1288).

S. Res. 567. A resolution waiving section 402(a) of the Congressional Budget Act of 1974 with respect to the consideration of H.R. 10587 (Rept. No. 95–1289).

S. Res. 572. A resolution waiving section 402(a) of the Congressional Budget Act of 1974 with respect to the consideration of S. 3309 (Rept. No. 95–1290).

By Mr. EAGLETON, from the Committee on Governmental Affairs, without amendment:

H.R. 12116. An act to amend the District of Columbia Self-Government and Governmental Reorganization Act to repeal the authority of the President to sustain vetoes by the Mayor of the District of Columbia of acts passed by the Council of the District of Columbia and re-passed by two-thirds of the Council, to change the period during which acts of the Council of the District of Columbia are subject to congressional service, and for other purposes (Rept. No. 95–1291).

PUBLIC UTILITY RATE—CONFERENCE REPORT

Mr. JACKSON, from the committee of conference, submitted a report on the disagreeing votes of the two Houses on the amendment of the House to the amendment of the Senate to H.R. 4018, an act to suspend until the close of June 30, 1980, the duty on certain doxorubicin hydrochloride antibiotics (Rept. No. 95–1292).

DISTRICT OF COLUMBIA RETIREMENT REFORM ACT—CONFERENCE REPORT

Mr. EAGLETON, from the committee of conference, submitted a report on the disagreeing votes of the two Houses on the amendment of the Senate to H.R. 6536, an act to establish an actuarially sound basis for financing retirement benefits for policemen, firemen, teachers, and judges of the District of Columbia, and to make certain changes in such benefits (Rept. No. 95–1293).

NATIONAL ENERGY CONSERVATION POLICY ACT—CONFERENCE REPORT

Mr. JACKSON, from the committee of conference, submitted a report on the disagreeing votes of the two Houses on the amendment of the House to the amendment numbered 3 of the Senate to H.R. 5037, an act for the relief of Jack R. Misner (Rept. No. 95–1294).

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. TALMADGE, from the Committee on Agriculture, Nutrition, and Forestry:

Robert W. Feragen, of Virginia, to be Administrator of the Rural Electrification Administration.

(The above nomination from the Committee on Agriculture, Nutrition, and Forestry was reported with the recommendation that it be affirmed, subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

By Mr. WILLIAMS, from the Committee on Human Resources:

George S. Ives, of Maryland, to be a Member of the National Mediation Board.

(The above nomination from the Committee on Human Resources 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. LEAHY:

S. 3552. A bill to amend the Rural Development Act of 1972; to the Committee on Agriculture, Nutrition, and Forestry, and the Committee on Banking, Housing, and Urban Affairs, jointly, by unanimous consent.

By Mr. ABOUREZK (for himself and Mr. McGOVERN):

S. 3553. A bill to provide for a study of the Crow Creek Village archeological site, Buffalo County, S.Dak., by the Secretary of the Interior, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. INOUYE:

S. 3554. A bill for the relief of Cheh-Hsiung Chen; to the Committee on the Judiciary.

By Mr. EAGLETON:

S. 3555. A bill for the relief of the Jewish Employment Vocational Service, St. Louis, Mo.; to the Committee on the Judiciary.

By Mr. CRANSTON:

S. 3556. A bill relative to the oversight provision in Public Law 95–46; to the Committee on Energy and Natural Resources.

By Mr. McCLURE:

S. 3557. A bill to encourage motor vehicle manufacturers to make investments in the production of electric vehicles; to the Committee on Commerce, Science, and Transportation.

By Mr. BURDICK:

S. 3558. A bill to authorize the Three Affiliated Tribes of the Fort Berthold Reservation to file in the Court of Claims any claims against the United States for damages for delay in payment for lands claimed to be taken in violation of the United States Constitution, and for other purposes; to the Select Committee on Indian Affairs.

By Mr. McCLURE:

S. 3559. A bill to provide for research programs to develop new agricultural commodities, to develop new nonfood uses for agricultural commodities, to develop new industrial or commercial uses for the byproducts of agricultural commodities, and for other purposes; to the Committee on Agriculture. Nutrition, and Forestry.

By Mr. CRANSTON:

S. 3560. A bill for the relief of certain employes of the Long Beach Naval Shipyard, Long Beach, Calif., to the Committee on the Judiciary.

By Mr. McCLURE:

S. 3561. A bill to provide for protection of the Johnny Sack Cabin, Targhee National Forest in the State of Idaho; to the Committee on Energy and Natural Resources.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. LEAHY:

S. 3552. A bill to amend the Rural Development Act of 1972; to the Committee on Agriculture, Nutrition, and Forestry and the Committee on Banking, Housing, and Urban Affairs, jointly, by unanimous consent.

(The remarks of Mr. LEAHY when he introduced the bill appear elsewhere in today's proceedings.)

Mr. LEAHY subsequently said: Mr. President, I ask unanimous consent that a bill that I had introduced this morning, amending the Rural Development Act of 1972, be jointly referred to the Committee on Agriculture, Nutrition, and Forestry and the Committee on Banking, Housing, and Urban Affairs. I understand this has been cleared with the appropriate chairmen and ranking members beforehand.

Mr. BAKER. Mr. President, reserving the right to object just for a moment, I do not dispute the distinguished Senator that it has been clear on our side, but I have no notice that it has been cleared.

Will the Senator withhold for just a moment?

Mr. LEAHY. I shall be happy to withhold. I am going to have to leave the floor for a while.

Mr. BAKER. I see the Senator from Missouri on the floor, and it might be that while he is proceeding we can work this out.

The PRESIDING OFFICER. Is the Senator from Vermont withdrawing his request?

Mr. LEAHY. I shall withdraw the request and perhaps once it is cleared to the satisfaction of the minority leader, the Senator from Missouri will yield to me at that point for 20 seconds.

Mr. DANFORTH. Certainly.

Mr. ROBERT C. BYRD subsequently said: Mr. President, I ask unanimous consent that a bill introduced earlier today by Senator LEAHY to charter a National Rural Development Bank be referred jointly to the Committee on Agriculture, Nutrition, and Forestry and the Committee on Banking, Housing, and Urban Affairs, jointly, by unanimous consent.

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

By Mr. CRANSTON:

S. 3556. A bill relative to the oversight provision in Public Law 95–46; to the Committee on Energy and Natural Resources.

WESTLANDS WATER DISTRICT IN CALIFORNIA

● Mr. CRANSTON. Mr. President, I introduce for appropriate reference a bill to approve three temporary water service contracts between the Department of Interior and the Westlands Water District in California.

Mr. President, in the 95th Congress we

enacted legislation requiring that these contracts for the Westlands Water District for temporary water service in 1979 must lie before the Congress for review for not more than 90 legislative days. However, since the Congress may adjourn sine die shortly, I am introducing this bill to exercise section 3 of Public Law 95–46 and expedite approval of the three contracts so that they may be executed prior to January 1, 1979.

The Secretary of Interior believes that these contracts are in the best interests of the Federal Government and consistent with the provisions of Federal reclamation law. I concur. The contracts provide for the delivery of 1.1 million acre-feet of water for agricultural purposes from the San Luis Canal at $13.50 per acre-foot; the delivery of 50,000 acre-feet of water for agricultural purposes from the Delta Mendota Canal at $10 per acre-foot; and the delivery of 6,000 acre-feet of water for municipal and industrial purposes from the San Luis Canal at $30.85 per acre-foot.

The temporary contracts will allow continuation of water service to the Westlands Water District pending reauthorization of the San Luis unit and renegotiation of the current water service contract originally executed in 1963.

I hope that the Congress will move quickly to pass this bill or adopt it as an amendment to an appropriate legislative vehicle so that there will be no interruption in the delivery of water service for the Westlands Water District.

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

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

S. 3556

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Congress hereby finds that the oversight provided for in section 3 of P.L. 95–46 has been accomplished with respect to the three temporary water service contracts between the United States and the Westlands Water District, as forwarded to Congress on October 4, 1978.●

By Mr. CRANSTON:

S. 3560. A bill for the relief of certain employees of the Long Beach Naval Shipyard, Long Beach, Calif.; to the Committee on the Judiciary.

● Mr. CRANSTON. Mr. President, I am introducing legislation today to relieve Rodney Herold and others listed below of liability for the excess payment for per diem and actual subsistence expenses which they received. These employees were overpaid due to administrative failures in implementing reductions in per diem rates for long-term training assignments. The General Accounting Office has reviewed this case and has recommended that these employees be relieved from liability. This legislation is intended to carry out this recommendation. I ask unanimous consent that the text of GAO's letter and decision regarding this matter and the text of the bill be printed at this point.

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

S. 3560

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That each of the following named employees of the Long Beach Naval Shipyard, Long Beach, California, is hereby relieved of all liability to repay to the United States the sum of money specified opposite the name of such employee, such sum representing overpayment of per diem made through administrative error and received in good faith by such employee:

(1) Rodney L. Herold the sum of $2,018.25;
(2) Albert L. Christiansen the sum of $1,254.50;
(3) Edward E. Goodrich the sum of $101.41;
(4) Kenneth E. Butler the sum of $1,808.25.
(5) Allen H. Reynard the sum of $1,310.50;
(6) Donald D. Fish the sum of $1,182.00;
(7) Steve A. Robertson the sum of $2,302.01;
(8) David W. Alton the sum of $1,890.52;
(9) George J. Larson the sum of $1,653.39;
(10) William R. Dow the sum of $1,626.11;
(11) Daniel L. Holly the sum of $1,475.07;
(12) Donald E. Jelinski the sum of $1,412.13:
(13) Leland Kocher the sum of $797.37;
(14) Carl R. Gonsalves the sum of $712.07;
(15) George E. McGuire the sum of $617.25;
(16) Herbert E. Tonkin the sum of $435.45;
(17) Virgil L. Nickell the sum of $194.03.

SEC. 2. The Secretary of the Treasury is hereby authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to any employee named in the first section an amount equal to the aggregate of any amounts paid by such employee or withheld from any sum due such employee on account of the liability referred to in the first section of this Act.

SEC. 3. No part of the amounts appropriated in this Act shall be paid or delivered to or received by any agent or attorney on account of services rendered in connection with this claim, and the same shall be unlawful, any contract to the contrary notwithstanding. Any person violating the provisions of this Act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding $1,000.

U.S. GENERAL ACCOUNTING OFFICE,
Washington, D.C., August 30, 1978.

HON. ALAN CRANSTON,
U.S. Senate.

DEAR SENATOR CRANSTON: Enclosed is a copy of our decision in B–190014, dated today, in the matter of the Long Beach Naval Shipyard. The decision holds that, after the effective date of the change in the Joint Travel Regulations (Volume 2) reducing per diem rates for long-term training assignments, there was no authority for the Shipyard to continue to pay higher rates of per diem to its employees. Hence, the 17 Shipyard employees affected are legally obligated to repay the excess payments for per diem and actual subsistence expenses which they received after the effective date of the change.

However, because the overpayments resulted from administrative failures in implementing the reduced rate, because the rate reduction was so substantial, and because the 17 employees acted in good faith, we have reported their claims to Congress under the Meritorious Claims Act, 31 U.S.C. § 236. Our report to the Congress recommending that these employees be relieved of liability for the overpayments has been transmitted to the Speaker of the House and the President of the Senate.

Please advise us if any further assistance is necessary in this matter.

Sincerely yours,

PAUL G. DEMBLING,
General Counsel.

[Decision, File: B–190014]

THE COMPTROLLER GENERAL
OF THE UNITED STATES,
Washington, D.C., August 30, 1978.

Matter of: Long Beach Naval Shipyard—Per Diem Allowances for Extended Periods of Training.

Digest: Seventeen civilian employees received per diem at the higher rate in effect prior to August 1, 1976, during various dates between August 1, 1976, and July 1977. Change in JTR, effective August 1, 1976, reduced per diem to 55 percent for extended training. No basis exists for allowing the higher per diem for the training performed on or after effective date of lower rate. However, since the overpayments resulted from administrative failures in implementing the regulatory change in the per diem rate, the rate reduction was so substantial and employees acted in good faith, equities warrant reporting claims to Congress under Meritorius Claims Act, 31 U.S.C. § 236.

This decision is rendered with respect to 17 employees at the Long Beach Naval Shipyard (LBNS), Department of the Navy, Long Beach, California, who, while attending training schools for periods in excess of 120 days commencing at various dates during the period July 1976 to January 1977, were paid per diem allowances in excess of that authorized by the Joint Travel Regulations (JTR). The Office of the Comptroller, LBNS, undertook to collect the overpayments of per diem from the employees. The basis for the proposed collection action was that the per diem rate authorized for civilian employees by the JTR, Volume 2, was changed to a reduced rate of 55 percent for extended training of 120 days or more, effective August 1, 1976.

In view of the number of Shipyard employees affected and the relatively large indebtednesses subject to deduction from the pay of the employees, the Comptroller of the Shipyard agreed to withhold any and all collection actions until this Office had rendered a decision on this matter.

On each of the travel orders, the block opposite the statement, "Per diem authorized in accordance with JTR" was checked. No dollar amount was stated but the Shipyard and the employees both understood that the amount was the maximum authorized rate.

On June 21, 1976, prior to the travel involved here, the Per Diem, Travel, and Transportation Allowance Committee, the body authorized by the Secretary of Defense to issue and change the JTR, issued a telegraphic message entitled "Reduced Per Diem Rates for Long-Term Training." The message stated that the JTR is revised, effective August 1, 1976. It stated that, for training programs of 120 or more calendar days at one location, the new per diem rate would be 55 percent of the maximum rate authorized for regular areas or high-cost areas, as applicable.

The message was not received at the Long Beach Naval Shipyard. We have been informally advised by officials of the Office of Civilian Personnel, Headquarters, Department of the Navy, that the distribution code used for dissemination of the telegraphic message of June 21, 1976, did not include the Long Beach Naval Shipyard. Navy officials also advised that, during the period under consideration, problems were encountered in disseminating written materials to Navy civilian components located at military installations

A new distribution code is now being utilized to transmit documents to Navy civilian personnel offices.

On October 1, 1976, Change 132 to JTR, Volume 2, was issued by the Per Diem, Travel, and Transportation Allowance Committee for the information and guidance of all Defense Department civilian personnel. The change was received by the Long Beach Naval Shipyard on October 15, 1976. Paragraph C4552–2i of Change 132 provided for a reduced per diem rate for long-term training programs of 55 percent of the maximum allowable per diem rate or 55 percent of the actual expense maximum, as applicable, for all locations within the continental United States, including designated high-cost areas. The effect of the change was to reduce regular per diem rates from $35 or $33, to approximately $20. The reduced rate was specified to be effective August 1, 1976, consistent with advance notice dated June 21. In the Brief of Revision which accompanied the change, it was stated:

"Par. C4552–2i. Provides a reduced per diem rate for long-term training courses of 55% of the applicable per diem or actual expense maximum when the course is in a high cost area."

Upon receipt of the formal change to the JTR on October 15, 1976, the civilian personnel officials at Long Beach has advised this Office that as to paragraph C4552–2i, they reviewed only the Brief of Revision and did not read the regulatory change itself. They erroneously interpreted the Brief to apply only to high-cost areas and thus believed that the reduction in rates applied solely to long-term training in high-cost areas. They further advised that their erroneous interpretation was not discovered until February 1977 when two naval shipyard employees, one from Charleston and one from Long Beach, learned that the Long Beach employee was being paid per diem at the maximum allowable rate of $35 or $33 per day while the employee from Charleston was being paid per diem at the reduced rate of approximately $20 per day. On February 14, 1977, a clarifying memorandum concerning the reduced per diem rate for long-term training was distributed to employees of the Long Beach Shipyard and stated as follows:

"Long-term programs are considered to be any continuous full-time training or research and study programs of 120 or more calendar days at one location conducted at a government or non-government college or university, or other academic institution or training facility.

"Prior to receipt of reference (a) [referring to change 132] 15 October 1976, per diem rates were based on the current rate known to be in effect at that time, i.e. $33.00. $35.00 or actual expense which is determined by the location. By reference (a), which was effective 1 August 1976, per diem rates were reduced and are calculated on 55% of the maximum amount prescribed rounded to the next higher dollar, i.e. per diem rate normally set at $35.00 would thus become $20.00, etc.

"Since long-term training will be calculated on 55% of the maximum rate prescribed, it is requested that the above information be given wide dissemination."

In a memorandum dated February 16, 1977, from the Commander of the Shipyard to our Claims Division via the Navy Accounting and Finance Center, it was stated, in pertinent part, as follows:

"2. Two Shipyard employees departed on training in excess of 120 days 6 July 1976 to Great Lakes, Illinois and San Diego, CA; two Shipyard employees departed 16 August 1976 to Great Lakes, Illinois; one employee departed 20 September 1976 and will return 22 February 1977; one employee departed 15 July 1976 to Washington, D.C. (actual expense area) and returned 13 November 1976. All of the above employees were advanced per diem based on the current rate known to be in effect at that time, $33.00 or $35.00 ($42.00/$50.00 actual expense) vice $20.00 ($24.00/$28.00 actual expense).

"3 According to the individual travel claims submitted, employees receiving training at Great Lakes, San Diego and Washington, D.C. received partial payments issued at those activities based on cost plus lodging not to exceed the maximum per diem rate and actual expense. Apparently, those activities were unaware of reference (a) or interpreted the change in the same manner as this Command.

"4. To compute the travelers' per diem based on the $20.00 or actual cost rate required by reference (a) will result in each individual traveler having to pay back from $1,254.00 to $2,018.00. Overpayment for the five employees who have returned is $7,167.00; estimated cost for the employee returning on 22 February 1977 is $1,980.00. It is felt that this would be unjust in that the overpayment was made through an administrative oversight in interpreting the 'Brief of Revisions' and not through any fault of the employees."

The record shows that the Shipyard Commander requested authority to waive the requirements of Change 132 on overpayments made to those travelers whose travel claims had already been finalized and to an individual traveler who was to return to the Shipyard on February 22, 1977. The request was denied by the Navy Department's Director of Civilian Personnel on the grounds that Comptroller General decisions precluded relief based on the failure to receive timely notice of the change and that the statute authorizing waiver specifically excludes travel allowances.

Shipyard officials stated that the 17 employees were assigned temporary duty training at the following locations: Great Lakes—8; San Diego—5; Maryland—3; and Washington, D.C.—1. The employees were dispatched in the following chronological order with the corresponding indebtedness owed by each;

	Indebtedness
July 1976—(3)	
Herold, Rodney L	$2,018.25
Christiansen, Albert L	1,254.50
Goodrich, Edward E	101.41
August 1976—(2)	
Butler, Kenneth E	1,808.25
Reynard, Allen H	1,310.50
September 1976—(1)	
Fish, Donald D	1,182.00
January 1977—(11)	
Robertson, Steve A	2,302.01
Alton, David W	1,890.52
Larson, George J	1,653.39
Dow, William R	1,626.11
Holly, Daniel L	1,475.07
Jelinski, Donald E	1,412.13
Kocher, Leland	797.37
Gonsalves, Carl R	712.07
McGuire, George E	617.25
Tonkin, Herbert E	435.45
Nickell, Virgil L	194.03

Both the Commander of the Shipyard and the Representative of the Federal Employees Metal Trades Council request that the overpayments made to the affected employees be waived under the provisions of 5 U.S.C. § 5584 (1970). While section 5584 authorizes the waiver of claims of the United States against a person arising out of an erroneous payment of pay or allowances, the waiver of travel and transportation expenses and allowances is specifically excluded. Since per diem is a travel allowance, erroneous overpayments thereof may not be considered for waiver under section 5584.

We have held that amendatory regulations changing per diem rates have the force and effect of law and are applicable from the stated effective date and that the rule is applicable from the stated effective date and that the rule is applicable not only to cases where the individual employee has not received notice of the increase or decrease in rate, but also to cases in which the installation responsible for the employee's temporary duty assignment is not on actual notice of the amendment. B–183633, June 10, 1975; and B–173927, October 27, 1971.

In B–182324, July 31, 1975, a case similar to the case at bar, the travel order was issued on May 22, 1973, for approximately 298 days temporary duty at the Air War College, and authorized per diem in accordance with the JTR. Thereafter, on August 9, 1973, the Per Diem, Travel, and Transportation Allowance Committee reduced the per diem from $25 to $14 for employees attending training courses at schools, colleges, and universities (including military schools) for periods of 45 days or more effective September 1, 1973. The formal "Change" in the JTR was issued November 1, 1973. The employee was paid at the $25 per diem rate until October 31, 1973, when it was discovered that under the amended regulation he should only have received the reduced $14 per diem from September 1, 1973. His orders were amended on November 13, 1973, to reflect the requirements of the JTR change and recoupment of the overpayment was made by his agency. We held that there was no authority to pay a rate in excess of $14 subsequent to September 1, 1973. We concluded that Joint Determination of August 9, 1973, accomplished the change in the JTR, effective September 1, 1978, consistent with the procedure authorized in 33 Comp. Gen. 505 (1954). See also B–177417, February 12, 1973, and *Bruce Adams*, 56 Comp. Gen. 425 (B–186770, March 18, 1977).

In the instant case we must determine the effective date of the amendment to the JTR governing per diem for long-term training. The travel orders issued to the employees authorized "per diem * * * in accordance with JTR" and covered travel between July 1976 and July 1977. By message dated June 21, 1976, the Per Diem, Travel, and Transportation Allowance Committee revised the JTR effective August 1, 1976, to provide "Reduced Per Diem Rates for Long-Term Training." The formal "Change" in the JTR was issued October 1, 1976, and shows an effective date of August 1, 1976, as set forth in the advance notice of June 21, 1976. The advance notice accomplished the revision of the JTR consistent with rule of 33 Comp. Gen. 505. Such notice is deemed to give actual or constructive notice to persons whose rights might be affected favorably or adversely. See B–182324, *supra*. Therefore, there is no basis for payment of per diem at the higher rate for long-term training on or after August 1, 1976.

However, we feel the equities in the instant case, particularly the substantial reduction in the subsistence rate are such as to warrant our reporting this matter to the Congress pursuant to the Meritorious Claims Act of April 10, 1928, 31 U.S.C. § 236 (1970).

Accordingly, we are forwarding a report to the Congress requesting consideration of the overpayments as Meritorious Claims and advising the Long Beach Naval Shipyard that no further collection action need be taken during the next session of the Congress.

R. F. KELLER,
Deputy Comptroller General of the United States.●

By Mr. McCLURE:

S. 3561. A bill to provide for protection of the Johnny Sack Cabin, Targhee National Forest in the State of Idaho;

to the Committee on Energy and Natural Resources.

● Mr. McCLURE. Mr. President, today I am introducing legislation to preserve and protect a unique structure located in the Targhee National Forest in Idaho. Known as the Johnny Sack Cabin, this structure and surrounding smaller structures have become something of a local historic landmark. Constructed about 1932, the cabin is nestled in the trees overlooking Big Springs, a natural springs emitting water at the same temperature year around. The setting of the cabin, the water wheel nearby, and the springs combine to prove a rare esthetic beauty which has been enjoyed by countless thousands over the years. Numerous artists and photographers have reproduced the scene many times since 1932.

The esthetic beauty of the area, including the cabin, is not the only reason for seeking its preservation, however. The original builder and owner of this cabin, Johnny Sack, was himself a unique individual.

A German immigrant, Johnny Sack stood only 4 feet 11 inches tall. Over the years, following his settlement in the area around 1931, Johnny Sack constructed the main cabin, and later the various other structures nearby, including a water-powered pumphouse, built around 1940.

Legend has it that Johnny Sack lived primarily off the land and, during the summer, held a variety of odd jobs. During the winter, he occupied himself with making improvements on the cabin and constructing furniture. Perhaps the cabin is most unique for its interior woodwork, which is of very high quality characterized by an interesting and attractive planed-bark finish. It remains today in excellent condition. Much of the original furnishings were also built by Sack, utilizing the same bark finishing techniques. The workmanship exhibits considerable skill, imagination, and attention to detail.

While many have seen the cabin from the outside, generally from a parking area located across Big Springs, relatively few have seen the magnificent interior of the structure. It is with the intent that the inside of the cabin be opened in some fashion for public use, also, that I introduce this legislation.

Johnny Sack was about 60 years old when he died in 1956. The cabin went to his sisters, who then sold it in 1963 to Mr. and Mrs. Rudy Kipp, the present owners and summer residents. Under the original special use permit issued by the Targhee National Forest, the cabin and approximately one-third acre of associated land will revert back to the Forest Service in 1980. The Forest Service has announced its intention to destroy this and 18 other structures in the area as part of their management plan. This proposed action has raised considerable controversy with local residents in the area who consider the cabin to be an historical landmark.

Though technically the cabin does not qualify to be nominated for inclusion on the National Register of Historic Places, it is considered by local resident and experts alike to be worthy of preserving. A recent cultural resource evaluation, undertaken by the USDA, states in part:

> This determination of significance does not mean that the property is lacking in all historic, architectural, or visual value. It could still be managed and preserved as a picturesque landmark for visitor enjoyment.

For some time now the Fremont County Historical Society has been seeking a method for preserving the Johnny Sack cabin and surrounding area. The Historical Society, I believe, reflects the unanimous feelings of the residents in the area, and in fact all those who have visited the Big Springs area. Interestingly, it is the present owners of the cabin, Mr. and Mrs. Rudy Kipp, who are also seeking preservation, though they know that they must vacate ownership and residency in 1980. As Mrs. Kipp explained to me on a recent trip to the cabin:

> We have been very fortunate to have been able to enjoy this place for many years. The worst that could happen is to have it destroyed. We want it preserved so that the public can enjoy its beauty and uniqueness.

Though the Forest Service has not refused to consider allowing local public interest organizations, such as the Historical Society, to maintain and operate the cabin for public use under a special use permit, the Society itself has expressed concern over the financial obligation involved.

After consultation with the Fremont County Historical Society, local Forest Service officials and interested residents, the consensus is that a legislative solution best suits everyone's needs and desires.

Specifically this bill does nothing more than require the Forest Service to preserve and maintain the Johnny Sack Cabin and associated structures in their present form. It also requires the Forest Service to consult local interest organization, such as the Fremont County Historical Society, concerning the management and operation of the cabin and immediate area; and, in fact, allows the Forest Service to enter into a cooperative agreement for the management and protection of the area for the public use.

Mr. President, I believe this to be the solution best aimed at preserving this unique, beautiful, and historic cabin. This will not only benefit the residents and frequent visitors to the area but, because of its proximity to Yellowstone and Grand Teton National Parks, will provide an informative and totally different experience for visitors and tourists from around the country.

Mr. President, I ask unanimous consent that the bill be printed in the RECORD, together with two letters, indicating the positions of the Fremont County Historical Society and the Kipps.

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

S. 3561

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That for the purpose of providing for the public use and enjoyment of the Johnny Sack Cabin, Targhee National Forest, State of Idaho, and to protect and preserve such cabin as a unique example of craftsmanship, the Secretary of Agriculture, in consultation with the Fremont County Historical Society and other interested organizations, shall take such action as may be necessary in order to provide for the protection and maintenance of the Johnny Sack Cabin and associated structures. In carrying out the requirements of this Act, the Secretary is authorized, in accordance with existing law, to enter into a cooperative agreement with, or to issue a special use permit to, an appropriate person or organization pursuant to which such person or organization shall provide such protection and maintenance.

Sec. 2. The cost of maintenance and preservation of the Johnny Sack Cabin and associated structures shall be borne by the Secretary and there are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.

APRIL 18, 1978.

Senator JAMES A. MCCLURE,
Dirksen Buiding,
Washington, D.C.

DEAR SIR: This letter is sent to you in regard of the beautiful cabin owned by Mr. and Mrs. Rudy Kipp and located at the Big Springs, Island Park, Idaho. It has become the concern of the Fremont County Historical Society, that this cabin is in danger of being destroyed. The land has been reclaimed by the United States Forest Service.

We would like to maintain the cabin as a historical site in its present beautiful setting. The cabin itself and furnishings is a work of art and to use this as a visitors center displaying the artistic work of local artists and authors would be of great benefit to the public. This short drive to Big Springs to see the wild life, feed the fish, the fantastic scenery of forest and stream, the exquisite beauty of the Kipp cabin complete with water wheel, would certainly be a breath taking adventure for all. This truly is a natural site for the public to absorb a bit of Island Park History. Surely the preservation of such a land mark is of concern to all.

May we please enlist your help in obtaining this site as a historical point of interest.

Thank you for your concern.

DOROTHY L. GIFFORD,
Fremont County Historical Society.

MAY 3, 1978.

Senator JAMES A. MCCLURE,
Dirksen Building,
Washington, D.C.

DEAR SIR: We are the owners of the summer home built by Johnny Sack which is described in the attached newspaper articles. The land is leased from the Forest Service until the end of 1979 at which time the lease will not be renewed and the structures are to be removed.

The improvements, consisting of the main house shown in the newspaper article and a small structure with a water wheel at the rivers edge, were erected in the 1930's. Johnny Sack was a master craftsman in the construction utilizing native woods. The interior of this log house is trimmed with local pine with the bark still in place. The cupboards and most of the furniture are similarly built. The place is truly one of a kind.

We have had the pleasure of owning and living in this summer home for several years and wholeheartedly join with the residents of Fremont County in the belief that it

should not be destroyed. We realize that we must give it up but strongly feel that it's destruction would be a great historical loss to the State of Idaho which already has a dearth of historical landmarks. The residents of Fremont County have indicated a concerned interest in the preservation of this property and we earnestly enlist your assistance in the support of this cause. If you are in the area during the coming summer we cordially invite you to visit the site.

Once demolished this landmark is lost forever.

Sincerely,

Mr. and Mrs. R. B. KIPP.●

ADDITIONAL COSPONSORS

SENATE JOINT RESOLUTION 153

At the request of Mr. ANDERSON, the Senator from Delaware (Mr. BIDEN) was added as a cosponsor of Senate Joint Resolution 153, authorizing the President to proclaim the third week in June 1979 as "National Veterans Hospital Week."

AMENDMENT NO. 3584

At the request of Mr. SCHWEIKER, the Senator from New York (Mr. JAVITS) was added as a cosponsor of amendment No. 3584, intended to be proposed to H.R. 5285, tariff treatment of film, sheets, and plates of certain plastics or rubber.

SENATE CONCURRENT RESOLUTION 107—SUBMISSION OF A CONCURRENT RESOLUTION RELATING TO LEBANON

Mr. ANDERSON (for himself and Mrs. HUMPHREY) submitted the following concurrent resolution, which was referred to the Committee on Foreign Relations:

S. CON. RES. 107

Whereas the Syrian presence in Lebanon has been in effect since January 1977; and

Whereas the continued presence of Syrian troops in sections of Lebanon no longer serves to further the attainment of peace in that country; and

Whereas the presence of a dispassionate peacekeeping force in these sections of Lebanon would serve the interests of peace: Now, therefore, be it

Resolved by the House of Representatives (the Senate concurring), That it is the sense of the Congress that the United Nations should consider the placement of a peacekeeping force in sensitive sections of Lebanon; and be it further

Resolved, That the Speaker of the House of Representatives and the President of the Senate are directed to forward a copy of this resolution to the President of the United States, the Ambassador of the Government of the United States to the United Nations and the Secretary General of the United Nations.

AMENDMENTS SUBMITTED FOR PRINTING

FULL EMPLOYMENT AND BALANCED GROWTH ACT OF 1978—S. 50 and H.R. 50

AMENDMENTS NOS. 3903 THROUGH 3953

(Ordered to be printed and to lie on the table.)

Mr. HATCH submitted 51 amendments intended to be proposed by him to S. 50, the Full Employment and Balanced Growth Act of 1978.

AMENDMENTS NOS. 3954 THROUGH 3958

(Ordered to be printed and to lie on the table.)

Mr. SCHMITT submitted five amendments intended to be proposed by him to H.R. 50, the Full Employment and Balanced Growth Act of 1978.

AMENDMENT NO. 3959

(Ordered to be printed and to lie on the table.)

Mr. GARN submitted an amendment intended to be proposed by him to S. 50, the Full Employment and Balanced Growth Act of 1978.

AMENDMENTS NOS. 3960 THROUGH 3972

(Ordered to be printed and to lie on the table.)

Mr. GARN submitted 13 amendments intended to be proposed by him to H.R. 50, the Full Employment and Balanced Growth Act of 1978.

REVENUE ACT OF 1978—H.R. 13511

AMENDMENT NO. 3973

(Ordered to be printed and to lie on the table.)

Mr. NELSON (for himself and Mr. LEAHY) submitted an amendment intended to be proposed by them, jointly, to H.R.13511, an act to amend the Internal Revenue Code of 1954 to reduce income taxes, and for other purposes.

AMENDMENT NO. 3974

(Ordered to be printed and to lie on the table.)

Mr. NELSON (for himself, Mr. KENNEDY, and Mr. LEAHY) submitted an amendment intended to be proposed by them, jointly, to H.R. 13511, supra.

● Mr. NELSON. Mr. President, today I am submitting two amendments to the Revenue Act of 1978, H.R. 13511 on behalf of myself and Senators KENNEDY and LEAHY. I ask that the text of the amendments be printed in the RECORD following my remarks.

DESCRIPTION OF AMENDMENTS

The first amendment would increase the present 50 percent exclusion from gross income for long-term capital gain to 60 percent. The 25-percent alternative tax on the first $50,000 of a noncorporate taxpayer's net long-term capital gain, the present "add-on" minimum tax and the tax preference offset to the maximum tax would be repealed.

As a result of these changes, the maximum capital gains tax rate applicable to a noncorporate taxpayer would be 28 percent; that is, 40 percent of the highest individual tax rate of 70 percent.

The second amendment adopts a new alternative minimum tax in place of the present "add-on" minimum tax which would be payable only if it exceeded regularly computed tax. It would be graduated and would be based on taxable income, increased by tax preference items, and decreased by an exemption of $20,000. The next $40,000 of taxable income plus preference items would be subject to 25-percent tax. All taxable income plus preference items in excess of $100,000 would be subject to a 30-percent rate of tax.

The items of tax preference for purposes of the new alternative minimum tax shall be the same as present law as modified by the finance Committee bill.

However, capital gains from the sale of timber would not be subject to the new alternative minimum tax.

PURPOSE OF THE AMENDMENT—CAPITAL GAINS RATE

Many distinguished economists testified before the Senate Finance Committee that a substantial reduction in capital gains rates would increase capital formation, stimulate the economy, and create more jobs. I do not challenge the merits of their argument. However, the capital gains cuts in the committee bill are larger than they should be considering the fiscal limitations of the entire tax package and the desirability for a more equitable distribution. The committee bill would reduce the maximum rate of tax on capital gains from 49.125 to 21 percent by increasing the present 50-percent exclusion from gross income for long-term capital gains to 70 percent and by repealing the existing "add-on" minimum tax as it applies to noncorporate taxpayers. Certainly the maximum capital gains rate should be reduced to facilitate needed capital formation, but not to the level adopted by the Finance Committee. It would be more appropriate given budget restraints to reduce the maximum rate from the current 49 percent to approximately 28 percent.

Reducing the maximum capital gains rate to 28 percent would certainly have the effect of stimulating capital formation while providing needed tax relief to middle-income taxpayers. Moreover, reducing the capital gains rate to 28 percent in keeping with the President's position that the maximum capital gains rate should be approximately 30 percent. The committee bill falls short of this goal.

The committee bill distributes 75 percent of the capital gains cut to taxpayers with incomes over $50,000. The cost of this proposal would amount to over $3 billion in 1979. The following table illustrates this point:

Expanded income (thousands)	*Number of returns*	*Average tax decrease*	*Percent of total distribution*
Below $5	52,000	−$212	0.4
$5 to $10	539,000	−39	.7
$10 to $15	573,000	−82	1.6
$15 to $20	687,000	−136	3.2
$20 to $30	990,000	−204	6.8
$30 to $50	873,000	−454	13.2
$50 to $100	435,000	−1,625	23.9
$100 to $200	124,000	−3,863	15.1
$200 and above	41,000	−29,040	35.1
Totals	4,314,000	−727	100.0

Revenue estimate (in billions of dollars):

1979	$3.20
1980	$3.52
1981	$3.86

TIMBER EXCLUSION

A capital investment in timber is unique. Depending upon the geographic location, timber requires 25 to 100 years to reach maturity and begin to provide a return on the initial investment required to establish a stand of timber. The costs of carrying this investment from the time of seedling planting to maturity are unavoidable and continue to increase. This unique burden of the tree farmer must be recognized if we expect to grow timber for future generations.

This investment is also constantly exposed to risks in the form of fire, insect damage, and disease. Expenses to control these hazards continue for many years before a single dollar is collected by the owner. In many cases the Internal Revenue Service does not allow the current deductibility of these expenses and, therefore, the corporate tree farmer is required to earn $2 in inflated currency for every $1 invested throughout the prolonged holding period before harvest can be accomplished. The capital gains benefit is received only when the timber is harvested and until then the owner is locked into holding and maintaining this asset.

Capital gains treatment of income derived from the growing and selling of timber has provided the needed incentive for individual and corporate taxpayers to invest in timber. The supply of timber has, therefore, kept pace with the increased demand for timber products. Our forests are maintained and improved through intensive and costly management programs which maximize acreage yield. This results not only in an adequate supply of those products, but also assures, at the same time, genuine conservation of our timber resources. Such results will continue to be achievable only if a reasonable return on investment which recognizes the uniqueness of timber when compared to other investments continues to be available.

I am offering these proposals as a substitute for the capital gains rate cut accepted by the Finance Committee. These proposals would provide sufficient incentive for investors to invest in our Nation's economy at a savings of some $1.2 billion over the committee bill. This savings would have the effect of bringing the finance bill in line with budget limitations.●

AMENDMENT NO. 3975

(Ordered to be printed).

Mr. BAKER proposed an amendment to H.R. 13511, supra.

AMENDMENTS NOS. 3976 AND 3977

(Ordered to be printed and to lie on the table.)

Mr. MOYNIHAN submitted two amendments intended to be proposed by him to H.R. 13511, supra.

AMENDMENT NO. 3978

(Ordered to be printed and to lie on the table.)

Mr. MOYNIHAN (for himself and Mr. JAVITS) submitted an amendment intended to be proposed by them, jointly, to H.R. 13511, supra.

AMENDMENT NO. 3979

(Ordered to be printed and to lie on the table.)

Mr. METZENBAUM (for himself, Mr. CHAFEE, Mr. GLENN, Mr. PELL, Mr. STAFFORD, and Mr. HEINZ) submitted an amendment intended to be proposed by them, jointly, to H.R. 13511, supra.

AMENDMENT NO. 3980

(Ordered to be printed and to lie on the table.)

Mr. HEINZ submitted an amendment intended to be proposed by him to H.R. 13511, supra.

AMENDMENT NO. 3981

(Ordered to be printed and to lie on the table.)

Mr. HATHAWAY submitted an amendment intended to be proposed by him to H.R. 13511, supra.

AMENDMENT NO. 3982

(Ordered to be printed and to lie on the table.)

Mr. BELLMON submitted an amendment intended to be proposed by him to H.R. 13511, supra.

AMENDMENTS NOS. 3983 THROUGH 3986

(Ordered to be printed and to lie on the table.)

Mr. DOLE submitted four amendments intended to be proposed by him to H.R. 13511, supra.

AMENDMENT NO. 3987

(Ordered to be printed and to lie on the table).

Mr. BARTLETT submitted an amendment intended to be proposed by him to H.R. 13511, supra.

AMENDMENTS NOS. 3988 THROUGH 3989

(Ordered to be printed and to lie on the table.)

Mr. WALLOP submitted two amendments intended to be proposed by him to H.R. 13511, supra.

AMENDMENT NO. 3990

(Ordered to be printed and to lie on the table.)

Mr. WALLOP (for himself, Mr. BAKER, Mr. DOMENICI, and Mr. METZENBAUM) submitted an amendment intended to be proposed by them, jointly, to H.R. 13511, supra.

AMENDMENT NOS. *3991* THROUGH *3993*

(Ordered to be printed and to lie on the table.)

Mr. BAYH submitted three amendments intended to be proposed by him to H.R. 13511, supra.

AMENDMENT NO. 3994

(Ordered to be printed and to lie on the table.)

Mr. DOLE submitted an amendment intended to be proposed by him to H.R. 13511, supra.

● Mr. DOLE. Mr. President, the Health Care Financing Administration is the agency in the Department of Health, Education, and Welfare responsible for the administration, coordination, and policymaking for the $50 billion medicare and medicaid programs, and certain quality assurance programs.

HISTORY OF HCFA

That agency was originally proposed some 3 years ago as a provision of S. 3205 and again in this Congress as a section in S. 1470. The agency was intended to provide a means for orderly consolidation and coordination of the medicare and medicaid programs. The concept of the Health Care Financing Administration was embraced by the administration prior to congressional action, and the agency established administratively rather than legislatively.

Since its inception, it has had serious difficulties, both administrative and bureaucratic. However, the last few months there appears to have been marked improvement in the functioning of this agency whose effectiveness means so much to so many millions of poor and older Americans.

SUFFICIENT AND BROAD RESPONSIBILITIES

This agency is certainly on a par with the Social Security Administration in its significance. Its role will only grow larger over time. As we all know, health care and health care financing are enormously complex areas which demand expertise, sophistication, and sensitivity. The programs we have with health care, both in the public and private sectors are enormous and urgent. At best we have only partial solutions to them. Hopefully, in time, we will have more adequate and equitable answers.

WHY REQUIRE SENATE CONFIRMATION?

It is absolutely vital that the principal official of that agency, the Administrator of the Health Care Financing Administration, be an individual experienced and knowledgeable in health care and health care financing, with full awareness of the sensitivity and complexity involved in those areas. This position is essentially a successor to a previous position—Administrator of the Social and Rehabilitation Service—which required Senate confirmation, because of its medicaid responsibilities. S. 3205 and S. 1470, to which I previously referred, provided for Senate review and confirmation of Presidential appointment of the Administrator of the Health Care Financing Administration. The significance of the appointment is so obvious and so important that I believe it worthy of introduction.

Therefore, Mr. President, I submit this amendment to the tax bill providing this change in the Social Security Act.

AMENDMENTS NOS. 3995 AND 3996

(Ordered to be printed and to lie on the table.)

Mr. BELLMON (for himself, Mr. RIBICOFF, Mr. BAKER, and Mr. DANFORTH) submitted two amendments intended to be proposed by them, jointly, to H.R. 13511, supra.

AMENDMENT NO. 3997

(Ordered to be printed and to lie on the table.)

Mr. SCHMITT submitted an amendment intended to be proposed by him to H.R. 13511, supra.

AMENDMENT NO. 3998

(Ordered to be printed and to lie on the table.)

Mr. HEINZ (for himself, Mr. NELSON, Mr. WEICKER, and Mr. RIEGLE) submitted an amendment intended to be proposed by them, jointly, to H.R. 13511, supra.

AMENDMENTS NOS. 3999 THROUGH 4005

(Ordered to be printed and to lie on the table.)

Mr. HEINZ submitted seven amendments intended to be proposed by him to H.R. 13511, supra.

AMENDMENT NO. 4006

(Ordered to be printed and to lie on the table.)

Mr. TALMADGE submitted an amendment intended to be proposed by him to H.R. 13511, supra.

AMENDMENT NO. 4007

(Ordered to be printed.)

Mr. BUMPERS proposed an amendment to H.R. 13511, supra.

AMENDMENT NO. 4008

(Ordered to be printed.)

Mr. DECONCINI proposed an amendment to H.R. 13511, supra.

AMENDMENT NO. 4009

(Ordered to be printed.)

Mr. PERCY proposed an amendment to H.R. 13511, supra.

AMENDMENT NO. 4010

(Ordered to be printed and to lie on the table.)

Mr. JAVITS submitted an amendment intended to be proposed by him to H.R. 13511, supra.

AMENDMENT NO. 4011

(Ordered to be printed.)

Mr. MOYNIHAN proposed an amendment to H.R. 13511, supra.

AMENDMENT NO. 4012

(Ordered to be printed.)

Mr. PACKWOOD proposed an amendment to H.R. 13511, supra.

AMENDMENT NO. 4013

(Ordered to be printed.)

Mr. MOYNIHAN proposed an amendment to H.R. 13511, supra.

AMENDMENT NO. 4014

(Ordered to be printed.)

Mr. KENNEDY submitted an amendment to H.R. 13511, supra.

AMENDMENT NO. 4015

(Ordered to be printed and to lie on the table.)

Mr. MOYNIHAN (for himself and Mr. CRANSTON) submitted an amendment intended to be proposed by them, jointly, to H.R. 13511, supra.

AMENDMENTS NOS. 4016 AND 4017

(Ordered to be printed and to lie on the table.)

Mr. HOLLINGS submitted two amendments intended to be proposed by him to H.R. 13511, supra.

AMENDMENT NO. 4018

(Ordered to be printed and to lie on the table.)

Mr. INOUYE (for himself and Mr. MATSUNAGA) submitted an amendment intended to be proposed by them, jointly, to H.R. 13511, supra.

AMENDMENT NO. 4019

(Ordered to be printed and to lie on the table.)

Mr. METZENBAUM (for himself, Mr. CHAFEE, Mr. GLENN, Mr. HEINZ, Mr. LEAHY, Mr. PELL, and Mr. STAFFORD) submitted an amendment intended to be proposed by them, jointly, to H.R. 13511, supra.

ADDITIONAL STATEMENTS

A MISTAKEN VETO

● Mr. McGOVERN. Mr. President, the veto of H.R. 12928, the Energy and Public Works Appropriations Act, appears to be an effort by the President and his administration to convince the public that congressionally authorized water projects are inflationary.

We have been treated to what advertising experts might market as "Jimmy Carter: Inflation Fighter." This campaign is designed to improve the President's political image at the expense of the Congress.

The President's veto message to the Congress yesterday told us there is no "single dramatic act which will control the budget." He wrote us that "budgetary control must be achieved by the cumulative impact of hard choices."

In truth, the Public Works Appropriations Act presented the President an opportunity to play to the proposition 13 sentiment in the country by launching cheap shots at the so-called "pork barrel." What we are really talking about are Federal projects which pay back much of their initial investment. They pay money back to the Treasury directly and return many times their cost in long-term benefits. In this way our public works program is unique among Federal programs.

But, as the President knew when he vetoed those public works projects, the victims of future floods are not yet vocal. We cannot readily identify the people who will be left without jobs or the communities left to fade away when these projects are not completed. There is no "hard choice" here. We have instead a safe, if woefully shortsighted, political ploy.

The hard choices will come if and when the President stands up to the insatiable demands of the Pentagon.

On that point, we have seen the President be firm in canceling production of the B–1 bomber and in turning down an unwanted nuclear aircraft carrier. While I agree these were prudent steps, I find we have ignored the fact that while making those decisions, the President still rewarded the authors of that spending package with a $10 billion net increase in their budget for fiscal 1979.

If the President were truly the bold inflation fighter he now portrays himself to be, he would be trying desperately to reverse that dramatic invitation to more military waste.

I attempted to offer such an opportunity yesterday by a modest amendment which would have cut 1 percent from the $116 billion defense appropriations bill.

I have not heard that any member of the administration took time to support this effort to help bring sanity to the military sector and fight a very real cause of inflation.

Apparent fiscal lavishness in the arms sector does not appeal to the President's anti-inflation strategy. He is instead after smaller game and the quick "media hit". Really—what has bothered the President so much about this public works appropriations package?

The President admits he is not at all concerned with the $6.1 billion earmarked in the vetoed bill for energy R. & D. programs. He says there is no "fat" there.

He is not concerned about the $251 million financing power marketing operations and construction projects. He did not express distress with the $138 million to be used by the U.S. Army Corps of Engineers to study a variety of projects in order to determine their feasibility.

What he was concerned with was a very small fraction of the $1.3 billion intended to fund corps' construction of a few projects he personally does not care for. Some of the $223 million intended to provide flood control concerns him. Part of the $30 million the Bureau of Reclamation was going to use to study project feasibility bothered him and definitely, he did not like a couple of projects included as small parts of the $221 million reclamation construction budget.

What then is at issue? The congressional budget adopted last month accommodates the spending in this public works bill. The same budget calls for a 35-percent reduction in the deficit expected in President Carter's budget recommendations of last January. The "platter of pork" the Congress served up to the President actually called for less money than he himself asked us to spend.

Let me return for a moment to the contrast I was noting earlier. The President has neglected the inflationary impact of the $10 billion increase in the military budget and is instead outraged at some $1.7 billion in total public works projects costs which will be spent over two or three decades.

If the President is worried about sneaking big bucks into the budget through small initial investments, then he ought, once again, to find the arms budget a compelling target.

This year's increase in the defense budget represents a commitment to spend $130 billion in the next 5 years—contrasted with our modest commitment to spend $1.7 billion over the next 20 to 30 years on water development.

Of course what we are talking about here is "ultimate costs." This is the very argument the President is using. But on these grounds, the President's "inflation" argument falls flat. Really now, which of the long-term commitments is going to create more inflationary pressure?

Let us face it, the President and especially his environmentally-oriented staff, stinging from the President's "cave-in" to the Congress on this issue last year, simply disliked a few specific projects and hid behind an inflation argument to see them defeated this year. Why did not the President make his argument on these grounds instead of re-

verting to this specious inflation argument? Simply because it would have cast the confrontation as one of "philosophical difference" and would therefore have been harder to use in whipping up popular support for this unwise decision.

The Senate will not now of course have a chance to vote on this issue because the two-thirds majority necessary to override the President's veto was not mustered in the House. We instead are left wondering how many billions in "political deals" were struck to win the votes necessary to sustain the veto. We will never know and cannot easily determine their contribution to inflation and wasteful spending.

For this reason, I thank my colleagues for their patience in allowing me to make these few observations the day after the House of Representatives allowed the President to make this misdirected and ineffectual step against inflation. I think time will prove me out when I say what has transpired was neither in the public interest, nor a matter of good national policy. It was public relations imagemaking.●

● Mr. CASE. Mr. President, the situation in Lebanon is deeply disturbing. It cries out for urgent steps to halt the repeated shellings of civilian areas and an immediate cease-fire.

Of particular concern is the continued, deliberate and indiscriminate shelling by Syrian forces of civilian areas, especially those inhabited by the Christian minority in Beirut. Thus, I join in supporting efforts to halt the bloodshed and obtain an immediate cease-fire, including using an emergency session of the United Nations security Council.

At the same time, I wish to express my strong opposition to the approval of the sale to Syria of four large cargo planes, the L–100 which is the civilian and stretched out version of the C–130 Hercules military transport plane. The first two planes are to be delivered to Syria in December.

It was very disturbing to hear that the sale was approved quietly at this time, without consultation with Congress and even, it now appears, without the knowledge of high level State Department officials. The first indication that the export license was approved came from a press report.

Upon checking into the situation, the State Department advised my office that the sale was approved at a relatively low level in the Department, by a deputy assistant secretary, and not at the higher policy levels. The approval was described as a "routine decision," based on the rationale that the L–100 is listed as a civilian plane and therefore not subject to congressional review procedures. This ignores the fact that the differences are not major and the L–100 can be used for carrying military as well as civilian cargo.

The manufacturer, Lockheed, has been seeking for 2 years to obtain a license for the sale and previously had been turned down. But the Commerce Department says the application for an export license was resubmitted August 27th. That was shortly before the Camp David meeting began.

By the timing of the sale and the nature of the plane, the export license application should not have been considered in a routine fashion. It is not routine to sell to a hardline country a plane such as a C–130, at this particular time.

The State Department approved the sale on September 27. That was exactly 1 month after the new application was submitted. It also was 10 days after the Camp David agreement was announced and the Syrians continued to attack the peace efforts. It also happened to be the same day that, without mentioning the impending plane sale, the administration worked for and won congressional approval of another "gesture" toward the Syrians—the $90 million the administration requested in foreign aid for Syria. The House eliminated the funds but a high level lobbying campaign by White House officials persuaded a Senate-House conference committee on the foreign aid appropriations bill to go along with the full $90 million requested for Syria and this was done even though State Department officials had privately indicated the previous week that they would accept a cut of about 30 percent if the funds were not cut on the Senate floor while Secretary Vance was then visiting Syria and other Arab nations. September 27 was also a day after the press reported that the Syrian Information minister was calling for the formation of a strategic alliance between Syrian and the Soviet Union in the Middle East as a reaction to the Camp David agreements.

In the week and a half since those two generous gestures of aid and planes were made to Syria, the Syrians have "reciprocated" by stepping up their shelling and attacks on the Christian community in Lebanon, creating hundreds of casualties.

The mishandling of this plane sale points up the need for the administration to reassess the policies and procedures which led to the granting of the export license. Earlier this year, administration officials strongly and successfully opposed in a conference committee a Senate amendment to the Security Supporting Assistance bill which called for improved procedures, including involvement of the Secretary of State, for scrutinizing commercial sales to certain types of countries.

Mr. President, I have been advised that following the inquiries made by my office and others into the proposed plane sale to Syria, the export license is now being reviewed at higher policy levels in the State Department. I am pleased to hear that a second look is being taken, even if belatedly. I urge the administration to make the reassessment a careful and deliberate one—and in the meantime suspend the license.●

DISTRIBUTION OF DAIRY STOCKS

● Mr. LEAHY. Mr. President, a global problem which faces us is a serious misallocation of the world's resources. This is especially true in regard to our allocation of man's most basic resource—food. One stark example of this is distribution of dairy stocks. In this country we are storing millions of tons of nonfat dried milk, butter, and cheese. These surpluses depress dairy prices in this country, while dairy products are scarce in other parts of the globe. All over the world and in the United States itself, people suffer from malnutrition and starvation. This glaring paradox is disturbing, and a method of equitable allocation must be found.

I would like to bring to Congress' attention one innovative proposal relating to the distribution of dairy products. The proposal is the creation of an International Dairy Cooperative, a concept developed by Patrick H. Healy, Secretary of the National Milk Producers Federation.

The International Dairy Cooperative is not another food-aid program. Its basic principles rest upon sound economic policies. The IDC would be an international administrative process by which surplus stocks of dairy product, for instance nonfat dry milk powder, would be handled by a group of international experts in commodity placement. Absolutely no existing markets would be disturbed by the IDC. The IDC's first responsibility, after assuming possession of stocks of dairy products produced in surplus to domestic needs, would be to develop new markets. This development would rely on a sliding economic scale. Those nations which could not afford to pay for the nutritious supplies of milk powder would be eligible to receive the needed food through an aid and development program. This plan will serve to strengthen the international market for dairy products and will help to alleviate the unnecessary undercutting market which now hampers strong dairy industries at home and abroad.

I bring this concept to your attention so that the potential advantages of this innovative proposal may be explored and discussed.

Mr. President, I submit for the RECORD an outline of the proposal.

The outline follows:

INTERNATIONAL DAIRY COOPERATIVE

PREMISE

The dairy industry of every major producing nation faces the ongoing task of managing and finding markets for their reserve supplies of milk. This process has led to a variety of actions on the part of governments and dairy industries which depress prices in world markets, distort normal trade patterns and, at times, cause serious damage to the dairy industries of other nations.

At the same time, millions of people in other nations face a more difficult problem—hunger. Lack of the capability to produce sufficient food or the funds to purchase needed supplies is a major problem facing many of the lesser-developed nations.

The opportunity exists to use the first problem to alleviate the second. The estab-

lishment of a cooperative international organization for the purpose of utilizing dairy stocks surplus to the needs of commercial markets can be a major step toward addressing world food needs on a continuing and rational basis. It can be a positive move in the development of new commercial markets. It can alleviate the chaotic conditions which characterize world dairy trade while assisting in maintaining the basic strength of domestic dairy industries.

FOOD NEEDS

Nonfat dry milk represents a stable, compact source of nutrition. Experience gained through its use in nutrition programs throughout the world over the last thirty years has demonstrated its value. It is readily stored and transported. It is a versatile product that can be used under a wide variety of conditions with a minimum of supporting technology for preparation and distribution.

While substantial quantities have been used for nutrition supplement in the past, more can be done with it provided steps are taken to stabilize its availability.

According to the Food and Agriculture Organization of the United Nations, the average annual usage of nonfat dry milk was 270,000 tons during the 1960's under a variety of food aid commitments. These commitments declined substantially late in the decade and by 1973–74, only 76,500 tons were committed to this use.

The work of the FAO has indicated that over 600,000 tons of nonfat dry milk are needed annually to provide a minimum level of assistance to needy persons in 36 nations. This would be employed in food assistance programs, food-for-work type projects and similar efforts.

It is necessary to provide assurances of continued availability as recipient nations are reluctant to commit scarce resources to programs which may be subject to termination in the short term. In addition, the FAO study indicated a need for moderate expansion of distribution facilities and some technical assistance in the development of utilization programs. With some degree of planning and the use of existing expertise within the governments and dairy industries of producing nations, these problems can be met.

MILK SUPPLY

The nature of milk production and the central role it plays in the nutrition patterns and economies of producing nations tend toward the production of milk in excess of domestic needs.

Weather patterns, governmental policies, and independent producer decisions all play a role in this process.

The seasonal pattern of milk production, production volatility in the face of weather and other factors affecting feed supplies, and the need to assure adequate production to meet consumer needs have led governments to recognize the need for some means to assure producers a degree of price stability which will induce them to make the commitment needed and accept the risks associated with milk production.

In connection with these efforts, some means of handling the surplus production has been developed by each individual nation. Unfortunately, these efforts tend to operate independently of each other with too little regard for their impact on the commercial export markets of other countries or on the domestic markets of other producing countries.

The existence of surplus dairy product stocks now places great pressure on the industries of producing nations and on their governments. Governmental decisions regarding dairy policy are necessarily affected by these stocks. Sounder, longer term decisions would be possible in the absence of such surpluses. Government officials responsible for dairy programs could act more effectively on current issues absent the compelling political pressures of overwhelming stocks.

Since utilization of these stocks is essential, it should be possible to develop a means of employing them in the most beneficial manner while avoiding the price depressing effects that have too often accompanied these efforts.

There is an abundant supply of nonfat dry milk available. It is a product that is easy to ship; to store; to use. Its effective disposition poses a major problem for major milk producing nations.

At the same time, there exists a major need for improved nutrition in nations throughout the world.

Some conduit is needed to match these two problems to yield a solution that would be beneficial in both instances.

AN INTERNATIONAL DAIRY COOPERATIVE

An International Dairy Cooperative would serve as a combination market development and food assistance agency for the dairy industries of producing nations. All stocks of nonfat dry milk determined to be surplus to the market needs of participating nations would be committed to the cooperative. Under the direction of the Board of Directors, the cooperative management would be responsible for identifying and implementing the programs of the cooperative. As indicated, this would include both market development and food aid.

These activities would not compete with the commercial export sales of producing nations. The sales programs of the IDC would be directed toward those nations which have not achieved the capability of participating in the commercial market. In some instances, this would mean sales at reduced prices. This would permit those nations to obtain the supplies needed and, at the same time, remove these technically noncommercial sales from the position of setting the price of nonfat dry milk in the world market.

For those nations unable to participate in the market even at a reduced price, the IDC would operate as a source of food aid. The cooperative and the recipient nation would jointly develop the terms of such a program, tailoring it to the needs of the country, including necessary arrangements for technical assistance, equipment, educational programs and other considerations necessary to achieve the fullest possible utilization. Future market development considerations would also be a part of this effort.

By channeling these reduced price sales through the IDC, producing nations would not be in the position of constantly underbidding one another in the international market. The continual price war which develops from attempts to dispose of surplus nonfat dry milk destroys the structure of the entire international dairy market. The International Dairy Cooperative would provide a home for true surpluses, thereby allowing the commercial market to operate at realistic levels.

Income realized from the sale of committed stocks, minus a deduction for program operation costs, would be divided among participating countries on a pro rata basis.

OTHER CONSIDERATIONS

While such agency can effectively serve to address food needs and the management of world daily stocks, there are several considerations which must be addressed as part of the plan. Actual nutritional needs must be addressed rather than permitting the effort to become a simple dumping operation. The cooperative's operations must not disrupt established commercial markets or the development of local industries in recipient countries. Finally, the program must not stand in the way of changing international economies but should facilitate the development of additional commercial markets.

Each of these considerations can be addressed within the structure outlined. The essential ingredient of any such effort must be the commitment of participating nations to make it work.

SUMMARY

The brief outline presented here leaves the detail of organization and operation to later development. The basic premise is to commit all stocks of nonfat dry milk in excess of commercial market needs to an international organization for use in market development and food aid effort. This would be a major step forward in dealing with the instability caused by excess production in primary dairy nations. Commercial markets would be strengthened by removal of the effects of below-market sales in efforts to reduce stockpiles. At the same time, the obvious benefit of improved nutrition would result.

DEVELOPMENT PLAN

1. International pooling of expertise from nations producing surplus stocks of nonfat dry milk and from nations in need of food assistance to address nutrition problems.

2. Documentation of the needs in terms of food assistance and the capacity of the populations of recipient nations to utilize available aid.

3. Development of an accurate assessment of international supplies to determine the scope of food aid potential.

4. Government commitments of resources and adoption of supportive policies by all nations concerned.

5. Establishment of the International Dairy Cooperative to coordinate the useful disposition of surplus supplies of nonfat dry milk.●

HOSPITAL COST CONTAINMENT LEGISLATION

● Mr. McCLURE. Mr. President, I wish to express my concern with the amendment that the Senator from Wisconsin (Mr. NELSON) intends to offer to the hospital cost containment bill. Rising health care costs are of concern to all of us. I am convinced that there is no difference in the commitment of the honorable Senator from Wisconsin and my own to the well-being of the people of the United States. We share equal concern in the endeavor to make available, both in accessibility and affordability, the best kind of health care to all persons. We do disagree, however, on the method to achieve that goal.

This amendment, which would authorize standby wage and price controls on hospitals is, in my judgment, arbitrary, unnecessary, and destructive to the successful voluntary cost containment efforts now underway by hospitals, physicians, and other concerned parties throughout the Nation.

This amendment would authorize wage and price controls on a single segment of one industry. Experience has shown that such controls are inequitable and counterproductive. Standby controls are inherently inflationary, because they en-

courage protective actions in advance by those who are at risk of further, future controls. This point has been repeatedly recognized and emphasized by Robert Strauss, the President's special counselor on inflation, as well as by Dr. C. Jackson Grayson, Chairman of the Price Commission during phase II of the economic stabilization program.

Shortly after taking office, President Carter called on labor and business to voluntarily control costs and fight inflation. One segment of the economy that quickly responded to this challenge was the health care industry. The American Hospital Association, the American Medical Association, and the Federation of American Hospitals produced a new partnership among hospitals, physicians, and consumers in instigating a nationwide program to slow down the rate of increase in health care expenditures. This effort by the private sector to control costs has become known as the "Voluntary Effort."

The immediate goal of the voluntary effort is to narrow the gap between health care increases and the rate of increase in the gross national product by significantly reducing the rate of increase in community hospital expenditures by 2 percentage points in 1978 and another 2 points in 1979. This voluntary effort is working. There has been a 2.9-percentage point decline in the rate of increase in hospital expenditures during the first 6 months of this year as compared to the same period in 1977. And the first 4 months of 1978 represent the lowest 4-month period since 1974. In addition, the July consumer price index data recently released show a continued decline in hospital industry inflation. The Congressional Budget Office has estimated the savings obtained from the voluntary effort to be $30 billion over the next 5 years.

I support the voluntary effort organized by the health community. I believe that this program should be given a chance to work without the threat of a fallback Federal mandatory control program. The President himself asked industry to voluntarily control costs. I am aware of no other industry which has met the administration's challenge as has the hospital industry. Why then this later punitive action against the one industry that has exemplified the President's program?

Senator NELSON says that his amendment recognizes the voluntary effort and imposes control on a standby basis. In fact, such standby controls are inequitable in that they seek to impose special controls on just one sector of the economy. Furthermore, the amendment would impose a flat "cap" on all hospitals thus ignoring the legitimate differences among institutions and their needs. This threat of controls forces the prudent manager to take defensive measures he would not otherwise have to. They force the prudent administrator to keep a cushion, a little flexibility, in his operations rather than lowering all expenses to their full extent. Those institutions which would suffer most are the hospitals which have striven to operate efficiently to date—those which have no spare fiscal "padding" from past years. The practical effect of this amendment would be a reduction in health services. Small hospitals in rural areas, which have tended to practice economy measures, would be especially hard hit. For them, a reduction or discontinuance of health services will be a likely result. As a consequence, the community will suffer. Such an outcome may cut costs, but the health and well-being of millions of Americans would be jeopardized.

Again Senator NELSON's proposed controls are wage-price controls and they are being unfairly imposed on one industry. I am against wage-price controls on principle and especially when only one industry of the economy is singled out. Such controls do not recognize expenses that continue to rise in areas beyond the control of hospitals such as costs of equipment and supplies, wages of hospital workers, or the costs of fuel or food.

Mr. President, I am not suggesting that hospitals be absolved of all responsibility for the increase in health care costs, but I fail to understand the value of a proposal which ignores current inflation and the fact hospitals have little or no control over many of the operational expenses. The end result can only be a diminution in health care quality for all consumers. I will vote against the Nelson amendment and urge my colleagues to vote with me.●

FOREIGN RELATIONS COMMITTEE: DIRECT SPENDING ALLOCATIONS

● Mr. SPARKMAN. Mr. President, in compliance with section 302(b) of the Congressional Budget Act of 1974, I am submitting on behalf of the Committee on Foreign Relations its report on direct spending under the committee's jurisdiction as provided by the second concurrent resolution on the budget for fiscal year 1979.

I ask that the report be printed in the RECORD.

The report follows:

COMMITTEE ON FOREIGN RELATIONS REPORT TO THE SENATE PURSUANT TO SEC. 302(b) OF THE CONGRESSIONAL BUDGET ACT—FISCAL YEAR 1979 ALLOCATION

[In thousands of dollars]

	Budget authority	Outlays
Subcommittee on Foreign Assistance:		
International affairs (150):		
Advances, foreign military sales	11,100,000	9,400,000
Liquidation, foreign military sales fund	0	−2,000
Technical assistance trust fund	4,000	4,000
Peace Corps trust fund	245	245
Subtotal	11,104,245	9,402,245
Subcommittee on International Operations:		
International Affairs (150):		
Payment to Foreign Service retirement fund	92,300	92,300
International Center, Washington, D. C	2,346	2,346
Department of State trust fund	740	20 740
Gifts and bequests, National Commission on Educational, Scientific, and Cultural Cooperation	25	
Department of Transportation trust fund	11,510	11,510
International Communications Agency trust fund	331	337
Subtotal	107,252	107,253
Commerce and housing credit (370): Department of Commerce trust fund	4,800	6,000
Income security (600): Foreign Service retirement and disability fund	207,817	117,430
Total allocation to Senate Foreign Relations Committee	11,424,114	9,632,928

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THE SHARP DECLINE IN THE DOLLAR

● Mr. JAVITS. Mr. President, "What to do About the Dollar"—a subject of serious national concern and much international debate—is the title of an excellent essay in this week's issue of Time magazine. George Tabor, its author, vividly highlights the dangers of having a shaky dollar at the center of the international economy—the dangerous speculative runs on the dollar in the money markets, the hesitancy on the part of business in making investment decisions and the exaggerated exchange rates that increase the danger of protectionist trade wars.

The Time article follows a recent speech I delivered to the Senate on August 17 regarding the decline of the dollar in its three-faceted approach to the immediate, medium- and long-term aspects of the dollar problem. At that time, I felt that we must develop a large swap arrangement with the other central banks as a backup mechanism to permit stronger intervention in the money markets. At the same time, the serious and deep-seated problems of the domestic economy that have international consequences must be addressed by intermediate-term policy measures to stop inflation, cut down on our oil imports, and increase our exports and trim our trade deficit.

Perhaps the most difficult aspect of the problem will be to adjust to the long-term structural changes in the international economic system—the change from fixed to floating exchange rates and the OPEC oil price increase—that are the legacy of the 1970's.

Mr. Tabor also recognizes that the most important ingredient for the success of any of these measures is U.S. leadership. The multifaceted nature of the dollar problem requires a strong and decisive Executive who is in control of the situation.

I commend the Time essay to my colleagues and ask that it be printed in the RECORD.

The article follows:

WHAT TO DO ABOUT THE DOLLAR

After long considering a strong dollar a national birthright, Americans lately have learned the humiliation of holding a currency that sinks, slumps and plummets almost every day. In the past year the dollar has declined 17 percent against the West

German mark, 29 percent against the Japanese yen and 34 percent against the Swiss franc—and even 9 percent against the Indian rupee. The Carter Administration has responded with a Dr. Feelgood litany that the dollar's health is sound, and that it will recover from its indisposition if everyone will only wait long enough. But the world's money traders are not buying that happy talk and are now demanding fundamental shifts in U.S. dollar policy.

The value of the dollar determines much more than merely what the doctor in Houston must pay for his new Mercedes-Benz or the housewife in St. Paul for her Swiss chocolates. Prices of domestic goods go up because the competing imports are more expensive; the dollar's decline will add as much as 1.5 percent to the inflation rate this year. More important, a nation's currency is the symbol of its economic vitality and the instrument by which it exercises its world role. The fall of the once-mighty British pound from $4.03 to a low of $1.55 was both a contributor to and a measure of Britain's postwar decline. When Charles deGaulle returned to power in 1958, one of his first acts was to restore the French franc to strength with a currency reform that devalued the franc, established an austerity program and even symbolically replaced the Monopoly-money *ancien* franc with a *nouveau* franc at a rate of 1 new for 100 old.

The fate of the dollar calls into question the way the whole world does business. The international monetary system is a precarious structure held together largely by paste, baling wire and confidence in the dollar, since it is the currency in which most international deals are made and which central banks keep in their vaults as reserves. During recent runs on the dollar, the first signs of financial panic could be seen. World money markets now resemble the urban ghettos of the 1960s, when a random traffic ticket or barroom scuffle could set off days of bloody rampages. The most implausible rumors out of Washington or the Middle East cause currency jitters and a dollar fall.

For no apparent reason, one Monday morning seven weeks ago, bankers, corporate treasurers and speculators suddenly wanted to sell dollars, causing a mindless two-day dollar run. Washington policymakers are still frightened by the episode because they have no idea why it started. While not predicting *The Crash of '79*, the dramatic title of a novel that foretold the collapse of Western civilization after a dollar disaster, Henry Kaufman, a partner in Wall Street's Salomon Bros., warns that the attack on the dollar "has placed the entire international monetary system in jeopardy."

The effects of a shaky centerpiece on the world economy are evident. Businessmen, who feel they cannot predict the value of their currency tomorrow morning much less a year from now, have grown overly cautious. Instead of marketing the new product that may (or may not) bring a profit in three or four years, they are gambling in the currency markets in hopes of making an overnight gain on a falling dollar or rising yen. That is one reason why business investment and economic growth in most Western industrial countries are running at only half the level of the 1960s.

Unreasonable exchange rates, which now mean a cup of coffee costing $2 in Geneva or a hotel room $100 a night in Tokyo, increase the danger of protectionist trade wars as everyone runs to shield his market against low-priced U.S. competition. The Tokyo round of trade talks, which has been dragging on for four years, is in danger largely because of the dollar. Finally, global inflation is being fired anew. Uncertain what the value of a product will be even a few weeks from now, both exporter and importers raise prices a little more to ensure against a possible loss from a currency change.

Until very recently the Carter Administration had tried to find benefits in a weaker dollar, claiming that it would encourage American sales abroad; and a year ago, Treasury Secretary W. Michael Blumenthal was arguing that the dollar was too expensive, and tried to talk its value down. Fortunately that view has been forcefully dismissed. Says Federal Reserve Chairman G. William Miller: "Any idea that it is in the interest of the U.S. to have a weak dollar, to have a lower dollar, is false prophecy. It is just not right."

A new American policy to lift the dollar will have to overcome that past mistake because worldy bankers and investors are very skeptical about the commitment of the Administration, and they have adopted a "show me" attitude. Quipped one top banker at the annual meeting of the International Monetary Fund in Washington last week: "He who talketh down the dollar cannot talk it back up." Of course, the stability of the American economy and the world financial system demands a decisive policy that goes much beyond talk. It should be a threefold strategy, of immediate steps to stem the dollar's decline, medium-term measures to correct the dollar's underlying weakness, and long-term reform that would stabilize the American currency inside a more certain monetary system. In sum, the U.S. can come to the aid of its currency if it takes a mix of actions:

SUPPORT THE DOLLAR

Everyone from Swiss gnomes to Brooklyn cabbies agree that the dollar is grossly undervalued. It can buy much more at home than abroad. Says Yale Economist Robert Triffin: "I used to buy all my suits in Europe because they cost half as much as in America. Now the situation is exactly reversed, and I buy my clothes in the U.S."

To prevent a further fall in the value of the greenback, the U.S. Government, in close cooperation with leading foreign central banks, should step in and buy large quantities of dollars on world markets. This would require assembling a vast war chest of funds to show currency speculators that Washington has the money to back up that policy. Two fast and impressive steps would be increasing sales from the nation's $60 billion gold reserves, as former Federal Reserve Chairman Arthur Burns suggests, and enlarging the so-called swap network of dollar defense funds from $25 billion to $100 billion, as Senator Jacob Javits proposes.

Critics of intervention argue that there is $400 billion to $600 billion in surplus dollars floating around foreign money markets—nobody knows the exact total—and Washington could not begin to buy them all. But if the U.S. expressed willingness and made funds available to buy huge amounts, speculators would conclude that the price would stay up, and so they would not sell their dollars. In short, a war chest to defend the dollar, coupled with a strong determination to use it if necessary, would act much like a nuclear deterrent: the more impressive it is, the less likely it will ever need to be used.

FIGHT INFLATION

An immediate dollar-support program will only buy time while the Administration takes the more fundamental action necessary to correct the dollar's underlying weakness. The most important step would be a tough, credible anti-inflation program. Inflation, of course, debauches a currency by reducing its purchasing power. As long as the West German inflation rate is under 3 percent while the American rate is more than 8 percent, the dollar will continue to depreciate, and the mark will rise. An austerity program that brings American inflation down toward the German level is an inescapable move to support the dollar.

President Carter is working on a Stage Two anti-inflation program that is expected to include voluntary wage and price guidelines. They can only supplement firm fiscal and monetary policies, which are still the surest way to slow inflation. The fiscal 1979 federal deficit is expected to be some $39 billion, and final planning will soon start on the 1980 budget. All effort should be made to keep that deficit well below $30 billion, for a larger figure would be a clear sign that the Administration does not take the inflation struggle seriously. The Federal Reserve must also continue its increasingly tight money policy, even though interest rates are starting to hit double digits.

DEVELOP AND CONSERVE ENERGY

Since the quintupling of oil prices by the OPEC cartel five years ago, the U.S. has spent $153.5 billion on oil imports, greatly swelling the world glut of dollars and reducing their value. Last week's Senate passage of the natural gas compromise was a small move in the right direction of reducing oil imports and increasing domestic energy production. Much more is needed. Congress is sure to kill Carter's proposal for a crude-oil equalization tax that would have raised U.S. oil prices to the world level and discouraged consumption. As a temporary substitute, the President should use his executive power to place an import tax or quota on oil imports. Beginning next May, the President will also have authority to deregulate oil prices. He should announce now that he will start moving then to increase prices, that will both slow imports and speed the search for more domestic oil and gas

EXPAND EXPORTS

The U.S. must again become a nation of traders in order to close the trade deficit that this year will approach $33 billion. The President's new export policy does not adequately cope with the myriad Government barriers that block sales abroad. Some $10 billion in exports is being lost annually because of a variety of Government measures, including blocking exports to some countries in order to further human rights policy. American businessmen, most of whom have treated exports as a minor sidelight, must also become more aware of new sales opportunities after the sharp decline in the dollar. Exports amount to a rather meager 6.4 percent of the gross national product; Federal Reserve Chairman Miller urges a drive to raise that to 10 percent.

SHOW ECONOMIC LEADERSHIP

By dumping dollars, foreigners have been voting no confidence in America's economic leadership. The long congressional battle over energy, after which Carter won only part of his program, and the conflicting policy signals on the dollar and inflation have moved many foreigners to conclude that U.S. economic policy is out of control.

There have been serious conflicts and infighting among the President's economic advisers. Instead of one clear voice speaking with authority, the Administration has sounded like a Greek chorus. Treasury Secretary Blumenthal, Anti-Inflation Coordinator Robert Strauss, Domestic Adviser Stuart Eizenstat and a host of other instant experts freely toss out ideas, and the conclusion is confusion. Nobody knows who speaks for the President. The Treasury Secretary, who is traditionally the chief economic spokesman, has been contradicted and undercut repeatedly by the White House, and his effectiveness has been seriously impaired. Said one European minister at the IMF meeting: "This Administration should either express confidence in this Secretary of the Treasury or get a new one." The credibility of the Carter

Administration to world moneymen will remain in doubt until there is one coherent authoritative voice on economic matters.

REFORM THE MONETARY SYSTEM

Beyond these short- and medium-term measures, there is need for long-range changes in the world's money system. Since early 1973 the system has been based on floating rates: a currency's value is set by supply and demand on money markets. This replaced the old system in which rates were firmly fixed in relation to gold and the dollar. The earlier structure had served fairly well for almost three decades but then had broken down because exchange rates could not be changed only abruptly, sharply and in a crisis atmosphere. Yet now with floating rates, the world endures a permanent crisis and fundamental economic instability, as currencies gyrate madly in response to today's headline or rumor. Says former Federal Reserve Chairman William McChesney Martin: "The floating-rate system is not serving the world well, buffeted as it is by structural imbalance, inflation, widespread lack of confidence and, as a result, excessive fluctuations in exchange rates."

In search of greater stability, many countries are beginning to turn away from floating rates. The Europeans are moving to set up among themselves rates that would diverge very little because central bankers would manage them. On the other side, the U.S. has steadfastly argued that only floating rates can avoid the old rigidity and periodic crises. But Princeton Economist Peter B. Kenen asks, "Can the U.S. be content with a monetary system in which we have no role except to complain that there is too much management of currency values, or would we be better off to participate in the management?"

The U.S. should join the trend toward more managed exchange rates, something of a compromise between fixed and floating rates. World central banks would have to cooperate closely, buying and selling currencies in order to keep the rates within certain ranges. Former Under Secretary of the Treasury Robert V. Roosa says that a first step toward this arrangement would be to set up "reasonable range of value for the three key currencies—the dollar, mark and yen." Other currencies would quickly fall into line behind the big three. The IMF could monitor national economic activity and recommend when currency values should be increased or decreased and by how much. Last April the IMF set up a "surveillance system" that could perform this function. Though some American officials have opposed such an idea because it would limit national economic independence, the U.S. should strongly support it as a major step toward greater stability in exchange rates.

Since the shocks of the early 1970s, the world's economies have lived in a period of tension and trauma. Oil price increases, world recession, rampant inflation, low growth and severe balance of trade problems have left leaders in the chancelleries and the counting houses doubting the present and fearing the future. But nothing has been worse in a period of crumbling foundations than the decline of the dollar, which is the talisman of an uncertain world. A first move toward a more secure economic future would be to re-establish the stability of the dollar inside a more managed and predictable international money system.●

AMERICAN AGRICULTURE AND RAIL STRIKE

● Mr. TALMADGE. Mr. President, I wish to address a situation that could have been a disaster. I speak of the rail strike that brought railroad transportation to a halt last week. I commend the President, the courts, and the parties concerned for their action to bring the strike to an end as quickly as they did, thereby averting a major crisis for the American economy.

While any transportation slowdown injures nearly every sector of our economy, no sector is more vulnerable to a railroad shutdown than agriculture. This is particularly true at this time. We have yet to recover from the problems of rail car shortage this past winter and spring. Our stocks of grains are expanding as record soybean and corn crops are now being harvested. Available storage is being strained, and the need to move products into export is at its highest.

The situation that we averted had the possibility of being a disaster. Stopping the movement of corn a week or 10 days could seriously affect American agriculture production. The Department of Agriculture recently estimated that even a 3-day stoppage would cause some poultry producers to begin to reduce their flocks of broilers and layers. A 10-day stoppage would force a large share of our poultry producers to destroy their flocks. As a result, supplies of poultry, meat, and eggs would become drastically short. This same ripple effect could be expected in the pork, beef, and dairy sectors. In these areas the impacts would develop more slowly, but the end result would be just as severe.

The effect would be sharply higher food prices. This would fuel the inflationary fires that our Nation has been fighting.

Railroads are vital to the movement of grain into export. A slowdown of a week in grain shipments can result in a market disruption that can take up to a month to be fully worked out. However, there are also lost market opportunities and reduced foreign exchange earnings that cannot be recovered. Further, the situation would result in building stock of grain, thereby depressing prices.

The railroads are also critical for the transport of fruits and vegetables. Any slowdown in the transportation of these products can result in rapid losses because of their perishability.

It is true that a good share of these products are moved by truck, however, anytime we have a stoppage in rail service there is a wild scramble for alternative transportation. Often agriculture loses out as the cost of transportation increases sharply. Mr. President, what I have described is the effect that transportation disruption can have on our farmers and consumers. Our Committee on Agriculture, Nutrition, and Forestry has been investigating transportation problems for agriculture and rural America for several years.

Our hearings, investigations, and reports on transportation in America have all reached the same conclusion: that even at the best times we have an inadequate transportation system in rural America, and that American agriculture is extremely vulnerable to even brief disruptions.

A few years ago we published a committee print entitled "The Immovable Feast." At that time the bountiful blessings of American agriculture could not be moved to market because of railcar shortages, tieups at the ports, inadequate bridges and other factors.

What we thought was a crisis 5 years ago has intensified. The Secretary of Agriculture has declared the current railcar shortage the most serious ever.

We see railcar shortages in the spring and winter when we need to be transporting fertilizer. We see it in the fall when we are trying to move our grain. While half of our agricultural products are moved by rail, we see constant efforts to abandon rural railroads. These rail abandonments would leave agriculture isolated because the Government has also decided not to support the maintenance of our rural highways. The condition of rural bridges is atrocious. Many bridges are too narrow and could not stand the traffic that would occur if rails are abandoned. The loss of the rail lines given the condition of our rural highways and bridges would mean there is no way to transport agricultural products.

Just as our rural highways are deteriorating, our railbeds are equally poor. In fact, one of our investigative teams found a railroad derailment that occurred while the train was standing still. The tracks were so bad that the train simply fell off them.

In spite of its brevity, last week's railroad strike dramatically demonstrated the inadequacy of transportation in rural America. Fortunately, the swift action taken by President Carter averted a major crisis.

However, the underlying problems of an inadequate rural transportation system remain. The magnitude and seriousness of this problem is such that I believe that this Nation must give a very high priority to improving the transportation system that serves rural America.

I again commend the President for his actions, but I call upon him to use every authority available to him in the executive branch to begin to resolve the underlying problems that I have outlined. If the products of the American agriculture cornucopia are to be moved from our fields to our tables, and the tables of the world, we must have a more efficient, effective, and reliable transportation system.●

GOVERNMENT REGULATION

● Mr. GOLDWATER. Mr. President, we hear a lot of talk about Government regulation and how necessary it is in some instances for the protection of the American people. But we very seldom hear much discussion about what Government regulation costs in terms of dollars. Recently, Willard C. Butcher, president of the Chase Manhattan Bank, made a speech at the Commonwealth Club of California in San Francisco which gave some answers to the question of costs. He claims that his research shows that in 1977 alone the price paid for Government regulations totaled over $100 billion. To give you an idea how much this really is, it represents $470 for every person living in the United States; it represents 5 percent of the gross national

product and 25 percent of the entire Federal budget.

Mr. President, because of its importance, I ask that Mr. Butcher's address entitled "Onward the Regulation Revolution" be printed in the RECORD.

The speech follows:

ONWARD THE REGULATION REVOLUTION: FAITH IN FREE ENTERPRISE

It is a great pleasure for me to address this distinguished body. For 75 years, the Commonwealth Club has served as an important forum for the discussion of a multitude of topics . . . from commerce and the economy . . . to politics and foreign affairs.

The particular faith I'd like to discuss is one that I hold deeply—as, I suspect, do most of you. It's the faith in private enterprise and our system of capitalism. Although my faith is an emotional one, it is also very much based on *logic* and *rational analysis*.

I am a devout capitalist. I can't deny it. In fact, unlike some others in our society, I am rather proud of that distinction. Each time I visit a country that offers an alternative system to free enterprise, my dedication to capitalism becomes even stronger.

It is precisely because of my deep commitment to our free market system that I am so concerned today. Capitalism, ladies and gentlemen, is in trouble—serious trouble. Over the past two decades, quietly and almost imperceptibly, our capitalistic system has been increasingly burdened by a widening web of government interference. The trend of ever-growing regulation at all levels threatens to strangle our market economy and render impotent not only everything our system stands for . . . but also the capabilities of the system itself.

Which is why I've chosen to preach this particular sermon in this particular temple of the converted. To my mind, the future of free enterprise . . . of individual economic freedom . . . indeed, of individual liberty itself, lies in how well business people like you and I convince our fellow-citizens that less government, not more government, carries the key to our country's future growth and prosperity.

There are already some tentative signs, at least, that people are waking up to the dangers of excessive regulatory intrusion.

In the government sector itself, President Carter rode to office on the coattails of a commitment to cut through the Federal thicket of overregulation. The Occupational Safety and Health Administration has proposed the repeal of 1,100 of its more meaningless rules. And Senator Lloyd Bentsen recently announced plans to introduce a monthly roster of legislative regulatory reforms. Although these are all steps in the right direction, I personally am "underjoyed" with the breadth of our government's progress on this front.

In the private sector, a number of business leaders have publicly warned of the American "economic decay" that regulation foreshadows. The Business Roundtable, in fact, is completing a major study on the problems of regulation and what might be done to solve them.

PUBLIC HOLDS KEYS

These developments are encouraging. But what is really needed is a full-scale "revolution on regulation." And the key to that "revolution" is the public. Individuals, after all, suffer most from regulation. They are the ones who pay the taxes that support the bloated bureaucracy—and pay for the inflation when taxes come up short. They are the ones who absorb the added costs that business must pass on to pay for regulatory demands.

Even worse, in the guise of protecting human freedom, decisionmaking power is taken away from individuals and their freely formed associations and transferred to the State. The supreme irony in doing this is that we systematically erode the very freedom we set out to protect.

Fortunately, the public has begun to put the politicians on notice. The clarion call of Proposition 13 issued the peoples' warning loudly and clearly: "We're mad as hell and refuse to take it anymore!"

And who can blame them?

When a phrase in the Constitution that calls on government to "promote the general welfare" is interpreted to mean that you must file separate effluent permits for some 62,000 sources of water pollution—I think there's something wrong. When the rights of a three-inch fish in the Tennessee Valley become more important than the livelihood of 25,000 workers—I think we've got a problem.

Now, I think most Americans want clear air, pure water and a better quality of life for our people—and even for our fish. I know I do. And I think most of my colleagues in the business community do too. So the notion that business is "anti-environment" or "anti-society" is, in itself, just so much more air pollution.

But the real question is, "What price must we pay for a better society?" What sacrifices and trade-offs do we have to make to reach the goals we all share?

Clearly, some government regulation is necessary and proper. I believe government has a key role to play in helping reduce pollution, improve health care and enhance product safety. But all these improvements carry a cost. "A billion here and a billion there," as Senator Dirksen used to say, "and pretty soon it adds up to real money!" Our task therefore, it seems to me, is to find the best balance between the benefits of the improvements and the costs to each of us for making them. Regrettably, our regulators rarely seek this balance.

In the early days of regulation—around the turn of the century—the purpose of regulating was very clear. Flatly stated, it was to guard against abuse. A regulator's job was to tell you what you could not do. Gradually, the focus of regulation has changed. Rather than telling us what not to do, today's regulators have begun to dictate not only what we must do but also how we must do it.

Why?

ANTI-CAPITALISM MENTALITY

My own view is that this trend stems from a basic anti-capitalism philosophy on the part of most regulators. I must agree with Irving Kristol that many regulators sincerely believe that "government, once it has the authority and power, will plan and manage our economic affairs both more efficiently and more humanely than do independent, autonomous institutions guided by market considerations." This notion that government provides the best instrument for allocating resources, answering society's needs, and making economic decisions implicitly rejects the free enterprise system. It is also naive, simplistic and just plain wrong! Because as Thomas Jefferson once put it, "Were we directed from Washington when to sow and when to reap, we should soon want bread." If you don't believe it, just look around at our country's most troubled industries. It should be no surprise that they also are among our most regulated.

The net result of a regulatory system designed and managed by people inherently hostile to capitalism is a mass of confusing, contradictory, and often overlapping regulation. And the price we pay for it all is enormous.

How much?

There have been many estimates of the regulatory cost to our society. Chase's economists have scratched the surface of knowledge a bit deeper by analyzing the price we paid for regulation in 1977. Now, coming up with the specific costs of regulation is a little like determining the ingredients in your Aunt Mary's fruit cake. You've got an idea what's in there, but you don't really know for sure. Nevertheless, I think we've come up with a pretty good ballpark budget—important not in its exactness, but in its general magnitude and direction.

$100 BILLION REGULATION BILL

In 1977 alone, according to our research, the price we all paid for government regulation totaled over $100 billion. Here's what $100 billion equals in terms we can all understand:

$470 for each person living in the U.S.,

5 percent of the Gross National Product,

25 percent of the entire federal budget, and

Nearly three-quarters of annual private investment in plant and equipment.

Now, what made up this $100 billion regulation burden?

Over $5 billion was for administrative costs—including federal, state and local. On the federal level alone, more than $3 billion covered the salaries and supplies of the army of 100,000 workers who staff the 41 regulatory agencies. Outlays of these agencies have increased by 100% over the past five years.

The largest part of the $100 billion regulatory number, about $85 billion, was in compliance costs—the price business and individuals paid to respond to regulation. The private sector fills out over 4,400 different federal forms each year; an activity which last year took over 143 million man-hours at a cost of $25 billion. The steel industry alone has to comply with some 5,600 regulations administered by 26 different federal agencies. General Motors spends more than $1 billion per year—equal to 2% of its sales and one-third of its net profits—to comply with regulations imposed by all levels of government. Dow Chemical spends almost $200 million in federal regulatory costs alone.

IMPACT ON SMALL BUSINESS

While big companies get hit hard by regulatory costs, small business gets walloped. Regulations typically do not distinguish among companies of different sizes, and smaller firms that lack the resources of large companies suffer disproportionately. For example, when the new Pension Reform Act was approved four years ago, 13,000 pending pension plans were terminated. Most of these terminations came from firms with an average of 30 employees. These companies found it impossible to meet the increased costs that the 250-page law imposed.

The largest share of 1977 compliance costs—a whopping $32 billion—went to the area of pollution abatement and control. In addition, auto safety and pollution equipment totaled another $7½ billion, raising the average price of a new car by $666.

Even more absurd than the specific costs of regulation are the purposes for which regulations are created

Like the company that was fined for not having its employees wear life vests while working on a bridge over a channel; even though the water in the channel had been diverted several days earlier.

Or the miner who was cited for not carrying a two-way radio, even though his was a one-man operation, and there was no one else to talk to.

Or the state Pollution Control Commission that ruled that a person who wants to be cremated on an open funeral pyre must meet "applicable air pollution control standards."

Clearly, these kinds of government edicts are laughable. But when we realize the burden placed on the American economy and the American public by such ridiculous regulations—it stops being funny.

The growth of unchecked regulation has struck at the very heart of business investment, productivity and the formation of new jobs.

In 1977 alone, our economists estimated

the opportunity costs of regulation—that is, the loss of income from having to invest in non-productive rather than productive projects—totaled $13 billion. Such deflections of private investment from productive uses cut our productivity growth by about one-half of 1% and added about three-quarters of 1% to inflation.

POTENTIAL LOSS OF 200,000 JOBS

Last year, real investment in plant and equipment in the U.S. totaled $95 billion in real terms—an increase of $8 billion over the equivalent figure in 1969. But three-quarters of that very small increase was investment in the pollution control, health and safety areas. Therefore, although the economy and its needs grew substantially in those eight years, the real annual investment—in terms of modernization and new capital—increased by a paltry 3% over the entire period.

What all that boils down to is a tremendous and tragic loss of jobs of our citizens. Opportunity costs alone last year represented a potential loss of 200,000 American jobs. Indeed, if we took half the $100 billion regulation bill and invested it in productive projects, we could have created just about one million new jobs.

By increasing government regulations then, we not only discourage efficiency and erode earnings, but eliminate jobs as well. The formation of productive employment—of jobs—is what really promotes "the general welfare." And if investment is frustrated by an ever-expanding flow of regulatory constraints, then the likelihood of more jobs . . . new jobs . . . or even enough jobs . . . is greatly reduced.

Ironically, the real victims of excessive regulation are both the "poor" and the "incipient" or "new" poor—the very people that regulators yearn to protect but, in fact help impoverish. These people are the least well-equipped to protect themselves against the rising inflation and increased unemployment ultimately brought about by non-productive regulations. In point of fact, excessive regulation causes a profoundly inefficient allocation of resources that often runs counter to the social ends it is designed to achieve.

COST TO PERSONAL FREEDOM

Which brings me to the final "cost of regulation" and the most onerous of all—the cost to personal freedom.

This, frankly, is the core of my concern.

To my mind, freedom and the free enterprise system are handmaidens. When one is stripped away, the other lies in peril. Besides being the source of economic efficiency and material wealth, our free market system sustains domestic prosperity for our citizens and enables us to survive as a free and progressive society. When regulation seeks to subvert that system . . . to shift decision-making from the people to the State through such devices as "credit allocation" for example . . . the well-being and freedom of all Americans is threatened.

As de Toqueville once put it, regulation "blankets society with a network of small, complicated rules, minute and uniform, through which the most original minds and the most energetic characters cannot penetrate." In such an environment, it is only a matter of time before individual freedom is squelched.

REVERSING THE REGULATORY TIDE

Now, what can we do about it?

I think several things. Fundamentally, I believe it's time to reexamine the basic tenets of regulation. Simply tinkering with an already faulty apparatus in the name of "regulatory reform" is not enough.

We need desperately to introduce "economic impact statements"—regulation-by-regulation—to ensure that regulators examine closely regulatory costs and their associated benefits. It is unfortunate, but true, that many regulatory decisions today are made in a vacuum on the basis of grossly inadequate information.

We must also change our approach to the charters under which regulatory agencies operate. Most regulation today emanates from so-called "enabling legislation," where Congress establishes a regulatory authority and the authority itself designs and enforces regulations. In other words, Congress takes no responsibility to set the standards of regulation after an agency is created. I would propose that this be reversed . . . that Congress itself be responsible for setting regulatory objectives and standards. This would introduce the notion of "bottom-line responsibility"—a principle that is sadly lacking in most government agencies.

I think, too, we should work to eliminate the disincentives to business and investment that regulations bring about. One often hears a call for business incentives to accomplish society's goals. I believe it is more a case of getting rid of the disincentives. In other words, release the shackles on business and leave the marketplace free to channel innovation into profitable and socially desirable directions.

Further, I would like to see government adopt a goals-oriented approach to regulation. Instead of telling us how to do things, tell us what it wants accomplished. There's nothing new in this approach. As early as the 18th Century B.C., in fact, King Hammurabi had a simple building regulation that if a house collapsed and killed the occupant, the builder would be executed! While this may be a bit harsh by today's standards, the law rightfully set goals rather than the means of reaching them.

Finally, as concerned businessmen and businesswomen, I believe you and I have a major responsibility to continue to speak out publicly for the free enterprise system and to fight tooth and nail on every piece of legislation that threatens that system. And that means we should be just as concerned when legislation threatens another industry sector as when it threatens our own.

I am convinced that, only through an unrelenting campaign to repudiate those who believe that government and not private citizens should allocate the resources of society, will we be able to reverse the regulatory tide of the present, right the regulatory wrongs of the past, and reestablish our country's commitment to freedom and prosperity for the future.

UKRAINIAN HUMAN RIGHTS DAY

● Mr. DOLE. Mr. President, yesterday I enjoyed the privilege of hosting a reception with the Ukrainian community of the United States. This reception, cohosted by my distinguished colleague from New York, Mr. MOYNIHAN, and sponsored in cooperation with the Ukrainian National Association and the Ukrainian Congress Committee, was to honor those Ukrainians in the Soviet Union making great sacrifices in demanding Soviet observance of human rights and adherence to the great principles of the Helsinki accords. The dedication and anguish of these Ukrainians in the Soviet Union, and of their countrymen here in the United States deserves only the greatest admiration and support. This gathering yesterday, commemorating Ukrainian Human Rights Day, gave us a chance to express this admiration and to pledge our continued support.

UKRAINE: A GLOBAL POWER IN CHAINS

If one pauses for a moment to consider, the position of Ukraine takes on appalling proportions. Ukraine is the second largest nation in Europe, only behind Russia. Its population ranks sixth among European nations. Ukraine has its own government, in theory an independent member republic of the Union of Soviet Socialist Republics. Ukraine has its own foreign ministry, and its own representative at the United Nations. All the form and structure of a strong, independent nation exists. Yet all domestic and foreign policy is dictated from Moscow. These forms and principles of democracy and freedom are but a facade for tyranny. Ukraine has been called the largest "un-nation" in the world. A potential global power bound in Soviet chains.

ASSAULT ON AN ANCIENT CULTURE

Ukraine, a nation a thousand years old, has been pressured and persecuted as a culture and a people for hundreds of years. Suppression of Ukrainian national consciousness, begun under the czars of Russia, reached its peak under Soviet domination. Under Stalin, an entire generation of Ukrainian intellectuals and creative talent were destroyed. Russification reached its zenith under Stalin's iron fist. While conditions improved under Khrushchev, Ukrainian literature and thought remained locked up in the chains of Russification, and Ukrainian figures such as Vyacheslav Chornovil and Valentyn Moroz were cast into the "Beria preserve," the archipelago of camps and prisons that Alexandr Solzhenitsyn has exposed to the world. This policy of Russification, now institutionalized after many years of practice, still threatens to overwhelm the Ukrainian people. Slowly but surely, the Soviet state is smothering Ukrainian culture.

NATIONAL SELF-DETERMINATION

National self-determination has been the cause and inspiration for many who have joined the ranks of Ukrainian dissent. While sharing the same thirst for freedom of expression, movement, and a voice in the determination of their future with Russian dissidents, this issue holds a special significance for the Ukrainians. For them, it is a goal of preserving their thousand-year-old heritage and culture. National self-determination is a goal for all of the suppressed nationalities of the Soviet Union, the peoples of the Baltic Republics, of the Caucasian Republics, of the peoples of Soviet Middle Asia and Siberia. The Ukrainians are outstanding advocates of this principle, and an inspiration to all. And for this, sentences against Ukrainian dissidents have been especially severe.

THE HELSINKI MONITORS

In August of 1975, the Helsinki Final Act, with its three baskets of principles, was signed by the attendants of the conference of security and cooperation in Europe, including the Soviet Union. The humanitarian principles of basket three became a rallying symbol for all of those in the Soviet Union and East Europe struggling for their basic human rights. Monitor groups were formed in various parts and among various groups in the Soviet Union. Among these, the Ukrainians have been the largest and most

active group. And, they have contributed the largest number of martyrs into the clutches of Soviet justice. Rudenko, Tykhy, Marynovych, Matusevych, Vins, Stus, Lukyanenko—each of these named has become a symbol of this struggle for human rights, figures larger than life, men of enormous courage and outstanding principle. Last night, we had the great honor of meeting another of these figures, delivered to United States, cast out of the fray by the Soviet authorities. This is Gen. Petro Grigorenko. His testimony has brought the cruelty of Soviet injustice and prisons to harsh, sobering reality here in the United States. Individuals such as General Grigorenko deserve the praise and high respect of everyone.

UKRAINIAN-HELSINKI PARTICIPATION

We can only applaud the actions of citizens who have offered to help their government implement its own international agreements. Thus far, Ukraine has been relatively isolated from international life despite the great achievements of her citizens in athletic, cultural, and economic life. By actively working to implement the provisions of the Helsinki agreement within her own borders, Ukraine could also begin to enter the international political arena. Greater Ukrainian participation in proceedings such as the Helsinki agreement would certainly be a major contribution to world peace and international harmony. The actions of these people should be rewarded, not harshly punished.

WESTERN SUPPORT OF THEIR CAUSE

The diplomatic efforts of the United States and the rest of the Western World should be directed toward the release of all imprisoned Helsinki monitors by the time of the Helsinki followup conference in Madrid in 1980. Basket III provides a sound basis for this requirement. In addition, the governments of all those Soviet republics where Helsinki monitoring groups were formed should be invited to attend the next followup conference so that they can be included in discussions of how the provisions of the Helsinki agreement can best be implemented in their countries. Such an invitation would be in keeping with the letter and the spirit of the Helsinki agreements of 1975, while at the same time making a genuine gesture to implement the Basket I. principle 8 provisions calling for national self-determination. Since Ukraine and Byelorussia are already members of the United Nations, such an invitation could not be construed as encouraging separatism.

While it would be unrealistic to expect Soviet acceptance of these proposals, these can be goals toward which the United States can work, which may lead to much private discussion in the Soviet Union that will have beneficial long-term influences on the humanization and decentralization process which the Helsinki agreement calls for.

DECLINING DOLLAR AND U.S. INFLATION

● Mr. JAVITS. Mr. President, I would like to have printed in the RECORD an exchange of letters that I recently had with the Director of the Congressional Budget Office (CBO), Alice Rivlin, regarding my request that the CBO undertake a study in the contribution of the declining dollar to the U.S. inflation rate.

In my letter, I took exception to the administration estimate that the decline of the dollar has only contributed between 0.5 and 1 percent to the overall inflation rate and asked the CBO for its estimate. It was my view that this figure did not take into account the indirect increase in the prices of domestically produced goods that occur because of the protection afforded to domestic industries from higher import prices.

In response, Mrs. Rivlin concluded that,

> Including all the direct and indirect effects, it has been estimated that, over a one-year period, a 10 percent rise in import prices leads roughly to a 2 percent rise in consumer prices.

Mrs. Rivlin goes on to say that, if anything, this estimate understates the total inflationary impact of the depreciating dollar.

I commend the exchange of letters with Mrs. Rivlin to my colleagues.

The letters follow:

CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., September 29, 1978.

Hon. JACOB K. JAVITS,
U.S. Senate,
Washington, D.C.

DEAR SENATOR JAVITS: Thank you for your letter of August 31 requesting that CBO undertake a study of the recent depreciation of the dollar as a cause of the accelerating rate of inflation. As you noted, there are direct and indirect effects from the declining dollar on domestic consumer prices.

The direct impact results from higher prices for imported goods and should occur relative quickly. The indirect impact generally occurs with a greater lag and comes from a variety of sources:

There is a spillover effect on the prices of domestically produced goods that are competitive with imported goods.

There is a lagged adjustment of domestic costs—especially wages—to the higher prices.

There is the increased utilization of existing plant and equipment that results from the increased demand for exports and import substitutes.

Some offsetting influences do prevent the full translation of the dollar depreciation into higher import prices:

A significant portion of U.S. international trade is denominated in dollars; most important is petroleum, which accounts for more than a quarter of the total U.S. import bill. Depreciation and oil prices, of course, are not independent. A declining dollar puts pressure on OPEC to raise its prices, although it has not yet done so.

Higher import prices would likely reduce the demand for such goods. Given the importance of the U.S. market, foreign suppliers may limit their price adjustments to a depreciation in order to maintain their volume of sales. It has been estimated that, as a result of this demand effect, only about three-quarters of a dollar depreciation shows up as higher import prices.

Including all the direct and indirect effects, it has been estimated that, over a one-year period, a 10 percent rise in import prices leads roughly to a 2 percent rise in consumer prices. About half of this estimated impact results from direct effects, and half from indirect effects. This overall estimate, however, probably does not capture the full adjustment of wages and, therefore, understates the total price impact. It should also be noted that the inflation impact depends on a variety of other factors—such as the state of the economy—which were held constant in deriving these estimates.

There has been work done on the direct and indirect effects of inflation resulting from a dollar depreciation. Probably the most detailed study of this issue was conducted by the staff of the Federal Reserve Board. It is entitled "International Sources of Domestic Inflation" (November 26, 1974).

If CBO can be of further help, please let me know.

Sincerely,

ALICE M. RIVLIN.

AUGUST 31, 1978.

Mrs. ALICE RIVLIN,
Congressional Budget Office,
Washington, D.C.

DEAR MRS. RIVLIN: In a speech I made on the Senate floor on August 17, I focused on the issue of the declining dollar, a subject of so much growing public and Congressional concern, and made special reference to its contribution to the dangerous rate of inflation in the United States.

The point of this letter is my belief that recent estimates of the declining dollar's contribution to inflation are too low. According to these estimates, the decline of the dollar, by increasing the prices of needed raw materials and other products, has contributed one-half to one percent to the overall inflation rate. I believe that these estimates, which are based on the standard view that the inflation pass-through of a dollar depreciation amounts to about 10 percent, fail to take into account the price rises on domestically produced goods that occur because of the protection afforded to domestic industries from higher import prices. Recent price increases in the steel, automobile, and color television industries support this contention. If these indirect inflationary pressures were taken into account, it may well be that the ratio is closer to 20 percent and that the declining dollar has actually contributed close to 2 percentage points to recent inflation.

While studies have been done on the direct costs of the declining dollar, I am not aware of any studies that take into account the indirect costs, although I understand that the Federal Reserve has been looking into this question. Accordingly, I would request that the Congressional Budget Office undertake such a study and report back its findings to Congress as soon as possible.

I would appreciate your assistance on this important matter and would like to have the views of your office.

With best wishes,

Sincerely,

JACOB K. JAVITS, *U.S.S.*●

BANKING COMMITTEE ACTS ON GOLD MEDALLION LEGISLATION

● Mr. HELMS. Mr. President, the Senate Committee on Banking, Housing, and Urban Affairs approved an amendment on September 28 which would require the Treasury to offer for sale to the public gold pieces of not more than 1 ounce if Treasury chooses to sell gold at all. This was added to the "Regulation Q" bill, S. 3499.

The distinguished Senator from Indiana (Mr. LUGAR) spoke very eloquently on this matter when the Banking Committee held hearings on August 25 on the Gold Medallion Act of 1978. He also is a cosponsor of this legislation which I first offered in April of this year. Senator LUGAR offered a slightly modified version of the Gold Medallion Act as an amendment to the "Regulation Q" bill, and the committee chairman, Senator PROX-

MIRE, offered as a substitute, an abbreviated version of the bill which reads as follows:

SEC. X. (a) Whenever the Secretary of the Treasury authorizes the sale of gold to the public, not less than ten percent by weight of the gold offered for sale each fiscal year pursuant to such authorization shall be offered in units containing not more than one troy ounce of gold.

(b) Notwithstanding any other provision of this Act the number of units to be produced and sold in units of one ounce or less in fiscal years after fiscal year 1979 shall be adjusted to meet anticipated demand.

The intent of the legislation is clear: that if the Treasury sells some of the vital U.S. gold stocks, then it should do so in the form U.S. citizens are demanding. The committee also acted to approve language to include in the committee report on the bill which read:

In approving this section, the committee recognizes the sizeable market for gold pieces in the United States and anticipates that the items produced pursuant to this section would be manufactured to compete in this market and would bear appropriate design, and weight and fineness markings so as to enhance their marketability. The committee further recognizes that demand for such items may change and anticipates that production and sales in any year such units are produced, would be expanded or reduced to meet such demand, but in the first year, would not be reduced below 10 percent of total gold sales.

In other words, the committee intends these "units" or "pieces" to compete in the same market with krugerrands—1-ounce gold pieces from South Africa—with Mexican gold pesos, Austrian gold kronen, and the new Canadian gold $100 coin.

Senator PROXMIRE noted that the Treasury Department is concerned about the use of the term "medallion" in that it might have a monetary connotation which would give the impression that they are relenting on their efforts to "demonetize" gold.

The staff "explanation" of the amendment read as follows:

The Secretary of Treasury would be required, in the first fiscal year after date of enactment of this Act in which he authorizes gold sales to the public, to offer not less than ten percent of the gold offered for sale in that fiscal year in the form of units containing not more than one troy ounce of gold. The provision would give the public an opportunity to buy Treasury gold in small quantities, but would not require issuance of "medallions" which could be mistaken for coins or legal tender and create an erroneous impression that the U.S. Government believes gold should have a monetary role.

I contend that the monetization fear is trivial. The dollar has no connection with gold, for if it did there would not be vast numbers of people in the world trying to get into gold and out of dollars. Let me make it clear that I do not advocate investment in gold or any other inflation hedge. I advocate getting rid of inflation.

No "hedge" can provide real protection from a depreciating and corrupting monetary system that no longer serves some of the prime functions of money: the dollar is no longer a store of value or a standard of value. It serves almost exclusively as a medium of exchange.

Well, if the Treasury wants to call a gold piece a "unit" or a "wafer" or a "thingamabob," who cares? The important thing is that it be designed, produced, and marketed in the manner that the American people want. The Banking Committee has in effect acted to give the Treasury authority to make that determination. I know that many in the Congress and in the public sector will watch carefully to see that the intent of Congress is carried out if, in fact, this is the language finally enacted.

I support the committee's action. Although I would have liked to see the bill contain more specific language as to the design, the specific weight and fineness, and other details included in the law, I am satisfied that those decisions will not be made in a vacuum. Obviously, if the Treasury Department puzzles over a gold piece that would be most "un-money like," it could offer for sale, say, a gold toothpick. If Treasury officials ask any person in this country who either sells or buys one of the 3 million ounces of gold being sold in this country this year in small units what he wants, I think they will come up with something better.

The General Services Administration has sent to the Banking Committee a proposed set of marketing plans which offer a number of alternatives. I think that a plan can be adopted which would provide maximum opportunities to individuals to participate in the sales and maximize revenues to the Federal Government.

There are basically two alternative forms of sale. One would be an over-the-counter method wherein the gold pieces would be sold at a daily changing price equal to the world price of gold bullion plus a premium to cover production, distribution and some profit for the retailers. The GSA draft proposal for marketing the gold medallions, as proposed in my initial bill, stated that the gold medallions could be produced, distributed and advertised for approximately $4.40 each, plus some profit margin for banks or other institutions who would handle them. This might make the retail price $6 to $10 above the bullion price. That is equivalent to 3 to 5 percent above the bullion price.

The difficulty that this method of sale poses is that in the first year after enactment, at most, 1.5 million ounces of medallions would be produced. In other words, the supply would be finite. If supply is limited, then the over-the-counter method has the obvious disadvantage of potential shortages if the marketplace determines that at the "fixed" price the demand is greater than the available supply.

Under the legislation approved by the Banking Committee, however, the production could be expanded during the course of the year to meet demand if gold sales continued. This may cause some production problems, of course, for changing production levels may increase unit costs somewhat. There is a great deal of time, however, between now and October of 1979 to work out these details and a great deal that first to accomplish—including getting the legislation to the President's desk.

The second alternative is to market the pieces via monthly, common-price auctions. This offers the advantage of providing maximum revenues to the Federal Government and assuring that the marketplace will determine the price.

In other words, if it was known that a specific number of gold pieces were to be sold in the month of October 1979, bids could be solicited; then the price would be determined, on the day of the sale equal to the price at, or above which, there were sufficient bids to sell all pieces offered for sale on that day. If half a million pieces were offered and half a million pieces were bid for at or above $225, then all pieces would be sold at $225. This is sometimes known as a common price or "Dutch" auction system. It has the advantage of providing some protection to individual bidders who may be less sophisticated than big dealers in that they will pay the same price all other successful bidders pay. Since the price at which the pieces are sold is the lowest price proposed by enough bidders to purchase all items sold, it encourages those who have a great desire to own the pieces to bid higher. Some experts say that by providing these two aspects—protection for the unsophisticated and one price for all—the "Dutch" auction system encourages more bidders and thus tends to increase the average price at which the pieces are sold. This increases the revenues to the Government.

The disadvantages to this is that it costs more to manage. GSA estimated that such a system of marketing might result in a cost of up to $11.70 apiece to deliver them into the hands of the successful bidders. This would be equal to about a 6-percent premium above the bullion price.

I believe that the Treasury Department will be able to produce the kind of item that the American people want and in the quantities they want. I predict that demand for a U.S. gold piece will be far greater than 10 percent of gold sales. Sales of the new gold pieces could come to $500 million per year and that would soak up $500 million dollars out of the grossly inflated U.S. money supply.

It is time to put gold back into the hands of the American people. The legislation approved by the Senate Banking Committee could do it. It is flexible enough to provide for gold pieces that would appeal to various markets. It is specific enough to make it clear to the Treasury Department that the desires of the American people should be met.

I know there is considerable support in the House of Representatives for some legislation which would authorize the production of gold pieces. Certainly, speedy action in that body will help insure enactment of a gold piece law this year.

For the achievements that have been made to date on this bill I am genuinely grateful to the distinguished Chairman of the Banking Committee, Senator PROXMIRE, and the cosponsors and sup-

porters of the Gold Medallion Act. In addition, I want to take this opportunity to compliment the work done by a relatively new but well-respected and able public policy research organization, the Institute on Money and Inflation. The Institute is dedicated to providing information on sound money to Members of Congress; it gave me and other Members of Congress much vital assistance on the gold medallion legislation and its policy implications.●

FLOOD INSURANCE PROGRAM

● Mr. EAGLETON. Mr. President, the Federal flood insurance program is approaching a critical juncture in its troubled history as more and more communities are forced to decide whether to adopt required land-use ordinances in order to qualify for permanent coverage. It is an agonizing choice for many cities. On one hand, they are pushed by anxious homeowners to continue participation in the program so that their property can be protected by low cost, federally subsidized flood insurance. On the other hand, businesses and industry object to the HUD-dictated land-use ordinance, adoption of which is the price for staying in the program. That ordinance severely limits new construction and improvements within the designated flood area, conditions which many businesses find intolerable.

A case in point is Kansas City, Mo. The areas of Kansas City designated flood prone include a large industrial tract known as the Blue Valley and Leeds industrial districts. Within that area are located some 250 firms employing 14,000 workers and representing an investment of three-quarters of a billion dollars.

A large number of homeowners in Kansas City are anxious to purchase insurance protection against repetition of the kind of flood disaster that struck the city last year. On the other hand, industrial and business concerns in affected areas are financially capable and willing to cover their own flood losses. These firms are well aware of the hazards involved and actively support protective measures such as levies and channel dredging. They object, however, to limitations on their capacity to expand and improve their businesses which the required ordinance would impose. A representative of an association of businessmen in the affected area wrote to me about this problem and warned that:

> Certainly, if the ordinances are passed as presently written, many of these businesses will be forced to relocate or cease doing business. Some of these businesses have already received attractive offers from areas located without the State of Missouri.

That statement underscores the dilemma facing Kansas City and other communities in Missouri as well as elsewhere around the country.

They do not wish to deny homeowners the right to buy insurance but neither do they want to face the loss of job-producing industries and vital tax revenues.

Unfortunately, there is little flexibility under the present act to deal with these problems. I have greatly appreciated the present administration's willingness to meet with local officials and to provide such assistance as is possible. The fact is, however, there are severe limits to what anyone can do under the rigid law we now have.

Last year, I introduced a bill, S. 1408, which proposed a number of changes in the flood insurance program. Among other things, the bill would require a favorable cost-benefit finding before any community is forced to participate in the permanent program and in certain circumstances it would authorize the Secretary to provide insurance on a property-by-property basis.

There are other possible changes which might be considered; for example, administering separate programs for residential and industrial-commercial areas. As it now stands, a city that declines to participate is subject to loss of all Federal construction and disaster aid. That is a severe sanction on a homeowner or small businessman, who for the most part want to join the program. But it is no deterence to industry which doesn't need Federal aid for its construction program and which is willing to underwrite its own flood losses. The net result is to penalize homeowners who want in the program but to leave industry undetered in its construction plans. From the viewpoint of controlling development in the floodplain, the program would be no worse off with a divided program than at present but it would avoid the harsh treatment of homeowners which is now unavoidable.

I believe it is time this agency faced the need for greater flexibility in the implementation of the flood insurance program or face the possibility of being overwhelmed by local and State opposition.

Mr. President, the Wall Street Journal of October 5, 1978, carried an excellent editorial entitled "Regulatory Flood" which points up some of the problems of this program. I ask that that editorial be printed in the RECORD.

The article follows:

THE REGULATORY FLOOD

If scholars of politics need an exemplar of how innocent government intervention can evolve into a regulatory monster, they might consider the unhappy history of federal flood insurance. As usual, federal interference began with a recognized problem—Americans were suffering severe financial losses from floods, and the private sector wasn't dealing very well with it.

The obvious market solution to flood losses would be insurance, but, for reasons not entirely clear to us, the insurance companies were reticent to insure for flooding. Industry spokesmen claim that they had no actuarial experience on which to base rates, and that because of "adverse selection"—i.e., only the most flood-prone would take out policies—rates would be so inordinately high that few property owners would insure. So why bother to push insurance?

For whatever reasons, those Americans imprudent or unfortunate enough to have been inundated had to suffer their losses as "acts of God." But 20th Century politics is not content to leave adversity to the whims of the individual, or even the Almighty; positive action had to be taken in the public interest. Federal effort first concentrated on flood prevention by building dams and levees. Enormous sums were spent by the Corps of Engineers, and a point of diminishing returns was eventually reached. Some properties were bound to be subject to riverine or coastal flooding.

So in 1968 the Congress passed the National Flood Insurance Act, providing for the subsidization of private insurance, which had the enthusiastic support of the insurance companies. But in the law was a provision that HUD's Federal Insurance Administration (FIA) could run the program directly. In late 1977, after the private companies had built up the business by insuring over a million properties, FIA pulled the plug and announced a federal takeover.

And a barbed hook was hidden in the flood insurance bait. The government cannot go on paying billions of dollars to victims indefinitely, so the 1968 law specified that insurance is available only in communities which have adopted preventive measures specified by FIA. The 1973 Flood Disaster Protection Act pulled the hook in deeper. FHA mortgage insurance, VA mortgage guarantees, housing subsidies, home improvement loans, water and sewer grants, highway money and other federal projects were cut off unless local governments adopted and enforced FIA-specified "flood hazard regulations," which amount to extremely restrictive building, subdivision and zoning codes in all flood plains.

Of course, FHA decides what is a flood plain and has chosen the "100-year flood"—the area with a one percent chance of being flooded annually. Some communities complain that they have never been flooded or that a dam has been built since they were flooded. FIA will consider their petitions for modification, provided that appropriate (and expensive) engineering studies are made. FIA has taken over control of development of one-eighth of the land area of the United States, in 20,000 local jurisdictions containing 6.5 million structures.

Local municipalities are required to administer the complex ordinances out of their own pockets. And they must bear the frightful tax losses from the collapse of property values inherent in de facto confiscation of the developmental rights of some or all of their property, and the tax burden is shifted to other property owners. FIA has not calculated the direct losses to the owners.

We have a hint of the program's ultimate objectives in FIA's environmental impact statement. "The regulations and insurance requirement may (sic) induce prospective and existing residents to locate elsewhere on sites which are not flood-prone. In the short run, this will tend to preserve the flood plain in its present state of development. In the long run, it will decrease high intensity use through a gradual process of attrition." We would add that it will protect elite country houses from being overrun by the masses.

Because flood insurance was hard to get, a multi-billion dollar government insurance company was established, the federal government seized control of development of an eighth of the nation, and there has been perhaps the largest single taking of property values in history. And under discussion is similar regulation of the larger "200-year flood" plain, of areas that might be flooded if dams break and of earthquake-prone regions. Don't we have a fascinating system of government?●

MEXICO'S NEWLY REPORTED INCREASES IN NATURAL GAS AND OIL RESERVES

● Mr. STONE. Mr. President, on August 31, I made a speech to the Orlando Chamber of Commerce expressing my opinion that the United States should

redirect its energy policy toward seeking more domestic and worldwide energy supplies. In this speech I pointed out that the "sky is falling" thesis, to the effect that the world is running out of oil and gas, is based upon false facts and incorrect assumptions. Indeed, over the recent months international energy experts have projected vast new worldwide petroleum reserves. The implications of these new estimates are significant in the development of an effective national energy policy.

I was pleased to read an editorial in the Washington Evening Star on October 6, 1978, by Mr. William Safire, which documents an important aspect of this new supply opportunity for the United States. Mr. Safire's article points out the new supply opportunity for the United States and Mexico in the exploration and development of Mexico's newly reported increases in natural gas and oil reserves.

Mr. President, I ask that Mr. Safire's article be printed in the RECORD.

The article follows:

THE SECRET OF MEXICO'S BIG-LEAGUE OIL TROVE

(By William Safire)

MEXICO CITY.—They called themselves "the guardians of the secret." They were the ultranationalistic group of engineers, geologists, labor union leaders and businessmen who threw the U.S. oil companies out of Mexico in 1938, and—for nearly four decades—kept their secret not only from the world, but from most of Mexico's politicians.

The secret was that Mexico sits on an enormous, largely unexplored sea of oil. The reason for hiding this fact was the fear that a weak Mexican government would fall prey to predatory capitalists and a domineering neighbor to the north.

After the Arab oil embargo, and after the shah of Iran quadrupled the world price of oil, the then-president of Mexico, left-leaning Luis Echeverria, continued to keep the secret: He did not want to disturb the Third World's oil leverage on the West by revealing the potential of a huge supply of oil in North America.

Mexico's new president, political philosopher Jose Lopez Portillo, tells me he was let in on the secret during his campaign for the presidency in 1976. (The "campaign" consists of one candidate rushing furiously around the country for two months, as if he needed every vote. An exhausting enterprise, it is relieved only by the knowledge that he is unopposed.)

Since Lopez Portillo had been finance minister for eight months in a regime that desperately needed foreign credit, the fact that he had been kept in the dark by "the guardians" illustrates how worried the ultranationalists were that Lopez Portillo might be the sort to make the decision for oil development.

The new Mexican president has broken the secret with a vengence. In his state of the union report last month he reported proven reserves of 20 billion barrels, probable reserves at an additional 37 billion barrels, and possible reserves at 200 billion barrels. That's in Saudi Arabia's league; a responsible U.S. official terms the startling figure as "likely to be on the conservative side."

The Carter administration has known of the Mexican oil potential since its inception. Although CIA projections were discredited when that agency began to provide the White House with whatever energy figures it wanted to hear, Atlantic-Richfield intelligence sources were known to be on target. But the Mexican resources were seldom discussed, for one good reason and one bad reason.

The good reason was that Energy Secretary James Schlesinger wanted to dicker for a fair price for Mexican natural gas, the first energy to be available in quantity. The U.S. wanted to pay a rate similar to our Canadian purchases; Mexico wanted us to pay what we paid for energy from Indonesia, giving Mexico a windfall profit on the savings on transportation. To Mexico's detriment, the deal fell through.

The bad reason was that the Carter administration wanted to sell the notion that the nation faced an energy "crisis" and downplayed the reality of a huge reservoir of oil on this continent in order to further its legislative goals.

Now that the need for the Carter sky-is-falling propaganda is over, and now that the Mexicans have learned the U.S. will not pay exorbitant prices to import energy across the Rio Grande, we come to the central issue: Will Mexico become a major source of U.S. energy in the 1980s?

Logic dictates that it must. The old fears of the "guardians of the secret" that politicians or foreigners would rape Mexican resources is meaningless today: Oil brings lofty prices, the profits stay in Mexico, and if the wells run dry in 50 years, that's no big deal—the world will then be running on solar energy, and Mexico is up to its sombrero in sunshine.

With 14 million inhabitants, Mexico City unhappily is becoming even larger than Tokyo. The overcrowding and lack of opportunity has driven some 8 million Mexican illegals across the U.S. border. Mexico needs oil money now, but quickly, to invest in itself massively, as Iran did—but without Iran's need for military buildup. Only the most foolish and stubborn pride would keep Mexico from turning to the U.S. as its major market.

Lopez Portillo—though fierce about independence from yankee domination—strikes me as neither foolish nor stubborn. One litmus test of future cooperation would be Mexican membership in OPEC. The U.S. hopes Mexico, unlike Venezuela will stay out; that would help undermine cartel power. For its part, Mexico does not want to give up its own production independence to the cartel.

Asked about membership in OPEC, the Mexican president goes into a philosophical discussion of the differences in economic history between his country and other oil-producing nations.

The bottom line, I think, is that he plans to stay out, which is good for both Mexico and the United States.

The time is right for an economic demarche on a strictly business basis. The pressure is on both Mexico and the U.S. to make a massive deal soon—and that's no secret.●

JUSTICE DEPARTMENT ASKS CLERGY TO REGISTER AS FOREIGN AGENTS

● Mr. HELMS. Mr. President, the Carter administration has recently asked a number of visiting clergymen to register as foreign agents on the grounds that they may be under the control of a foreign principality. Moreover, the Justice Department has been harassing many distinguished U.S. clergymen by telling them to register as foreign agents also, on the grounds that they had arranged for preaching and other public appearances by the visiting clergymen.

One of the clergymen so harassed is Dr. Paul Mickey, associate professor of pastoral theology at Duke University Divinity School, in my own State. Others include Dr. Charles Keysor, of Asbury College, in Wilmore, Ky., and Rev. E. C. Bundy, of Wheaton, Ill., publisher of the National Layman's Digest, as well as others in South Carolina, Texas, and California. They include Southern Baptist, Presbyterian, and Methodist clergy.

Mr. President, what is the reason for this astonishing action? The reason is simply that the visiting clergymen—a multiracial and interdenominational group—are from South Africa and Rhodesia. They are members of the Christian League of Southern Africa. They believe that Christian reconciliation must take some other form than the U.S. State Department's goal of domination by Marxist, antiwhite "liberation groups."

Without any proof or any evidence of fact, the Justice Department has asserted that all of these clergymen—both African and United States "are operating at the request of and under the direction and control of, a foreign principal—a political party, person, association, corporation or partnership." The Justice Department, in response to press enquiries, agreed that "anyone in the United States who is in any way under the control or direction of any foreign principality and leader, who speaks on behalf of and furthers the purposes of this principality and leader, should therefore be registered as a foreign agent."

An article in the Washington Weekly by Lester Kinsolving contains the verbatim account of an interview with Cecil L. Woodard II, auditor of the Registration Unit of the Internal Security Section of the Criminal Division of the Department of Justice. In the article, Mr. Kinsolving points out that the same criteria imposed upon the Southern African clergy could be imposed on rabbis who speak on behalf of the Jewish National Fund of Israel, on Catholic bishops who recognize the Pope as the head of their church, on Episcopal churches that invited the Archbishop of Canterbury to speak—and even on the National Council of Churches that regularly arranges for visiting clergy from the Soviet Union to speak.

But of course, Mr. President, none of these clergy have been asked to register as foreign agents. To do so would be absurd, and a blatant violation of our first amendment rights. The same holds true for the Southern African clergy. To ask them to register is absurd. To ask distinguished clergymen who arranged for them to preach in this country is absurd. And it is a blatant violation of first amendment rights.

Mr. President, when will the Carter administration stop trying to interfere with freedom of religion and freedom of speech to further their own foreign policy goals? When will the Carter officials understand that freedom of worship and expression extends to all persons in this Nation? Mr. Kinsolving, as usual, has had the courage to dig into this story and get to the bottom of it, whereas other journalists have not. I congratulate his pertinacity.

Mr. President, I ask that the article by Lester Kinsolving from the Washington Weekly of Wednesday, October 4, should be printed in the RECORD at the conclu-

sion of my remarks, along with the letter, typical of the letters which went to all the clergy, to Rev. E. C. Bundy by John H. Davitt, Chief of the Internal Security Section, U.S. Department of Justice.

CLERGY LEADERS ORDERED TO REGISTER AS FOREIGN AGENTS

(By Lester Kinsolving)

WASHINGTON.—Presbyterian, Methodist and Southern Baptist clergy in five states have been ordered by the U.S. Department of Justice to register as foreign agents—because they arranged preaching and other public appearances for black and white clergy of the Christian League of Southern Africa.

The clergy include Dr. Paul Mickey, associate professor of Pastoral Theology at North Carolina's Duke University Divinity School; Dr. Charles Keysor, journalism teacher at Asbury College in Wilmore, Ky., and the Rev. E. C. Bundy of Wheaton, Ill., publisher of the National Layman's Digest (circulation 250,000) and others in South Carolina, Texas and California. Each of these clergy has written in dissent of the Justice Department action on Sept. 12.

During an exclusive interview on Sept. 26, Cecil L. Woodard II, auditor of the Registration Unit of the Internal Security Section of the Criminal Division of the Department of Justice, said that as far as he knows the Christian League is not a part of the governments of either Rhodesia or South Africa. He added that as far as he knows none of the five African clergy (and one Catholic layman) is employed by either of these governments.

But their U.S. clergy hosts "are operating at the request or under the direction and control of a foreign principal—a political party, person, association, corporation or partnership," explained Justice Department Attorney Joseph Clarkson, Deputy Chief of the Registration Unit.

Clarkson was then asked whether "anyone in the United States who is in any way under the control or direction of any foreign principality and leader, who speaks on behalf of and furthers the purposes of this principality and leader, should therefore be registered as a foreign agent."

"Yeah," replied Clarkson, while Auditor Woodard said "That's fairly correct."

Mr. Woodard was asked why, therefore his department has not taken action to require registration as "foreign agents" by those bishops who are under the direction and control of a foreign principality (the Vatican), and who have led as many as 75,000 people in marching around the U.S. Capitol in the annual Right-To-Life (political) demonstrations.

Department of Justice. That's a touchy question!

Additional "touchy questions" included the following:

Question. Rabbis throughout the United States have taken the lead in campaigns to raise millions of dollars for the Government of Israel. What has your department done about this?

Department of Justice. (Long pause) As far as fund-raising by rabbis?

Question. Yes. For the government of a foreign power; i.e. the Government of Israel.

Department of Justice. Is it for charitable purposes?

Question. The Jewish National Fund is one of them. It's for the development of Israel. Have you taken any action against the rabbis?

Department of Justice. No. And I'm not sure there's any violation of the Foreign Agents Act in that.

Question. Why? the rabbis are raising money for a foreign power. These people (the African clergy) aren't raising money for the governments of Rhodesia or South Africa. And the rabbis have certainly been very outspoken on political issues, haven't they?

Department of Justice. But were they raising funds at the direction of a foreign principal or are they doing it on their own account?

Question. They are being paid by a foreign principal. They receive honorariums. That's part of the Israel Bonds Campaign. You weren't aware of that?

Department of Justice. No.

Question. I see . . . Trinity Episcopal Church on Wall Street in New York has repeatedly entertained and promoted public appearances for an appointed official of the British Government, the Archbishop of Canterbury. Has your department done anything about this?

Department of Justice. No.

Mr. Clarkson went on to explain, however, that his department, in determining specifically which clergy should be made to register as foreign agents, is obliged "to split what is religion and what isn't," in the process of determining "whether or not there are political activities involved."

Question. From your knowledge of the New Testament—which deals with a lot of these organizations you have to deal with—was Jesus Christ a political preacher or not? Would you say he was a "soul-saver" or a "political preacher?"

Department of Justice. Probably both.

Question. Both? He was, therefore, a political preacher. So if Jesus Christ were brought in the United States by the Rev. E. C. Bundy, and He (Jesus) spoke, you would ask Bundy to register as an agent of a foreign person?

Department of Justice. Probably. It depends on what He (Jesus) said.

Question. Oh? If Jesus spoke on a political party like the Pharisees and the Saducees, that would be political.

Department of Justice. Possibly.

Question. The National Council of Churches recently entertained and arranged public appearances for a group of clergy from the Soviet Union, who, I heard during a press conference, repeatedly defended the policies of this communist dictatorship. Has your department contacted the National Council of Churches officials who were responsible for this tour? Or do you confine your actions in this regard to anti-communists?

Department of Justice. We don't confine our actions under the Foreign Agents Act to anti-communists.

Question. I see. Have you gone after any communist or pro-communist groups, or those not necessarily pro-communist, but who have entertained communist-oriented speakers, or defenders of communist policies? Have you gone after any of these that you can recall?

Department of Justice. No, we haven't. But the one thing that all these questions seem to miss a little bit is that we have been able to show that these people (the U.S. hosts of the African clergy) are operating at request, direction or control of a foreign principal.

Question. Well, you were aware, of course, that they (National Council of Churches) brought these Russian clergy to the United States. Did you make any inquiries?

Department of Justice. As far as I know, we were not even aware that they were in (the United States.)

U.S. DEPARTMENT OF JUSTICE,
Washington, D.C., September 12, 1973.

Mr. E. C. BUNDY,
Wheaton, Ill.

DEAR MR. BUNDY: It has recently come to the attention of this Department that you may be engaged in activities on behalf of the Christian League of Southern African which may require your registration pursuant to the Foreign Agents Registration Act of 1938, as amended, 22 U.S.C. 611 et seq. A copy of the Department's pamphlet of the Act and Rules is enclosed for your convenience.

Your attention is directed to the requirement to register within ten days of becoming an agent of a foreign principal as provided by Section 2(a) of the Act.

Since meetings between your foreign principal, The Christian League of Southern Africa, and groups in your geographic area are scheduled to begin on October 10, 1978, your registration is due in this office on or before that date.

If you have any questions regarding this matter, please contact Cecil Woodard of this office at (202) 739-4527. Please send the completed forms (enclosed) to the attention of Mr. Woodard.

Sincerely,

JOHN H. DAVITT,
Chief, Internal Security Section, Criminal Division.

JOEL S. LISKER,
Registration Unit.●

ALAN KICHLER—LIFE PRESERVER

● Mr. METZENBAUM. Mr. President, historically, the city of Cleveland has been one of the proudest and most courageous cities in the United States. It has overcome natural disasters such as the killer blizzard of last winter, tremendous economic hardship, and, of course the financial problems many of our major cities are now facing. The reason Cleveland has been able to survive and remain a truly great city is, of course because of the courage and pride of its residents. Recently, an article in the Cleveland Plain Dealer newspaper focused on a man who personifies that which makes Cleveland great.

Mr. Alan Kichler was recently awarded his coxswain pin from the U.S. Coast Guard. This symbol of excellence on the waters of Lake Erie was given to him in recognition of his outstanding work in search and rescue missions on the lake. Repeatedly, Alan Kichler has fought adverse conditions on the lake when it was at its worst in order to save the lives of others. This to me, is the finest display of courage and caring a person can show.

I would like to point out, Mr. President, that is not a rare occurrence in Cleveland. Thousands of concerned Clevelanders daily show their concern for their fellow human beings. What is remarkable is that he has overcome great obstacles to achieve this recognition.

Mr. Kichler, who is 60 years of age, was afflicted with polio at the age of 3. He was crippled by the disease, and is handicapped by a very pronounced limp to this day. Yet he has refused to let this affliction get in the way of serving his fellow man. In my eyes. Alan Kichler is a truly remarkable man.

Mr. President, I submit the article by Gary R. Clark. entitled "Life Preserver" for the RECORD as a remainder to all of us that an individual can accomplish a great deal with the talents and gifts we have.

The article follows:

LIFE PRESERVER

(By Gary R. Clark)

Alan J. Kichler beat polio 57 years ago and today has two of the best sea legs on Lake Erie.

The 60-year-old publisher has spent his weekends over the past six years in his boat patrolling Lake Erie, searching for boaters in distress.

And at least eight persons owe their lives to a man who first fell in love with the lake

while gazing at its many moods after moving into his 12th-floor Bratenahl Place apartment nine years ago.

"You can't live near this lake and not get excited about it," Kichler said. Until he moved near the lake he never owned a boat.

Not content with the boating knowledge he learned through area Power Squadron classes, Kichler completed two of the Coast Guard's most prestigious search and rescue schools. Last week he received a hard-to-get Coast Guard coxswain's pin, permitting him to command and operate Coast Guard rescue boats up to 44 feet.

"I'm a perfectionist," he said earnestly. "I don't want to play out there unless I know what I'm doing. That's dangerous water."

Gary Hormell, captain of the Coast Guard Auxiliary's Division 7, said Kichler is one of the auxiliary's most competent skippers.

"He has 110% devotion to search-and-rescue requirements," Hormell said. "He's down there every weekend.

"I think for a man who has a physical disability, he's one of the most dedicated people we have." He was referring to Kichler's polio bout, at age 3, which left him with a limp.

George Howe, Division 7 operations officer, agreed.

"Kichler is one of our very, very best patrollers," he said.

Patrols are what Kichler loves most.

"That, to me, is the most exciting thing in the world."

Until this year, Kichler's wife, Barbara, served as crew aboard their 24-foot, twin-engine Sea Ray. She has also received several Coast Guard awards.

But Kichler had a coast guardman aboard as crew on a Sept. 3 patrol off Gordon Park. A call came in that a boat with four people aboard had capsized. Kichler was first on the scene.

"After a while, you can smell where the problems are," he said.

One man was clinging to a steel piling about 50 feet offshore. While harbor police helped the man, Kichler attempted the rescue of two women in the water. A second man from the capsized boat was missing.

The wind had picked up, and waves were recorded at 8 to 10 feet.

To prevent injury to the women, Kichler shut off his engines while he and the coast guardman hauled them aboard.

Kichler's business, United Publishing Corp., 2728 Euclid Ave., has provided Kichler and his family with a good living.

More importantly, he said, is that "I can afford the time to help others, and this is one way." ●

SENATOR SCHMITT URGES GREATER SPACE EFFORT AS SOVIETS CHALLENGE AMERICA'S LEAD

● Mr. GOLDWATER. Mr. President, the distinguished Senator from New Mexico (Mr. SCHMITT) delivered a challenging speech on the Nation's space program recently. Speaking to the Institute of Electrical and Electronic Engineers (IEEE), he warned America faces the prospect of Soviet dominance in space technology.

Calling for leadership "to lead us onward and outward," Senator SCHMITT urged a renewed effort in all areas of research and development vital to the well-being of future generations.

Mr. President, I know that Senator SCHMITT, who is the ranking minority member of the Science, Technology and Space Subcommittee as well as a former astronaut, appreciates the 20 years of bipartisan effort that kept America first in technology. We must stand together on this fundamental issue.

I commend Senator SCHMITT's address to my colleagues, and I submit the text to be printed in the RECORD.

The speech follows:

CIVILIZATION IN SPACE: THE CHRONICLES PLAN

The Carter Administration's policies for space are a disaster. Rather than exerting the leadership that the American people and the world expect, Carter has continued and appears on the verge of accelerating the policies of retrenchment begun by Nixon.

As the Soviets steadily move their civilization into space, we merely talk of gradually building a worldwide satellite information system.

As the rest of the industrialized world run technological and marketing circles around us and the dollar steadily weakens, we further close our principal faucet of innovation in technology and productivity, namely, new activity in space.

As the extreme danger of our dependence on external sources of fossil fuels increases, we stagnate in the development of alternative conservation, production and conversion energy technologies, most of which have their roots in aerospace research and development.

Most critically, when there are younger generations of Americans chomping at the bit to move our civilization of freedom back to the frontier of space, we say to them "wait; one percent of our budget or one fifth of one percent of our GNP is too much for such childish dreams". Hogwash!

Ladies and gentlemen, this continuation of a no-vision space policy, which in reality is no policy at all, is rapidly putting this great nation and freedom in grave danger; danger of technological domination, then economic domination, then military domination, then political domination.

The hope of the free world's ability to prevent long-term Soviet dominance of the planet Earth is the technology of space. From the monitoring of compliance with international arms control agreements, to the defense against military space systems, to the control of our own defense systems, the preservation of our civilization of freedom on Earth is increasingly dependent on our expansion of activities in space.

This country, and Americans, need to flex their muscles and their motivation against all the frontiers of human endeavor, against both the risks and the benefits of those frontiers.

If we were to imagine a space policy that would carry this country and the civilization of freedom we lead into space and into the 21st Century, upon what factors should such a policy rest?

Let me suggest the following essential criteria:

1. The policy must present a sense of direction and continuity for all present and future generations who must implement the policy.

2. The policy must have flexibility that can take advantage of new science and technology as well as adapt to rapidy changing goals which events may dictate.

3. The policy must have clearly identifiable significance to the direct or indirect solutions of the major terrestrial problems of hunger, disease, unemployment, and ignorance.

4. The policy must integrate budgetary requirements between the various elements of the policy, and between the governmental and private sectors, so that the demands on the taxpayer are both reasonable and consistent from year to year.

Although the over-all space policy I have been considering contains long-term and significant activity in aeronautics, the discussion of the details of such programs is beyond the scope of today's remarks. It is important to note, however, that our efforts must be expanded in basic aeronautical research for general, commercial, lighter-than-air, hydrogen-fueled, supersonic and new aviation concepts. The Administration's head is in the sand on these issues as much as on any other.

The space policy that I am developing matches the real world of science and engineering with the perspective of the younger generations who must give it life. My activities with young Americans from five to twenty-five have convinced me that dreams of adventure on the Moon, on Mars and throughout space have become a principal motivating factors in their lives.

This space policy for our civilization covers three decades of activity, but also has the clear implications of indefinite continuity.

The decade of the 80's, a World Information decade, should have programs aimed at permanent, eventually self-financing, services for worldwide communications, weather and ocean forecasting, earth resources discovery or monitoring, societal services, and prediction of natural events of disastrous human consequences or broad scale economic impact.

A World Information Decade is consistent with, although much more aggressive and far reaching than the rumblings from the Carter Administration about their space policy for the 80's. Of particular interest is the capability such a decade will provide in our assistance to those developing countries of the world who wish to move with us as free nations into the technological 21st Century. The benefits of the high technology of space will be available to them without the need to invest alone in its creation.

The decade of the 90's, an Orbital Civilization decade, should emphasize the progressive creation of permanent facilities in near-Earth space. Such facilities will utilize and augment this unique research, service and manufacturing environment. The weightlessness, the vacuum, the unique view of the Earth, sun and stars provide unparalleled opportunities for research, education, space power production, manufacturing, health care, Earth power generation and recreational activities.

As with a World Information System, the management of the development of an Orbital Civilization should be rapidly assumed by largely non-governmental groups. In most cases, the facilities will be economically self-sustaining except for continuing federal involvement in high-risk improvements in technology.

In the first decade of the 21st Century, a space policy for our civilization should reach major culmination of excitement with the initiation of a second Solar System Exploration decade. This is the decade about which most of the very young have their dreams. Bases and settlements on the Moon, missions of exploration to Mars and Venus, and the beginnings of the establishment of a Martian settlement, all are the stuff these dreams are made of. The parents of the first Martians are looking over our shoulder as they work their way through elementary school, high school and college.

In order to sustain the technological and scientific requirements for these three decades of space activity, a significant level of basic research must be maintained, and development programs must be phased in to support the major programmatic efforts.

Of particular significance are the continued development of basic transportation systems, units and structures for space facilities, heavy capacity boosters, deep space boosters and new power and communications systems; particularly those utilizing laser technology.

The estimated annual costs in 1978 dollars, of the development, research and mission programs, when properly phased, suggest that a sustained level of $15 billion annually

would eventually be required to establish the basis for an Earth-supported space civilization. The build up to this level would be from about $5 billion in 1980 to about $10 billion in 1990 to about $15 billion in 1995. This final level would include an estimated federal work force of about 75,000 and a directly supported industrial force of about 10 times that figure.

The economic and employment impact on commercial and other nongovernmental activities during this period have not yet been estimated. However, a major design philosophy behind this policy is to undertake largely those activities in the World Information and Orbital Civilization decades which would eventually sustain themselves without federal support. It is also assumed that the settlement activities on the Moon, and eventually on Mars, will be in part, if not largely, supported by commercial interests and will be self-sufficient after a decade or less.

For two days in August of 1975, at a unique Caltech conference of Apollo Astronauts, managers and scientists, the past and future of space exploration was debated by those who had given us Mankind's first decade of Solar System exploration. The heady excitement and rivalries of the 1960's were far enough back to soften judgments; the possibilities of the future were far enough away from our generation to lend objectivity. After two days of the most stimulating discussions of our lives, we gradually found ourselves in unanimous agreement on one major conclusion: civilization is moving inexorably into space. The only question left unanswered is whose civilization will dominate that movement and thus dominate the future of mankind. Will it be the civilization of fear, or the civilization of freedom?

By once again doing great things at great risk of failure, but with characteristic confidence in success and their civilization of freedom, Americans led the first wave of activities in space. Now we have fallen behind, not in technology, but in governmental will.

What does it take for Americans to do great things; to go to the Moon, to win wars, to dig canals between oceans, to build a railroad across a continent? In independent thought about this question, Neil Armstrong and I concluded that it takes a coincidence of four conditions or, in Neil's view, the simultaneous peaking of four of the many cycles of American life.

First, a base of technology must exist from which the thing to be done can be done.

Second, a period of national uneasiness about America's place in the scheme of human activities must exist.

Third, some catalytic event must occur that focuses the national attention on the direction to proceed.

Finally, an articulate and wise leader must sense these first three conditions and put forth with words and action the great thing to be accomplished.

The motivation of young Americans to do what needs to be done flows from such a coincidence of conditions.

What of our present situation with respect to doing great new things at the space frontier?

It does not appear that the articulate and wise leader is yet visible.

The catalytic event is unpredictable except that if we do not get moving, that event may come too late for us to catch up.

The period of uneasiness is upon us as a sign that we have become too introspective, too self-centered for the good of America.

The technology base exists for our World Information decade of the '80's. The technology base is being created for our Orbital Civilization decade of the '90's, but it is being created much too slowly. The technology base is wholly inadequate, but accessible, for initiating our second Solar System Exploration decade when we begin the 21st Century.

Thus, the challenge for a space policy that will sustain the movement of the civilization of freedom into space is to create the technology base by which future leadership can move in directions dictated by events. The Tom Jeffersons, the Teddy Roosevelts and the John Kennedys will appear. We must begin to create the tools of leadership which they and their young frontiersmen will require to lead us onward and outward.●

THE POETRY OF OLE OLSON

● Mr. BURDICK. Mr. President, in these hectic last days of Congress, I think the following poems are most appropriate. One was written by Ole Olson, of Fargo, N. Dak., on the occasion of his 99th birthday.

As Mr. Olson states in his poetry, he is enjoying his later years because he is taking them one day at a time and relishing the little things in life that bring him pleasure.

As we race from one meeting and one crisis to another, I think we would all do well to take a minute to read Mr. Olson's poems. We would probably all be better off if we could incorporate a little of Mr. Olson's serenity into our lives at this time.

I submit Mr. Olson's poems for the RECORD.

The poems follow:

MY SUNSET YEARS

Fate has treated me kindly during my Sunset Years,
Though I have shortened my steps and shifted my gears.
The people seem friendlier and greet me with a smile,
They willingly volunteer to go the second mile.
The pharmacists and doctors have all prolonged my life,
But for their skills and remedies, I'd be resting with my wife,
Who shared our reverses as well as all our joys,
And mothered a couple of healthy boys.
I praise the hardy people who bring my noonday meals,
Not on balanced platters, but on sturdy rubber wheels.
They come when it is snowing, then when it rains,
Without enhancing their capital gains.
The news comes in on the wireless to keep me up-to-date,
Stories recorded on records may feature both friendship and hate.
The days in my life are rewarding, I welcome and cherish each one,
They never depress me or bore me, for I'm not too old to have fun.
I loved the sport of fishing near our cabin at the lake,
And often in the evening, my limit I would take.
This hobby I have relinquished, without too many tears,
For the pleasure of living beyond these ninety-nine years.

OLE A. OLSON,
November 26, 1977.

MY NEW WAY OF LIFE

For many years I prepared my own meals,
If you ever did it, you'd know how it feels.
My neighbors took care of my lawn and my floors,
So that relieved me of some of my chores.
When my food caught fire on the range,
I said to myself "It is time for a change".
To manage a home, I was getting too old,
So the house and furniture both were sold.

The sun was red and it looked like snow,
Which made me look for a place to go.
With nothing in sight, and nowhere to look,
I signed my name in a nursing home book.

My life in the home, at first felt strange,
From wall to wall the extent of my range.
I ride in a wheelchair in lieu of my car,
It made transportation, but would'nt go far.

I pity the farmer who has to shovel the snow,
When the mercury had dropped to thirty below.
He has water to pump and fuel to lug,
While I am as snug as a bug in a rug.

Rain may come with a lively breeze,
There's no one to tell me, but the dancing trees.
The weather outside may fall or rise,
But inside these walls it's always nice.

If the stars still shine over my head,
They're not seen from my soft bed.
Does the moon still wax and wane?
If so, I've searched for it in vain.

Some aids are hefty, while others are tall,
One will come promptly in response to my call.
The oldest is spry at Sixty-seven,
To which she attributes her Viking leven.

This Rest-home provides me with bed and with board,
And daily acknowledges, God as their Lord.
For the lack of attention, I harbor no fear,
So I may enjoy my Centennial Year.

OLE A. OLSON, 1978.●

THE DIGENOVAS OF DELAWARE

● Mr. MATHIAS. Mr. President, I hope that my distinguished colleagues from the State of Delaware will forgive me for intruding on their territory long enough to call attention to a remarkable family success story that has been unfolding for the past 67 years in the city of Wilmington.

Last week the family of the late Ennio diGenova celebrated the 67th anniversary of the founding of the family business—a business that has expanded fourfold since then. In 1911 when Ennio diGenova opened his Eighth Street Central Beauty Salon in Wilmington, he pioneered a concept that may be old to us now, but was revolutionary then. His salon was unisex. Women could get their hair washed and set in one part of the salon, while men were being shaved and getting haircuts in another part.

Today the family business has four branches in Wilmington and employs a significant number of people in addition to all of Ennio diGenova's children and most of his grandchildren. I am happy to say that there is an exception to this. One member of the diGenova family resisted the lure of the family business to pursue a career in the law and government. His name is Joseph diGenova, my much-valued and frequently overworked legislative director and administrative assistant.

So that my colleagues, who already know Joe, may appreciate the wonderful American success story of which he is a part, I ask that a feature story on the family salon which appeared in the Wil-

mington Evening Journal be printed in the RECORD.

The article follows:

LOCAL FAMILY SALON MARKS 67 YEARS OF HAIRCUTTING

(By Martha E. Espedahl)

A unisex beauty salon in the 1920s?

In Delaware?

Douse your doubts because way back then Ennio DiGenova was shampooing and cutting women's tresses on one side of his Eighth Street Central Beauty Salon in Wilmington and clipping, snipping and shaving men in the adjoining barber shop which he opened in 1911.

Central, believed to be the state's oldest continuing hair salon, is also the largest and has remained a family operation. It now has four shops.

Its 67th anniversary is Tuesday and is being hailed tomorrow with a reception for friends, customers and the public at the Augustine Cut-Off salon.

Why a celebration for the 67th?

"We've always had cakes in the salons (Augustine Cut-Off, Prices Corner, Midway and Dover) on the anniversary, but this year we decided to really celebrate," says owner Ernest DiGenova, son of the founder.

When Ernest DiGenova was growing up in Wilmington, he packed off for dental school. "That didn't work out, and I came back to Wilmington."

But Ennio DiGenova wasn't hiring—not even his own son.

"It was during the Depression and my father told me that his employees had families and children to support. I sold furniture, did a lot of other things but I was beginning to develop an interest in hair. I worked for another stylist and finally an opening occurred in my father's place. He hired me."

With an estimated 3.5 million haircuts done by the staff since the salons opened this is a success story. Surveys show that the average lifespan of a beauty salon is three years.

DiGenova took charge of the Eighth Street salon in 1938, when his father became ill. Faced with this challenge, he made trips to New York and Chicago to study the work of some of the nation's best-known stylists. He attended seminars, workshops and schools.

He had launched the beauty business in Wilmington to the extent that in the early '50s—shortly after his father died—he lured brother Eddy away from the glamor of singing on the Broadway stage to direct the just-opened Augustine Cut-Off salon.

In 1961 another relative and another salon: Phil Calvarese, Ernest's cousin by marriage, and the Midway salon. Calvarese, with extensive beauty schooling behind him, had been on the staff at Augustine Cut-Off.

The downtown location was closed and Central moved into the Prices Corner shopping center in the mid '60s. Eddy's son, Ennio, is running it. He attended the University of Delaware, but wanted to get into the hair business and, against his father's feeble protests, studied hair design and completed his apprenticeship under Calvarese at Midway.

Ernest attended a hair-styling show in San Francisco and ran into his cousin Silvio Spezio, who had been at Central in the early '50s but now was working at a Beverly Hills salon.

"He wanted to come back to Delaware," says Ernest, "so we opened the Dover salon that year with Spezio as manager."

DiGenova recalls his first days in the business by saying: "In those times in the Eighth Street salon, it wasn't uncommon for me to do anywhere from 40 to 60 haircuts a day—myself. We didn't take appointments. The waiting room was so small that often I'd look out and see a line of 15 to 20 people extending down the sidewalk.

"Do you know something? The cuts we're doing today are so similar to the styles that were popular when the salon first opened—perms, curly hair, short cuts."

DiGenova estimates the salons now handle anywhere from 550 to 600 customers a week.

A renovation of the Augustine Cut-Off salon is due for completion next January.

DiGenova is among the 12 hair stylists in America who have received the Chevalier of the Haute Coiffeur Francais award in Paris.

NOMINATION OF MARVIN S. COHEN TO CAB

● Mr. DECONCINI. Mr. President, the President's nomination of Marvin S. Cohen to the Civil Aeronautics Board of Tucson, Ariz., has been reported favorably by the Commerce Committee of the U.S. Senate. I can attest that in this instance, the President has responded to his own query "who not the best," by appointing the best.

I have known Marv since 1961 when both of us were much younger; he was chairman of the Pima County Democratic Party, and I served on his executive committee. I acquired a great deal of respect for Marv at that time and through the years, my respect for him and his abilities has continuously increased.

Mr. Cohen's résumé of many accomplishments is on file with the Commerce Committee, but a list on paper does not nearly begin to tell how distinguished his accomplishments have been. Rarely have I seen, in one person, a better combination of integrity, intelligence, and industry.

In our home town of Tucson, Ariz., Marv has gained the reputation as one of its most outstanding attorneys, a reputation that cannot be gained overnight, but one that has taken years and years to attain. Marv will bring to the Civil Aeronautics Board all of these abilities, and with this outstanding combination of qualities, he will within a very short period of time, make his presence and his abilities known.

Additionally, Marv Cohen will add to the Civil Aeronautics Board a dimension which is not there and is sorely needed. The Western part of the United States, which has its own diverse problems, because of the long distances between communities, presently does not have a representative on the Civil Aeronautics Board. It is vitally important that there be a person with the knowledge and understanding of the special problems that exist in the Western part of the United States. For this reason, the Western Governors' Conference and the Western Conference of the Council of State Governments, each passed resolutions requesting the President appoint someone from the West, who knew and understood the unique problems of the West, in order to add that dimension to the Civil Aeronautics Board which both groups felt was presently missing. Marv Cohen has the knowledge and understanding to satisfy the concerns of the Western State governments—that someone on the Civil Aeronautics Board would be able to understand and address their problems. Marv Cohen will, I am sure, prove the wisdom of the President in nominating him and the U.S. Senate in confirming him, and he surely should be confirmed.●

A COMMUNITY THAT CARES

● Mr. METZENBAUM. Mr. President, once in a great while, a person comes along who has the ability to touch the people he meets, and to share with them his concerns for the community in which they live. The people of Cleveland have always been sensitive to the needs of their community, and have always responded warmly and with an open heart. David Roth has that ability to touch people, and the people of Cleveland have given him support and encouragement.

During the tumultuous times of the late 1960's, David Roth was an active opponent of the Vietnam war at Rockford College. As did so many others, David became frustrated and tired of trying to affect social change, and he "dropped out" of society. He began the life of an agrarian on a farm in southern Indiana.

But, again, like so many others, David could not continue his life as a "social dropout." Seven years ago, David received a phone call from his brother in Cleveland, asking him to help out at the new Cleveland Free Clinic. David returned to his native Cleveland, and became the clinic coordinator for mental health programs.

No one could have imagined then the affect David would have on Cleveland, or how strongly Cleveland would react to David's pleas for help.

Because of the interaction between David Roth and the people, the city of Cleveland can now boast of the oldest and finest clinic of its kind in the entire United States. As a native Clevelander, and a representative of the State of Ohio I am truly proud.

Mr. President, I ask that article from the Cleveland Plain Dealer entitled "Free Clinic Director Providing Community Responds to Caring" by Ms. Judy Sammon be printed in the RECORD.

The article follows:

FREE CLINIC DIRECTOR PROVING COMMUNITY RESPONDS TO CARING

(By Judy Sammon)

As David Roth recalls, he was growing vegetables on a farm in southern Indiana seven years ago when a call from his brother, a druggist, got him out of farming and into the health field here.

"My brother, Robert, had become involved in setting up the Free Clinic's drug program, and called to tell me there was an opening for a clinic coordinator of mental health programs," said Roth.

The job must have struck Roth as the irony of ironies: His activity in farming was undertaken, in part, to relieve some of the frustrating experience after years of activity in the anti-war movement at Rockford (Ill.) College, his alma mater. Roth was not unlike so many of his peers at that time who had begun to lose their bearings and faith in a system which refused to budge.

"When you keep banging your head against walls, it tends to get very sore," said Roth, referring to those years of protest and struggles.

That psychic-wound-healing period ended with his brother's call. Until then, he confessed, he had "no career goals."

With his degree in history of philosophy, but no medical training, much less a background in psychology, Roth left the farm and

joined the clinic staff, consisting of two other fulltime paid members. Part of his work involved one-to-one counseling, which some might consider a dangerous business for the untrained. Not Roth.

"My saving grace was the fact that I had never taken psychology courses," he said sitting at his cluttered desk in a very busy office. What he did have was a knowledge of the streets and the number one problem facing his peers: Drugs.

In 1971 when the drug euphoria came crashing to earth, the clinic was established to handle the medical and psychological needs of abusers through the agony of their descent.

Headquarters was a rambling ruin on Cornell Rd., watched closely by police.

"It was a while before the community realized that we were not 'hippies,' and that we were committed to the physical and mental welfare of the people we were seeing," said Roth. It took a year for the state to recognize the Free Clinic's venereal disease treatment center.

If the clinic was initially perceived as a counter-culture experiment, today it is recognized as an important health and mental health care center for the community, a sanctuary for people adrift from the mainstream of economic stability. It expects to treat nearly 11,000 patients, mostly the poor, this year.

For the past five years, as executive director the 29-year-old Roth has been banging the drums for the clinic, the longest running full service medical facility of its kind in the nation. Roth was recently nominated by the Cleveland Jaycees as one of America's Ten Outstanding Young Men of 1979.

Mrs. Conella Coulter Brown, assistant superintendent for the Cleveland Board of Education and a trustee of the clinic, has said:

"David's leadership is such that many segments of the Cleveland community have coalesced to provide volunteer services and hundreds of thousands of dollars in donated financial resources to make the dream of the clinic to provide free medical counseling and dental services to those who may otherwise go wanting a reality.

"In addition, troubled youths and runaways have and continue to find an appropriate counseling and guidance at this Center Safeway Station."

Roth is quick to give credit to others.

"I didn't do this alone," said Roth. "The staff and volunteers here happen to be the best in the country."

From the three paid staff members in 1971, when Roth joined the organization, the clinic has grown to 46 fulltime paid staff members, 10 parttime paid staff and 400 volunteers. With an annual budget of only $500,000, the clinic offers 19 programs, and delivers to the community approximately $5 million annually in health care services.

The clinic moved from a working space of 3,000 square feet to 35,000 square feet two years ago. Its headquarters is at 12201 Euclid Ave.

Materials to renovate the building, owned by the Salvation Army, were hustled by Roth, as well as much of the medical equipment.

"We tap every resource we can for donations of any kind before we spend a cent," said Roth. He is in charge of all fund raising, as well as writing all proposals for public and private monies. He also is involved in the planning, implementation and operation of all programs.

Counselors say the myriad responsibilities don't seem to get Roth down.

"He never becomes overwhelmed by the magnitude of what is happening here," said Jeannie Sonville, counselor and former director. When a problem arises, she said, "David just jumps in and plows through. David's energy level is about 1,000% higher than most people, and his awareness of what is happening in society and the problems people face is incredible."

Roth's organizational skills, his knowledge of how and where to get funding, are greatly responsible for the clinic's success, she said.

Patients line up outside the ramshackle building every weekday late afternoon, long before the medical clinic opens at 5:30 p.m. They are treated on a first-come, first-served basis, unless it is an emergency. Sometimes the wait can last for hours, and the patient might not be treated on his first visit. "We might not be able to see all of them in one night, but we never turn away a patient twice," said Roth.

An example of Roth's sensitivity and compassion became public recently.

A woman from Alabama arrived at the clinic, distraught about her daughter who was confined to a mental clinic here. The woman's life story was one of horror. Roth spent hours listening to her, found her a job, a place to live and a refrigerator for the apartment. He also acted as a liaison between her and the hospital so that she might better understand what was happening to her daughter and the treatment she was undergoing.

"But this is the type of thing David does every day," said a co-worker. "He drops everyting he is doing if someone is in trouble."

Roth has been described as a pathological idealist, humanitarian and an eternal optimist, with a strong commitment to the havenots of the world. He credits his parents, Mr. and Mrs. Saul Roth of Lyndhurst (his father is a druggist), for having instilled in him "a strong social conscience and an inherent sense of justice.".

They also gave him freedom to find himself. While attending Shaker Heights High School, the young Roth shared an apartment on weekends on Murray Hill with friends, partly as an attempt to put some distance between himself and the middle class luxury to which he was accustomed.

"It was also a great way to break things without my parents getting angry," he recalled.

This interest in learning about the lives of people from other social and philosophical backgrounds was behind his choice to attend Rockford College in a conservative northern Illinois community. His anti-war activities might have doomed him there had it not been for the fact he was a sports fanatic and active in the school's athletic programs.

A bachelor, who has been dating one woman for several years, Roth resides with his golden retriever, Alias, in Cleveland Heights. When he has time to unwind it is usually on the playing field.

Roth is quarterback for Rick's Cafe team in the Muny Touch Football League this year; he played safety the past four years. He also plays left field on the clinic's softball team.

He estimates that he is at the clinic 50 to 60 hours a week, not unusual since he is The Boss, drawing an $18,000 salary. Roth also has been attending Cleveland State University Law School, where he expects to graduate next June.

"I've been lucky to have some professors who are not adamant about class attendance," he explained. "Some are more interested in students learning a subject than they are about how that learning is accomplished."

His interest in law led to establishment of the free legal clinic in 1976. While Roth sees himself headed toward a career in law, he expects to continue his commitment to and involvement with "addressing the needs of the poor . . ."

Roth's impatience with dawdlers and delays has led him to fly off the handle occasionally. His job is not without its frustrations.

"There is the constant pressure of raising money to stay alive, and the knowledge that there are more people out there than we can serve," he said. An intense man, his forehead becomes a sea of waves when he bores into a subject that he considers significant.

Dedicated and indefatigable are the words most often used by friends in describing Roth, including clinic board chairman and lawyer Charles F. Clarke, who has known the director seven years.

"David is a remarkable human being who understands the needs of people in trouble and has a genuine sympathy for them as well. He is one helluva person. He just never seems to get tired.

"David is street wise in the sense that he is not only aware of patients' problems and needs, but that he tries to understand the business, medical and legal communities and bring them all together.

"This clinic is the best of its kind in the U.S. and David is in no small measure responsible for it," said Clarke.

While the clinic's impact in the community has been important, Roth said it is "still a drop in the ocean. If we could see 200 people a day, there would still be more people waiting than we can handle.

"It's appalling that a country as rich as this one lets people sink into poverty because they have spent all their funds for health care, or have no money to obtain help. What we truly need is a system that would deliver quality health care to everyone regardless of circumstances."

The past seven years have been enriching and fulfilling to Roth not only because the clinic has been able to meet some vital needs of a segment of the population, but also because he has been in contact with people as concerned as himself.

"Part of the beauty of this job is knowing that the people who work or volunteer here, or who have contributed in other ways, are not involved for selfish reasons. They really care," he said.

About his own investment and experiences, Roth said:

"It's like love. Once you've experienced it, you don't ever want to lose that feeling." ●

THE ROTH-KEMP AMENDMENT

● Mr. WALLOP. Mr. President, I recently conducted a poll in Wyoming and joined several of my Republican colleagues in a trip across the country to gage the attitudes of the American people on the issue of taxes. The response I received from the people of Wyoming, I think, is indicative of the feelings of the people across the country. Ninety-five percent of the people responding to my Wyoming survey indicated they favored a Federal tax cut. The questionnaire showed the people of Wyoming and I believe the people of the country as a whole feel burdened by tax systems that are too high and unfair. Hundreds of people detailed with considerable sophistication those programs they felt should be increased, cut back or eliminated. Of the 9,000 people who responded, there seems to be an attitude across-the-broad spectrum of income levels pay more than their fair share of taxes. I found direct parallels between the attitudes of people in Wyoming and the attitudes of the people of California as reflected in the passage of proposition 13.

The meaning of proposition 13 and the results of my statewide tax survey is that taxpayers are reevaluating the benefits they received from Government services and have decided that they can put their money to better use. In spite of

warnings that essential public services would collapse, Californians went to the polls to declare that Government was taxing and spending too much.

They were affirming, as the noted economist Herbert Stein has stated:

> That income in our society belongs to the people who earn it and they have a right to retain it unless there is a clear and important social purpose to be served by taking it away.

This attitude has spread across the Nation, and if one takes a look toward Washington, there is little wonder why the people are dissatisfied with the way their tax dollars are spent.

Federal bureaucrats have been arguing, with considerable success, that more funds are needed for new or expanded projects, with the rationale that their programs serve a clear and important social service. The fact of the matter is that the Federal bureaucracy will always be able to spend all of the revenues the Government receives, plus a few extra billion in deficit financing thrown in for good measure. Less credible is the statement that all Federal programs have a clear and important social purpose. More and more Americans believe that many Federal programs are frivilous or wasteful expenditures of their tax dollars. Just as taxpayers say no to this kind of waste in California or Wyoming, so too we see Americans and their Representatives in Congress calling for a cut in Federal taxes. I am not talking about the President's "symbolic" tax cut, but a meaningful cut in income taxes from which the average taxpayer will derive real benefits. The Roth-Kemp tax cut proposal calls for a 33-percent across-the-board income tax that will provide the tax relief that the average taxpayer so desperately needs.

It is tragic that there is not more understanding and concern over the effects of not passing the Roth-Kemp tax cut program, without the Roth-Kemp bill, we provide a clear signal to Washington that taxation should increase and Federal spending should continue to absorb an increasing proportion of our personal income. There should be no concern over the notion that our tax burden could ever decrease: Our tax system is structured so that the Government has everything to gain from inflation. We can be assured that both inflation and taxes will climb unless we act to derail their advance. As inflation pushes prices and incomes upward, Americans slide quietly into higher tax brackets, and increasingly larger portions of their incomes goes to the IRS. Under this tax system, Federal taxes took 18.2 percent of the GNP in the period between the Korean war and the Vietnam war. In the present fiscal year, taxes will consume 19.6 percent of the GNP. If the tax schedules contained in present laws remain unaltered, Federal taxes in 1983 would consume 22.7 percent of GNP. This relationship between inflation and the tax system means that Federal agencies can continue to make budgets and operating plans under the assumption that more revenues are on the way. Such increases in public spending and Government employment may not change the size of our GNP in the short run, but it affects the strength of our economy and its resilience to inflation. Public sector spending provides many important jobs and services, but as the size of the public sector increases, there is less room in the economy for private investment. Private investment in industry and agriculture add to our Nation's wealth, both now and in the future, providing jobs and more products at lower prices. If private investment is forced out by Government spending, we can count on fewer production-oriented jobs and higher prices in the future. Without a substantial tax cut, scheduled over the next few years, we permit inflation to carry all taxpayers into higher income brackets and we do nothing to impede the growth of Government spending.

In calling for a tax cut, the Roth-Kemp bill is not demanding that the tax burden should be reduced, but rather that the tax burden should not be permitted to keep its scheduled climb over the next 5 years. Even with the Roth-Kemp tax cut, 1983 taxes would still compose 19 percent of our GNP.

There is still considerable debate raging over the question whether the Roth-Kemp tax cut will generate more tax revenue by stimulating the economy, than is lost through the cut in tax rates. I am convinced by the history of tax cuts in West Germany and Japan and our own experience with tax cuts under the Kennedy administration, that the Roth-Kemp tax cuts will only help our economy. Look at the results of the Tax Reduction Act of 1964. That tax cutting initiative triggered increased Federal revenues, new investments and more jobs. Taken in conjunction with other needed measures, such as a cut in the capital gains tax and strong measures to balance the budget, the Roth-Kemp tax cut will set the stage for a dynamic and healthy economy in the 1980's. Increased economic activity triggered by the tax cut will mean less unemployment, less poverty, and lower spending on unemployment and poverty programs.

Finally, there is an effect of the Roth-Kemp tax cut proposal that is difficult for economists to measure, but is nevertheless familiar and important to all working Americans. Simply speaking, the Roth-Kemp tax cut will help restore the incentive to work and invest in an economy where incentives have been taxed away. Increasing numbers of Americans are discouraged from finding work as high marginal tax rates make it economically foolish to go off of the welfare rolls. Working Americans have little reason to work overtime or seek a better job when much of their additional income goes back to Washington, D.C. High corporate taxes stifle new competition, making us all the poorer in the absence of new dynamic, small businesses. The Roth-Kemp proposal will, if nothing else, restore incentive as the driving force behind our Nation's economy and individual self-respect.

Can we afford to cut taxes? I do not see how we can afford not to.●

NATIONAL EXPORT PROGRAM

● Mr. LUGAR. Mr. President, the President deserves to be commended for focusing long-overdue attention upon American export policy. Our exports have grown much more slowly than those of other industrialized nations, and we are losing an increasing share of the world market. Perhaps the United States could not expect that it would forever hold its given share of the world market; perhaps, in the wake of rapid development of some so-called Third World countries, all of the presently industrialized nations will face long-term decreasing shares of the world market. But we can hope, if not actually expect, that the world market will continue to grow, and that the absolute level of world exports and imports will continue to increase and to better the material conditions of everyone. In the meantime, however, there is little excuse for our declining share of the world market. We have quite simply failed to take seriously our export possibilities, and we have lost many opportunities to those nations which have pursued aggressive and creative export policies. Competitive American industries and workers—as well as foreign consumers—have paid the price for our inaction.

The President's recently announced national export program appears at first blush to be a comprehensive attempt to improve our export performance. Upon closer inspection, however, the President's program displays nothing of legislative importance or originality, and altogether very little of substance. In the place of concrete proposals addressed to specific problems, the President has offered a programmatic public relations effort. This may be enough to satisfy some people, and indeed more than enough to suit others; but it is unlikely to entice potential exporters, whose calculations must be based upon firmer grounds than new "priorities," "guidelines," "recommendations," and "councils."

The President's program consists of three parts. One of them is the continuing multilateral trade negotiations in which we are involved. On this front, we are all hopeful that the good work of Ambassador Robert Strauss will be effective in securing for this country's exporters greater competitive access to foreign markets. Other industrial nations have handled their import policies as creatively as their export policies, and often to the detriment of American exporters.

The second part of the President's program concerns reductions of domestic barriers to exports. According to the President, there are five major domestic barriers to exports: domestic regulations, foreign policy restrictions, the foreign corrupt practices act, antitrust laws, and environmental review requirements. What the President is saying here, I believe, is that he intends to undo some of the harmful effects of his own administration's policies and of policies that his administration inherited. This is all to the good. We have witnessed in recent years a simply incredible list of reasons why this or that export must be restricted, delayed, or reconsidered. The

President's proposals here do not go far enough. What is needed is not more confusion about whether harmful regulations will be enforced, but less. Exporters need to know that they can expect as a matter of course that their products, with only a few well-defined exceptions, may be speedily exported. Under the President's new directive, a business wishing to export in some circumstances must go to the Justice Department and discover current "enforcement priorities." To have to inquire when it is and when it is not permissible to break the law is an objectionable, but natural, result of ill-conceived laws.

Third, and potentially most important, the President's program promises direct assistance to U.S. exporters. But it is here that fulfillment falls furthest short of promise. The President speaks of new targets and credits, without convincing arguments that they will materially improve our export position. And the President speaks generously of tax measures and incentives, which remain vague hopes. Indeed, our one concrete export tax incentive, DISC, is still criticized and disapproved by the President, though without even the hint of an alternative.

Throughout his message, the President speaks of "priorities." We will now have an export priority. But we also have national security priorities, human rights priorities, health and safety priorities, environmental priorities, and so forth. Where there are so many "priorities," there is, in effect, only conflict and confusion. In subjecting us to a constant barrage of "priorities," the current administration raises considerable doubt that there is sound underlying direction to its projects.

If we are to have a genuine solution for our export difficulties, we will need something more than a vague commitment to a great variety of more or less minor proposals, no one of which is significant in itself. One single real tax incentive might be preferable to another ostensibly comprehensive national program. Specific terminations of regulatory blocks to exports would be much more encouraging than mere assertion of "exporting" as a priority.

We face important questions concerning foreign trade in the coming years. We will have to decide whether to adopt large-scale direct or indirect subsidies for our exporters. We will have to decide if we are to encourage, or even to permit, the development of giant export cartels. We will have to determine what degree of economic diversity we are to seek in the future of the world economy. To answer these questions will require development of specific goals and continuing perseverance in attaining them.●

STUDY OF DEFENSE MATERIALS FACILITIES

Mr. THURMOND. Mr. President, a very important step was taken last Saturday when the Senate passed an amendment to the defense energy bill calling for a study of the Nation's nuclear weapons production facilities.

This study is aimed at modernization of these plants, a very important and in some cases, long overdue action. This effort is to be a high priority undertaking, and is dictated by law under this amendment.

This amendment, which I cosponsored with Senator HENRY JACKSON, Democrat of Washington, brings to our attention the importance of having a modern, efficient weapons production complex to accompany any new agreement or new requirement we may face in dealing with the Soviets. We have seen too many examples of how the Soviets exploit self-imposed U.S. handicaps and other well-intentioned actions that they look upon as signals of weakness.

This study will provide our Nation with a range of both short-term and long-term options. We need to identify steps that could be taken to shore up our nuclear production complex quickly and economically. If new SALT agreements are to be put before us in the next session, we should be looking intensively now at our nuclear production capabilities to meet new material needs of new weapons systems so necessary to maintain a clear strategic edge.

Mr. President, the situation at our production complex may be serious enough to warrant some temporary restructing or realinement of our resources. We should look hard at the possibility of drawing on any and all industrial capabilities and resources that could be utilized quickly to pick up the slack for the short term.

One option that must be looked at by the Department of Energy in their study is the prospect for using the Barnwell Nuclear Fuel Plant in South Carolina to reprocess spent production reactor fuel. The Barnwell plant is capable of reprocessing production fuel with minor technical modifications and I expect DOE to present a detailed evaluation of this possibility when they report to Congress early next year.

MUTUAL AND BALANCED FORCE REDUCTION TALKS

Mr. BARTLETT. Mr. President, since October of 1973, members of NATO and the Warsaw Pact have engaged in formal negotiations aimed at mutual and balanced force reductions (MFBR) in Central Europe.

The goal of the United States in those negotiations has been to eliminate the dangerous and growing military advantages currently held by the Soviet Union in Europe. To be successful, any such agreement must take into account the ability of Soviet forces in Germany to launch a successful surprise attack, and it must take into account the ability of the Soviet Union to reinforce the Warsaw Pact from western Russia.

This task has been made more difficult as a result of Soviet insistence that Western intelligence sources are overestimating their forces in Central Europe. Soviet intransigence on the verification questions suggests that they seek to increase their European military advantages through negotiations. Given the complex issues involved and conflicting goals of the conferees, it would seem unlikely that progress would be rapid. That has been the case thus far. However, recently there has been an alarming trend of concessions which if allowed to continue, could culminate in an agreement which would seriously jeopardize the security of Western Europe.

The history of the MBFR talks reads much like other Soviet/American negotiations on military matters. The United States was propelled to the negotiating table chiefly by domestic political pressures. The trauma of Vietnam held a tight grip on American public policy during the early 1970's, with calls for a reduced military being sounded from nearly every political and social arena. Several Senate leaders were even calling for the unilateral withdrawal of American troops from Europe. The signing of SALT I suggested the possibility of significant arms control agreements with Russia, and Americans were optimistic about promises of detente. Naturally MBFR talks began with an air of enthusiasm.

The establishment of equal force ceilings constituted the first proposal offered by NATO at the MBFR talks. The withdrawal of about 15 percent of American and Soviet troops, 29,000 and 68,000 respectively, was suggested as the first step toward establishing troop ceilings of 700,000 for both sides. This proposition offered stability and reduced military expenditures. However, the proposal was summarily rejected by the Soviet Union. In so doing, it surfaced the primary impediment to any agreement.

Although the Soviet Union and the United States are able to agree on intelligence estimates for NATO troop deployments, there is considerable disagreement on the number of Warsaw Pact forces. The Soviets count 805,000 ground troops and 160,000 tactical air personnel.

Several sources estimate Warsaw Pact ground forces at 925,000 and tactical air forces at perhaps 204,000. Given the Warsaw Pact's alleged 2-to-1 numerical advantage in main battle tanks and tactical aircraft, the disparity in troop estimates is significant.

Essentially, the Soviet Union claims Warsaw Pact-NATO military equility exists already in the NATO guidelines area (NGA). Their bargaining posture has therefore stressed cuts of equal numbers. The United States believes that Moscow has a numerical advantage and that an equal ceiling would require larger cuts in Warsaw Pact Forces.

In 1975, NATO proposed the withdrawal of 29,000 U.S. troops, with the addition of 1,000 U.S. nuclear warheads, 54 F–4 fighter-bombers, and 36 Pershing surface-to-surface missiles. The Soviet Union was asked to withdraw an entire tank army from East Germany in exchange.

The revised proposal did not require any reciprocal reductions of Soviet-deployed theater nuclear systems. This proposal favored the Warsaw Pact in the military balance. However, the proposal would have lessened the threat of a Warsaw blitzkrieg attack on the West, and for that reason, the plan had merit.

Nevertheless, the plan was rejected by the Soviet Union as an insufficient response to the issue of Forward Based Systems (FBS).

During the fall of 1977 and into the spring of 1978, a third major NATO proposal was debated. Again, further substantive concessions were made to the Warsaw Pact. In this proposal, NATO's reductions remained identical to those tabled in 1975. However, NATO's requirement for a phase-one withdrawal of a Soviet tank army from East Germany, was dropped. Instead, this proposal called for the withdrawal of numbers equivalent to a tank army—1,700 Soviet tanks and 68,000 men—from any of the five Soviet divisions in the NATO guidelines area.

In this instance, the Soviets could selectively remove obsolescent tanks and inferior troops in less critical areas. In effect, the Soviets would be allowed to maintain their newest armor and Elite troops in an attack posture along West Germany's eastern border without any modification. This proposal would have had the effect of stripping the 1975 proposal of its only real value to the West; namely a reduced surprise attack capability.

In addition to the tactical nuclear concessions repeated from the 1975 proposal, an extremely valuable bargaining chip in theater nuclear weapons was forfeited. You will remember, it was during this period that our administration shelved development of our enhanced radiation warhead or neutron bomb. A reciprocal reduction of Soviet offensive capability in Central Europe was hoped for. It has never come.

At present the talks remain in deadlock. The Soviet Union agrees to a ground force ceiling of 700,000, but does not agree on how many troops must be withdrawn to reach that ceiling. Major verification problems remain. The Soviet ability to negotiate in MBFR for 5 years without making any substantive concessions, must be regarded as nothing short of extraordinary.

At present, I think we may be thankful that the Russians did not accept the last NATO offer. It most certainly would have worsened our tactical posture and placed the security of Western Europe in greater jeopardy. Apparently, they are optimistic about political trends, displaying nothing but the most impassive face. They are waiting for us to place further concessions on the table.

Surely, the question must occur to even the most casual observer, Why does NATO continue the negotiations? Since 1975 it has become clear that the Soviet Union seeks significant gain from the talks. Western leaders, apparently driven by the credo that any arms control negotiations with the Soviet Union are inherently healthy and should be pursued for the sake of détente, having made progressively worse offers. Unfortunately, we are making substantive military concessions in exchange for a false sense of security.

If there is to be an agreement it should be for the establishment of balanced forces and the lessened ability of one side to launch a successful preemptive blitzkreig attack upon the other. Our negotiator's preoccupation with troop strength does not even address itself to this end. As wars in Vietnam, Korea, the Middle East, and World War II have illustrated, success on the battlefield is not dependent on the number of soldiers. Today in Europe, stability and the prevention of a preemptive attack will depend more on troop placement, configuration, armaments and logistical support. It is with these elements of modern warfare that our negotiators should concern themselves.

Furthermore, effective verification procedures including real time reporting are mandated before any credible agreement can be achieved. Recognition is also needed of the comparative distances and circumstances that troop withdrawal of men or material from the West German border would mean for the United States and U.S.S.R. Soviet reinforcements would traverse a distance of perhaps 700 miles over flat terrain and good roads; 4,000 miles and an ocean separate the United States from the NATO guidelines area. For this reason, in the event of a mutual withdrawal of Soviet and American forces, demobilization of Soviet forces should be a major consideration. Again, verification is crucial.

The negotiations for MBFR, held in Vienna, have usually dwelled in the shadow of SALT II negotiations. In many ways, however, MBFR talks differ markedly from the SALT process and are singularly important. They involve a total of 19 nations of Western Europe, as opposed to the one on one of SALT II. MBFR involves a full range of military doctrine, manpower, and armament questions. SALT II in that respect is relatively limited. Finally, SALT II is being negotiated from a position of relative parity. Decidedly, MFBR is being negotiated by NATO from a position of weakness. Nevertheless, the success or failures of MFBR must be viewed in unison with the negotiations for SALT II and a CTB agreement. In the rarified atmosphere of détente the outcome of one agreement is certain to have an impact upon the outcome of the others.

To conclude, I must return to the question of "why are we negotiating in MBFR?"

In a 1977 report issued by my esteemed colleague Senator NUNN and myself, we pronounced the NATO posture in Europe woefully unprepared. President Carter has prudently echoed our findings with renewed commitment and has called for increased cooperation with our allies in Western Europe. It would be a tragedy indeed if fresh initiatives to provide for the security of Western Europe were diluted or negated by an ill-conceived and damaging MBFR agreement. Any agreement must be verifiable and enforceable and take into account the ability of the Soviet Union to launch a surprise attack and to reinforce quickly from European Russia.

THE ERA EXTENSION

Mr. MORGAN. Mr. President, from the beginning, I have favored the equal rights amendment to the Constitution.

Had I been in the Congress when it was brought up initially, I would have voted to send it to the States for ratification, and I will do so in the future if that is necessary.

It has been unfortunate that the ERA issue has been clouded and muddied by arguments that had little or nothing to do with equal rights for women.

I regret that I cannot, in good conscience, support extending the time for consideration by the States that have not ratified it.

It would not have been a hard decision if those States which have approved it had been given an equal opportunity to reconsider their actions.

I felt that when the Senate voted against rescission, which would have given those States that had already voted a chance to reconsider, then the Senate was saying, "This isn't the constitutional, the legal or the best way to do this, but we are going to do it anyway."

The resolutions of ratification from 30 of the 35 States that have already ratified the amendment contain the express provision that they would be joined in their action by three-fourths of the States within the original 7-year period.

Five of those 30 States put the condition of being joined by 37 others within the original 7-year period as an explicit part of the contract.

I cannot help but feel that the Congress will have changed the rules in the middle of the game, which is something that Americans have always felt to be unfair.

There was a right way to do this thing and a wrong way to do it and I think the wrong will have prevailed if the extension is now granted.

I have been lobbied on this bill in a very personal way.

My wife has served as cochairperson of the State committee for the equal rights amendment in North Carolina.

My daughter has talked to me about it and she was seen advocating passage of the extension on national television.

So the decision that I reached was not an easy one.

But I think it is the right one, one that was brought about by my respect for the Constitution and for the law, and I cannot feel that those people who sent me to the Senate as their representative would want me to act otherwise.

DISTRICT OF COLUMBIA RETIREMENT REFORM ACT—CONFERENCE REPORT

Mr. EAGLETON. Mr. President, I submit a report of the committee of conference on H.R. 6536 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 amendment of the Senate to the bill (H.R. 6536) to establish an actuarially sound basis for financing retirement benefits for policemen, firemen, teachers, and judges of the District of Columbia, and to make certain changes in such benefits, 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 October 5, 1978.)

Mr. EAGLETON. Mr. President, the Senate and the House have reached agreement in conference on a thorough and tough reform of the pension system for police officers, firefighters, teachers, and judges in the District of Columbia.

The bill, I believe, is one of the most stringent pension reforms ever presented to Congress. It not only will eliminate abusive practices that have skyrocketed costs in the past, but it provides a fail-safe mechanism to squeeze out all possible abuse in the future. The bill, as hammered out with the House, not only will serve the men and women who will draw benefits from it, but the taxpayers who must support it with their hard-earned dollars.

The bill essentially does two things: First, it provides Federal funds to reduce the system's staggering $2 billion liability. Second, it strikes out disability provisions that made the system a premier rip-off for years. Basically, it provides fair and adequate pensions for the men and women who serve the Nation's Capital, but it closes the loopholes through which, at one time, 98 percent of all retiring police officers and firefighters claimed full disability pensions.

A unique feature of the bill is a mechanism that automatically will trigger a reduction in the Federal authorization if costs exceed a certain, clearly defined limit. This will keep relentless pressure on the city for rigorous and effective administration of the system. The General Accounting Office will be the vigilant watchdog and will provide annual reports to Congress that would trigger a drastic reduction in the authorization. I believe this fail-safe device could well be a model for other pension programs and will assure a constant alert against possible waste and fraud. In fact, an over-run of more than 2 percent would result in a lost of $25 million which the District itself would be obligated to make up.

As to the benefits themselves, a person truly disabled in the line of duty will be assured lifetime security. But the present system of only full disability pensions no matter the extent of the injury or illness will be scrapped for what I believe is a far more equitable and responsible system. From here on out, for persons entering the police and fire services, disability pensions will be equated to the percentage of disability. Persons with less than total disability will receive pensions in line with their earning abilities in less physically demanding jobs. Another reform of the disability provisions is the absolute elimination of the aggravation clause which has permitted legions of police and firemen to obtain full disability because of disabilities suffered off duty.

Federal funding, of course, is an indispensible element of the bill. Under the current, pay-as-you-go system, the District was fast approaching the disastrous brink of paying more in pensions than for active-duty salaries. The conference managers agreed on a Senate formula that authorizes $65 million annually for 25 years. Through that same quarter century, the District will end up contributing an equal share to deal with the enormous liability that has been allowed to deepen since the police and fire pensions were established by Congress in 1916. The $65 million effectively will plug the gaping deficit, although it is a reduction from the $80 million in the Senate version. The House originally proposed $47 million.

This authorization should put the system on a sound actuarial footing, and I have the statistical data and formula for the record that should assist the Appropriations Committee in making its annual determinations.

Mr. President, I ask unanimous consent that two tables be printed in the RECORD.

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

Funding formula
[Dollars in millions]

	Police and fire	Teachers	Judges	Total
Accrued liability:*				
Wyatt assumptions	$698.1	$272.9	$4.5	$975.5
Treasury assumptions	641.9	272.9	4.5	919.3
Average	670 0	272.9	4.5	947.4
Value of fund (estimate)	0.0	62.0	1.5	63.5
Unfunded liability	670.0	210.9	3.0	883.9
Level payment	49.45	15.56	0.22	65.12
Prorated reduction to yield $65 million total	49.27	15.51	0.22	65.0

*See Exhibit A. Difference in liability for police and fire between House and Senate bills is due to different treatment of "equalization clause." Conference report retains House provisions, which Wyatt estimates will add $56,200,000 to the liability. Treasury assumes however, that pay increases will equal cost-of-living increases, thus not affecting the liability. The estimate used in these calculations is an average of the two estimates.

EXHIBIT A

District of Columbia retirement systems for policemen and firemen and for teachers—estimate of accrued liability as of Oct. 1, 1978 for members and beneficiaries retired prior to Jan. 1, 1975 (all numbers in thousands)

	S. 2316	H.R. 6536
Police and fire	$641,867	$698,096
Teachers	272,870	272,870
Total	914,737	970,966

The above estimates have been developed based on the actuarial assumptions and the data used for the actuarial valuation as of Jan. 1, 1976, for the police and fire system and as of Oct. 1, 1976, for the teachers' system. The liabilities related to members retired before Jan. 1, 1975, were approximated based on assumed percentages of those retired members remaining on the inactive rolls as of Jan. 1, 1976, for the police and fire and as of Oct. 1, 1976, for the teachers' system. The estimates have not been adjusted to reflect the differences between actual and assumed experience from the valuation date to Oct. 1, 1978.

Mr. EAGLETON. I strongly urge my colleagues to approve this conference report.

The PRESIDING OFFICER. The question is on agreeing to the conference report.

The conference report was agreed to.

Mr. EAGLETON. Mr. President, I move to reconsider the vote by which the conference report 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.

SHIPPING ACT AMENDMENTS OF 1978

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar Order No. 897.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

Calendar 897, H.R. 9518, an act to amend the Shipping Act, 1961, to strengthen the provisions prohibiting rebating practices in the United States foreign trade.

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on Commerce, Science and Transportation with amendments as follows:

On page 1, line 9, strike "subsection" and insert "paragraph";

On page 2, line 24, strike "subsection "(a)" and by adding a new subsection (b) as follows" and insert "subsections "(a)" and "(b)", respectively, and by adding a new subsection (c) as follows";

On page 3, line 3, strike "(b)" and insert "(c)";

On page 6, line 5, strike "one hundred and eighty" and insert "180";

On page 6, line 9, strike "thirty" and insert "30";

On page 6, line 15, strike "ten" and insert "10";

On page 7, beginning with line 22, insert the following:

SEC. 11. Section 15 of the Shipping Act, 1916, as amended, is amended by designating the existing paragraphs of that section as subsections (a) through (f), respectively, and by adding at the end thereof the following:

"(g) (1) United States carriers and reciprocal carriers are hereby authorized to enter into reciprocal ocean transportation agreements. A reciprocal ocean tansportation agreement is any ocean transportation agreement which—

"(A) establishes a revenue or cargo pool or pools;

"(B) provides for equal access to some or all government controlled cargoes;

"(C) provides for rationalization of sailings or apportions earnings, losses or traffic between such carriers; and

"(D) provides that the United States carriers shall have and receive a share at least equal to the share or combined shares of or have rights at least equal to those of the reciprocal carriers.

Any such agreement may also provide for participation by common carriers other than the United States carriers or reciprocal carriers.

"(2) Reciprocal ocean transportation agreements are hereby declared presumptively to be in the public interest and beneficial to the commerce of the United States and shall be lawful and deemed approved under subsection (a) of this section 30 days after they are filed with the Federal Maritime Commission. Any such reciprocal ocean transportation agreement shall remain lawful and effective until canceled by one of the parties, with 45 days notice to the Federal Maritime Commission, or until finally disapproved by the Federal Maritime Commission on findings, after notice and hearing, that such agreement—

"(A) prohibits or otherwise prevents any other United States carrier or reciprocal carrier from becoming a party to such reciprocal ocean transportation agreement on a fair, reasonable, and equitable basis, at the time of filing of such agreement or at any time thereafter;

"(B) contains any provisions other than those establishing revenue or cargo pool or pools, equal access to some or all government-controlled cargoes, rationalization of sailings or apportionment of earnings, losses, or traffic, and administrative provisions necessary or proper to effectuate the foregoing provisions or to admit other carriers; or

"(C) is unjustly discriminatory or unfair as between United States carriers or reciprocal carriers, shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors, or operates to the detriment of the commerce of the United States, or is contrary to the public interest, or is in violation of this Act.

"(3) The Federal Maritime Commission may, on the complaint of an aggrieved carrier, shipper, exporter, or importer or port, or on its own motion, after notice to the parties to the agreement and preliminary hearing, within the 30-day period following its filing with the Commission, suspend for a period not to exceed 120 days, the effectiveness of a reciprocal ocean transportation agreement upon a finding that (A) it is probable that the agreement violates the provisions of subparagraph (A), (B), or (C) of paragraph (2); (B) irreparable injury will result to the complaining party; (C) such suspension will not substantially harm the parties to the agreement; and (D) such suspension will not adversely affect the free flow of commerce between a coast of the United States and the foreign country involved.

"(4) At any hearing under this subsection, the burden to show that the reciprocal ocean transportation agreement involved should not become effective or should be suspended or disapproved shall be upon the opponent of the agreement.

"(5) For the purposes of this subsection—

"(A) the term 'United States carrier' means a United States-flag common carrier by water in foreign commerce; and

"(B) the terms 'reciprocal carrier' means a common carrier by water in foreign commerce of the flag of the nation which is the ocean port destination or origin of the cargo which is the subject of a reciprocal ocean transportation agreement.".

On page 11, line 1, strike "11" and insert "12".

Mr. INOUYE. Mr. President, I move the consideration and adoption of the committee amendments en bloc.

The amendments were considered and agreed to en bloc.

UP AMENDMENT NO. 2018

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

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Hawaii (Mr. INOUYE) proposed an unprinted amendment numbered 2018.

Mr. INOUYE. 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:

Strike all after the enacting clause and insert in lieu thereof the following:

"That this Act may be cited as the 'Shipping Act Amendments of 1978'.

"SEC. 2. Section 16 of the Shipping Act, 1916 is amended, by striking '$5,000' in the sixth paragraph, and inserting, in lieu thereof, '$25,000.'

"SEC. 3. Section 18(b) of the Shipping Act, 1916 is amended by deleting subsection (6) thereof and by adding the following new language in lieu thereof:

"(6) Whoever violates any provision of this section, other than subsection (b)(3) hereof involving rebates or refunds shall be subject to a civil penalty of not more than $5,000 for each day such violation continues.

"(7) Whoever violates subsection (b)(3) hereof by means of rebates or refunds, shall be subject to a civil penalty of not more than $25,000 for each shipment on which a rebate or refund was paid and to suspension by the Commission of any or all tariffs filed by or on behalf of such carrier, or suspension of that carrier's right to utilize any or all tariffs of conferences of which that carrier may be a member, for a period not to exceed twelve months. Any carrier whose tariffs or rights of use thereof have been suspended pursuant to this paragraph and who accepts cargo for carriage during the suspension period which cargo otherwise would have been governed by the provisions of the suspended tariff(s) shall be subject to a civil penalty of not more than $50,000 for each shipment so accepted.

"For purposes of this subsection and section 22(c) of this Act, a shipment shall mean all of that cargo, the carriage of which is evidenced by a single bill of lading.".

"SEC. 4. Section 21 of the Shipping Act, 1916 is amended by designating the existing two paragraphs as subsection '(a)' and by adding a new subsection (b) as follows:

"(b) The Commission shall require the chief executive officer of every vessel operating common carrier by water in foreign commerce and to the extent it deems feasible, may require any shipper, consignor, consignee, forwarder, broker, other carrier or other person subject to this Act, to file a periodic, written certification under oath with the Commission attesting to—

"(1) a policy prohibiting the payment, solicitation, or receipt of any rebate which is unlawful under the provisions of this Act;

"(2) the fact that such policy has been promulgated recently to each owner, officer, employee, and agent thereof;

"(3) the details of the efforts made, within the company or otherwise, to prevent or correct illegal rebating; and

"(4) full cooperation with the Commission in its investigation of illegal rebating or refunds in United States foreign trades, and in its efforts to end such illegal practices.

"The Commission may by regulation prescribe the form and content of any certification required under the authority of this subsection. Failure to file any such certification shall result in a civil penalty of not more than $5,000 for each day such violation continues.".

"SEC. 5. Section 22 of the Shipping Act, 1916 is amended as follows:

"(a) designate the two existing paragraphs as '(a)' and '(b)', respectively;

"(b) amend subsection (b), as designated by this Act, by deleting therefrom the phrase 'except as to orders for the payment of money,'; and

"(c) immediately after subsection (b), as designated by this Act, insert the following:

"(c)(1) In addition to, and without limiting the authority granted to the Commission by subsections (a) and (b) hereof, the Commission may, on its own motion, institute an adjudicatory investigation into possible violations of section 16 (other than paragraphs First and Third) involving rebates or refunds in foreign commerce or violations of section 18(b)(3) involving rebates or refunds, with the powers set forth in subsection (c)(2) hereof in addition to those already contained in section 27, 43, and other sections of this Act.

"(2) Failure on the part of any person, respondent to a proceeding instituted pursuant to subsection (c)(1), or any other person directly or indirectly controlling, controlled by, or under common control with such respondent, to comply with any subpena or any duly issued order compelling an answer to interrogatories or to designated questions propounded by deposition or compelling production of documents in relation to any investigation conducted under subsection (c)(1), shall authorize the Commission to issue an order to show cause why any or all tariffs filed pursuant to section 18 (b) of this Act, by or on behalf of a respondent carrier, or any or all rights of a respondent carrier to utilize such tariffs in the case of conference tariffs, should not be suspended until that carrier or any person directly or indirectly controlling, controlled by, or under common control with such carrier, has fully responded to the pertinent deposition, interrogatory, production request or motion, or subpena, and after such proceeding, and after consultation with the Secretary of State, to so suspend those tariffs or the respondent carrier's rights to utilize such tariffs. Any carrier whose tariff(s) or rights of use thereof have been suspended pursuant to this subparagraph and who accepts cargo for carriage during the suspension period which cargo otherwise would have been governed by the provisions of the suspended tariff(s) shall be subject to a civil penalty of not more than $50,000 for each shipment so accepted.

"(3) The Secretary of State shall take appropriate steps to negotiate a regime of cooperation with other maritime nations engaged in United States foreign trades to secure compliance with the Commission's requirements for information. He shall issue a report to the President and the Congress within one hundred and eighty days after enactment of this Act on the results of those negotiations. If the President deems that the steps taken provide satisfactory Commission access to such information, he shall so certify to the Congress within thirty days after receipt of the Secretary's report. If such certification is not made, the penalties prescribed in paragraph (c)(2) for failure to comply with information requests shall be mandatory.

"(4) Before any tariff suspension ordered pursuant to paragraph (c)(2) becomes effective, it shall be immediately submitted to the President who may, within ten days after receiving it, disapprove any such order

if he finds that disapproval is required for reasons of the national defense or the foreign policy of the United States.".

"SEC. 6. Section 23 of the Shipping Act, 1916 is amended by deleting therefrom the language ', other than for the payment of money,'.

"SEC. 7. Section 27 of the Shipping Act, 1916 is amended by deleting from subsection (b) thereof the phrase 'other than for the payment of money'.

"SEC. 8. Section 29 of the Shipping Act 1916 is amended by deleting therefrom the phrase 'other than an order for the payment of money,'.

"SEC. 9. Section 30 of the Shipping Act, 1916 is amended in the initial and final paragraphs thereof by deleting the phrase 'for the payment of money' and by inserting, in lieu thereof, the phrase 'for the payment of reparation'.

"SEC. 10. Section 32 of the Shipping Act, 1916 is amended by inserting at the end thereof the following new subsections:

"(d) No penalty shall be imposed on any person for conspiracy after August 29, 1972: (1) to rebate or refund in violation of the initial paragraph or paragraph Second of section 16, or under section 18(b)(3) of this Act; or (2) to defraud the Commission by concealment of such rebates or refunds in any manner.

"(e) Notwithstanding any other provision of law, the Commission shall have authority to assess or compromise all civil penalties provided in this Act: *Provided, however,* That, in order to assess such penalties a formal proceeding under section 22 of this Act shall be commenced within five years from the date when the violation occurred.".

"SEC. 11. The provisions of this Act, including the amendments made by this Act, shall become effective immediately upon its date of enactment.".

Mr. INOUYE. Mr. President, on June 28, the Commerce Committee reported H.R. 9518, a bill to strengthen our laws against rebating, which passed the House 390 to 1. As reported by the Commerce Committee it contained an amendment which had been offered in committee by Senator LONG.

Senator LONG's amendment would have facilitated FMC approval of certain pooling agreements now permitted under section 15, of the Shipping Act, 1916, but which, because of the administrative and judicial interpretation of that section, are virtually unobtainable.

Senator LONG's amendment has engendered some controversy, however. In view of the lateness of the session, he does not wish to jeopardize enactment of the House-passed antirebating provisions of H.R. 9518. He therefore requested the Commerce Committee to authorize me, as the manager of the bill, to delete his amendment on the floor. The committee in executive session on September 21, agreed to Senator LONG's request. I therefore offer an amendment to H.R. 9518, which will make it identical to the House passed version. This will have the effect of striking Senator LONG's amendment and making whatever technical changes are necessary for the version reported by the committee to conform to the House-passed version.

Mr. President, illegal rebating in the U.S. ocean liner trades has for many years been a widespread practice which now amounts to over $100 million annually, and threatens the viability of the liner segment of the U.S. merchant fleet.

Existing laws have proven ineffective to correct the situation, and have been applied in a discriminatory fashion against U.S. carriers. Moreover, existing mechanisms in the law which reduce the incentive for carriers to engage in illegal rebating have been rendered inoperative by administrative and judicial interpretation, and lack of a coherent, unified national shipping policy.

H.R. 9518 would amend the Shipping Act, 1916, to strengthen the provisions prohibiting rebating practices in the U.S. foreign trades.

Mr. President, this legislation will be a greater deterrent to illegal rebating and provide the Federal Maritime Commission (FMC) with greater authority and flexibility to enforce the provisions of the Shipping Act prohibiting rebating.

Specifically, H.R. 9518 would provide:

First. Increased civil penalties for rebating and other malpractices; and discretionary authority for the FMC to suspend tariffs up to 12 months for rebating.

Second. Additional authority for the FMC to require certifications from U.S. and foreign carriers, forwarders, shippers, and other persons subject to the act attesting to company policies and efforts to combat rebating and to require other information necessary for the FMC to carry out the provisions of the act.

Third. Additional powers for the FMC to investigate rebating violations in any adjudicatory proceeding on the record. Specifically, the Commission would be authorized in connection with any adjudicatory proceeding into possible illegal rebating, to issue an order to show cause why the tariffs of a carrier or its right to utilize a conference tariff, should not be suspended for failure of that carrier to comply with any subpena, or any order of the Commission to answer interrogatories, questions propounded by deposition or to produce documents related to any Commission investigation of illegal rebating. If the carrier in question fails to produce the requested documents, answer the questions or interrogatories, and fails to show cause why he has a right to withhold such information, the Commission—after consultation with the Secretary of State—has authority to suspend any or all of the traiffs of that carrier which may be on file with the Commission. The President has a veto power over whether or not a carrier's tariffs will be suspended.

Fourth. A prohibition against the use of the conspiracy statutes to make the past, present or future illegal practice of rebating as narrowly defined in the initial and second paragraphs of section 16 or in section 18(B)(3) of the Shipping Act, 1916, a criminal offense.

Fifth. The FMC could assess all civil penalties prescribed by the Shipping Act, 1916. Presently an action must be initiated in the U.S. district court for collection of the penalty.

Mr. President, with the exception of certain minor technical changes, this legislation is identical to the bill which passed the House 390 to 1, on March 22, 1978.

Mr. LONG. Mr. President, ocean rebating is one of the most destructive practices confronting our merchant marine, and I commend the Senator from Hawaii for his work in bringing to the floor H.R. 9518, a bill to prevent ocean rebating. This is a necessary piece of legislation, and I support it.

We know that existing laws have proven ineffective to correct the situation and have been applied in a discriminatory fashion against U.S. carriers. This bill therefore contains a number of provisions designed to provide the Federal Maritime Commission with greater authority and flexibility to enforce the provisions of the Shipping Act prohibiting rebating. These include increased civil penalties, tariff suspension powers, additional authority for the Federal Maritime Commission to require certifications from U.S. and foreign carriers, forwarders, shippers, and other persons subject to the act attesting to company policies and efforts to combat rebating and to require other information necessary for the Federal Maritime Commission to carry out the provisions of the act.

In addition, when this legislation was going through markup in the Commerce Committee, I offered an amendment that was designed to further strengthen the bill and get at the root cause of rebating—overtonnaging.

My amendment, which was approved by the committee, would merely seek to expedite the approval by the Federal Maritime Commission of certain reciprocal ocean transportation agreements that are designed to bring stability to our liner trades and prevent overtonnaging. These are the very same agreements that are currently provided for in section 15 of the Shipping Act of 1916, but which have historically been so difficult to implement that their utility has been compromised. These agreements provide for revenue pooling among carriers, cargo pooling, equal access to government controlled cargoes of our South American trading partners, and rationalization of sailings in order to avoid overtonnaging and duplication of sailings.

By expressly exempting these kinds of agreements from the antitrust laws, section 15, as it now stands, recognizes that economic cooperation through rationalization; equal access, rate and pooling arrangements under governmental supervision and control are necessary for greater regularity and frequency of service; stability and uniformity of rates; economy in the cost of service; better distribution of sailings and equal treatment of shippers through the elimination of secret arrangements and under-handed methods of discrimination. The Federal Maritime Commission is already on record to the effect that these agreements help in deterring rebating. In testimony before the Senate Committee on Commerce, Science, and Transportation on March 18, 1977 on illegal rebating, then chairman of the FMC, Karl E. Bakke, said:

". . . Rebating is commonly accepted competitive practice in virtually all ocean trades other than our own. However, the incentive for rebating is significantly diminished in these trades, by regulation of tonnage through such devices as cargo or revenue pooling, or in a variety of other ways . . ."

As I have already indicated, Mr. President, the antitrust immunity given these agreements under section 15 of the Shipping Act of 1916, has been severely restricted by a series of administrative and judicial interpretations; and procedural problems caused by interpretations can effectively prevent such agreements from being implemented in timely fashion. In fact, the mere filing of such an agreement with the Commission is an invitation to protracted, expensive hearings which ultimately results in the agreement's being talked to death.

As I have said, my amendment would have facilitated the approval of these agreements by providing a specified time frame for approval or disapproval, and would have made it clear that these agreements were in the public interest.

Unfortunately, some Senators felt that the amendment created a controversy between our shipping laws and our antitrust laws and expressed the view that the amendment represents an abrupt and sudden change in policy. I happen to disagree, but in view of the lateness of the session, the importance of at least passing H.R. 9518, and my desire not to engage the Senate in prolonged debate at a time when other bills require action, I asked the committee at its last business meeting, through the Senator from Hawaii, to approve a modification of the bill on the Senate floor, such modification to consist of deleting my amendment regarding reciprocal ocean transportation agreements.

Mr. GRIFFIN. Mr. President. The committee amendment now before the Senate would delete section 11 in its entirety from the bill.

This section would have made bad law and would have been against the public interest. I have worked actively to delete this provision, and I am pleased with the action being taken.

I wish to thank Senators KENNEDY, STEVENSON, ZORINSKY, and SCHMITT for their strong support in achieving this result.

Section 11, as reported from the Senate Commerce Committee, concerns pooling agreements. Contrary to the Senate Committee-reported bill, the House-passed bill had no such provision.

Generally, pooling agreements are agreements among carriers for economic cooperation, which would otherwise be illegal under the antitrust laws, except for antitrust immunity granted under section 15 of the Shipping Act.

Under the existing law such as agreement can become valid only after it is approved by the Federal Maritime Commission.

As stated in existing law, and as interpreted by the Supreme Court, the burden of showing that such an agreement should be approved is upon the proponents of the agreement.

The wisdom of the present policy to grant such agreements antitrust immunity has been severely questioned. Far worse, however, is the language of Section 11 in the Commerce Committee bill that would change existing law and make it far more anticompetitive than is now the case.

It is my belief that this provision is both anticompetitive and against the public interest. Such anticompetitive practices, of course, would mean increased prices to the American consumer. During these days of inflation and unemployment, this cannot be tolerated.

Section 11, as added in committee, has a number of subsections which change current law in a most anticompetitive manner.

First, the section overturns Supreme Court and legislative authority in declaring that pooling agreements are "presumptively in the public interest and beneficial to the commerce of the United States."

Second, the section provides that these agreements are presumed valid 30 days after they are filed with the Federal Maritime Commission and are to remain in effect until and unless declared invalid by the FMC.

Third, it declares that the opponents of the agreement, rather than the proponents, have the burden of showing that the agreement is not in the public interest.

Fourth, the section imposes an all but impossible burden upon opponents who seek to have such agreements merely suspended, rather than invalidated, by the FMC.

And, fifth, even if this burden is satisfied, the agreement is suspended for only a 120-day period, which is apparently too short a time for the Commission to render a final decision on the validity of the agreement.

There are a number of compelling reasons for opposing section 11. Based upon recognized authorities who have examined the merit of pooling agreements, the inescapable conclusion is that, rather than being beneficial, these agreements are contrary to the public interest. In a 1977 report, the Department of Justice stated: "Pooling agreements should be prohibited altogether." The Justice Department reaffirmed this position in testimony delivered in March of this year before the House Subcommittee on Merchant Marine.

Similarly, a spokesman for the State Department also expressed grave reservations regarding the benefit of such agreements, stating "[w]e continue to believe that cargo-sharing agreements, which are anticompetitive and tend to promote inefficient shipping services, should be avoided whenever possible." And, the Treasury Department in testimony delivered in May of this year, also stated that new limitations, on competition between shipping firms as proposed by section 11 of this bill as reported from Committee, "could lead to greater inefficiencies and increased costs, without providing improved services to the shipping public." Or, as more succinctly phrased by the Federal Maritime Commission, "[p]ooling agreements are the ultimate in anticompetitive combinations."

This displeasure with pooling agreements goes back to at least 1962 when the House Subcommittee on Antitrust concluded that "[p]ooling agreements are bold efforts to substitute monopoly for competition." And, as significantly, when the Supreme Court examined this question, it likewise concluded that such agreements generally are not in the public interest.

With all of these knowledgeable authorities concluding that pooling agreements are contrary to the public interest, I cannot agree with the provision's declaration that such agreements are beneficial to the public. But far more disturbing is the way section 11 uses this policy declaration to change current law. Under present law, pooling agreements do not become valid until they are approved by the Federal Maritime Commission. The FMC is required to disapprove any agreement it finds to be "contrary to the public interest." Further, as provided by present law and the Supreme Court, the burden is upon the party seeking approval.

As stated earlier, however, if section 11 were to become law, pooling agreements would be deemed effective 30 days after they are filed with the Commission and would stay in effect until and unless declared invalid. Further, the burden would be shifted to the opponents of the agreement to show that such an agreement should be invalidated by the Commission. As significant, an all but impossible burden of proof would be placed upon parties who wish to have the agreement merely suspended by the FMC.

I simply do not understand the logic of changing current law to permit pooling agreements, although they may be blatantly invalid, to stay in effect until they are disapproved by the Commission. Countless authorities in this area conclude that pooling agreements are contrary to the public interest, but this provision, as adopted in committee, would heighten the anticompetitive nature of these agreements by presuming their validity and shifting the burden of proof to the opponent.

For a number of reasons, the provision also is objectionable because it imposes an unreasonable burden of proof upon the opponent to have a proposed agreement merely suspended by the FMC. First, the opponent under section 11 can apply for a suspension of the agreement only if he does so within 30 days after the agreement is filed with the Commission. This 30 day period is an inadequate length of time for an opponent to learn of an agreement's filing, analyze it, request a hearing, prepare evidence, and present arguments to the Commission in a manner that will sustain the difficult burden of proof.

Second, the provision that the FMC can only suspend a pooling agreement for 120 days. Within this period, the Commission must render a final decision regarding the validity of the agreement. The General Counsel of the Commission has notified the Commerce Committee staff that this 120-day period is inadequate.

Third, section 11 imposes a much too rigorous burden upon the opponent to have the agreement suspended. To have such an agreement suspended, the opponent must satisfy four conditions: First, that it is probable that the proposed agreement will ultimately be declared invalid, second that irreparable injury will result to the opponent if sus-

pension is not ordered by the Commission, third that suspension will not substantially harm the parties to the agreement, and fourth that suspension will not adversely affect the free flow of commerce between a port of this country and the foreign nation involved.

These standards are all but impossible to satisfy. It should be first remembered that under this subsection, the Commission is authorized only to suspend rather than invalidate the agreement. But even more important is the fact that it is extremely difficult for an opponent to show that it will suffer irreparable injury if it has never previously engaged in the particular route or trade. Also, if the agreement is illegal, it should not be relevant whether the parties to the agreement will suffer substantial injury if it is suspended for the 120-day period. And last, under this standard, the FMC may decline to order suspension when such an order would have a de minimis affect on the free flow of commerce. The proper standard should be whether suspension would have a substantial effect.

I well understand that the Commission has been subject to criticism for taking what is allegedly an excessive amount of time in determining whether to approve certain pooling agreements. But this criticism is certainly no reason to change the current law to make the anticompetitive practices of the shipping industry even more anticompetitive. Rather, what is needed is a thorough and deliberate approach to this problem. At the present time, the administration is conducting an interagency study of our national maritime policy. As the Justice Department testified on June 8 of this year regarding similar legislation introduced in the House, "further investigation should be undertaken before enacting this type of statutory change." I agree with the administration. Let us wait and see what the interagency study recommends before proceeding to enact such drastic legislation.

In conclusion, I vigorously oppose this pooling agreement provision and am delighted that we have agreed to delete the provision from the bill. This provision would have made bad law. It would have been contrary to the public interest and would have promoted even more anticompetitive practices in the shipping industry. I thank my colleagues, particularly Senators KENNEDY, STEVENSON, ZORINSKY, and SCHMITT, for their strong support.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Hawaii.

The amendment was agreed to.

The PRESIDING OFFICER. The question is on the engrossment of the amendments and third reading of the bill.

The amendments were ordered to be engrossed and the bill to be read a third time.

The bill was read the third time, and passed.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. INOUYE. I move to lay that motion of the table.

The motion to lay on the table was agreed to.

The title was amended so as to read:

An act to amend the Shipping Act, 1916, to strengthen the provisions prohibiting rebating practices in the United States foreign trades, to provide for the prompt and effective implementation of certain equal access, pooling, rationalization, apportionment, and related reciprocal ocean transporation agreements, and for other purposes.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 95–966), 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 BILL

Illegal rebating in the U.S. ocean liner trades has for many years been a widespread practice which now amounts to over $100 million annually, and threatens the viability of the liner segment of the U.S. merchant fleet. Existing laws have proven ineffective to correct the situation, and have been applied in a discriminatory fashion against U.S. carriers. Moreover, existing mechanisms in the law which reduce the incentive for carriers to engage in illegal rebating have been rendered inoperative by administrative and judicial interpretation, and the lack of a coherent unified national shipping policy.

As ordered reported by the committee H.R. 9518 would amend the Shipping Act, 1916, to strengthen the provisions prohibiting rebating practices in the U.S. foreign trades; and to provide for more prompt and effective implementation of certain equal access, pooling, rationalization, apportionment, and related reciprocal ocean transportation agreements entered into between carriers of the flags of the United States and of the nations with which it trades.

The committee believes this legislation will be a greater deterrent to illegal rebating; provide the Federal Maritime Commission (FMC) with greater authority and flexibility to enforce the provisions of the Shipping Act prohibiting rebating; and facilitate approval of section 15 agreements among carriers which control overtonnaging, the root cause of rebating.

Specifically, as reported by the committee, H.R. 9518 would provide:

1. Increased civil penalties for rebating and other malpractices; and discretionary authority for the FMC to suspend tariffs up to 12 months for rebating.

2. Additional authority for the FMC to require certifications from U.S. and foreign carriers, forwarders, shippers, and other persons subject to the act attesting to company policies and efforts to combat rebating and to require other information necessary for the FMC to carry out the provisions of the act.

3. Additional powers for the FMC to investigate rebating violations in any adjudicatory proceeding on the record. Specifically, the Commission would be authorized in connection with any adjudicatory proceeding into possible illegal rebating, to issue an order to show cause why the tariffs of a carrier or its right to utilize a conference tariff, should not be suspended for failure of that carrier to comply with any subpena, or any order of the Commission to answer interrogatories, questions propounded by deposition or to produce documents related to any Commission investigation of illegal rebating. If the carrier in question fails to produce the requested documents, answer the questions or interrogatories, and fails to show cause why he has a right to withhold such information, the Commission—after consultation with the Secretary of State—has authority to suspend any or all of the tariffs of that carrier which may be on file with the Commission. The President has a veto power over whether or not a carrier's tariffs will be suspended.

4. A prohibition against the use of the conspiracy statutes to make the past, present or future illegal practice of rebating as narrowly defined in the initial and second paragraphs of section 16 or in section 18(b)(3) of the Shipping Act, 1916, a criminal offense.

5. The FMC could assess all civil penalties prescribed by the Shipping Act, 1916. Presently an action must be initiated in the U.S. District Court for collection of the penalty.

6. Certain reciprocal agreements for economic cooperation[1] among U.S.-flags and the flags of the nations with which we trade, which are now permitted by section 15 of the Shipping Act, would become effective 30 days after filing with the FMC. They would remain in force until terminated by the parties; or the Commission, after notice and hearing, disapproves them as violating the provisions of present section 15, and certain new safeguards added in the bill. The FMC would also be empowered to suspend these agreements before they become effective.

THE CALENDAR

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar Orders Nos. 1101 and 1192.

TRIBAL-STATE COMPACT ACT OF 1978

The Senate proceeded to consider the bill (S. 2502) to authorize the States and Indian tribes to enter into mutual agreements and compacts respecting jurisdiction and governmental operations in Indian country, which had been reported from the Select Committee on Indian Affairs with amendments as follows:

On page 1, beginning with line 5, strike through and including page 3, line 11;

On page 3, line 13, strike "SEC. 3." and insert "SEC. 2.";

On page 4, line 2, strike "SEC. 4." and insert "SEC. 3.";

On page 5, line 7, strike "(a)" and insert "(2)";

On page 5, line 8, after "responsibility" insert "of States of tribes";

On page 5, line 10, strike "for the allocation or determination of jurisdiction on a case-by-case basis, and agreements which provide";

On page 5, line 13, after "tribes" insert a comma and "and (3) agreements or compacts which provide for transfer of jurisdiction of individual cases from tribal courts to State courts or State courts to tribal courts in accordance with procedures established by the laws of the tribes and States";

On page 5, beginning with line 18, strike through and including page 6, line 8, and insert the following:

Such agreements and compacts shall be subject to revocation by either party upon six months written notice to the other unless a different period of time is agreed upon. No agreement may provide for a period for revocation in excess of five years unless first approved by a majority of the adult enrolled Indians within the affected area voting at a special election as prescribed in Title IV, Sec. 406 of the Act of April 11, 1968 (82 Stat. 80; 25 U.S.C. 1326), but such approval shall not curtail the right of the parties to revoke the agreement by mutual consent within a shorter period of time.

[1] The agreements provided for are: revenue or cargo pools; equal access to government-controlled cargoes; rationalization of sailings; and apportionment of earnings, losses or traffic.

On page 6, beginning with line 19, strike through and including line 23, and insert in lieu thereof the following:

(c) Agreements or compacts entered into under the provision of this section must be filed with the Secretary within thirty days of consummation. In the event an agreement is not so filed, it shall be subject to immediate revocation by either party. The Secretary shall cause the jurisdictional provisions of any such agreement, compact, or revocation to be published in the Federal Register unless requested otherwise by all parties to the agreement or compact.

On page 7, line 13, after "to" insert a colon and "(1)";

On page 7, beginning with line 14, strike "either";

On page 7, line 16, after "Act" insert a semicolon and the following:

(2) authorize or empower State or tribal governments, either separately or pursuant to agreement or compact, to expand or diminish the jurisdiction presently exercised by the Government of the United States to make criminal laws for or enforce criminal laws in the Indian country; (3) authorize or empower the government of a State or any of its political subdivisions or the the government of an Indian tribe from entering into agreements or exercising jurisdiction except as authorized by their own organizational documents or enabling laws; (4) authorize agreements or compacts which provide for the alienation, financial encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or (5) to enter into agreements or compacts for the transfer of unlimited, unspecified, or general civil and criminal jurisdiction of an Indian tribe, except as provided under Title IV, Sec. 406 of the Act of April 11, 1968 (82 Stat. 80; 25 U.S.C. 1326).

On page 8, line 14, following "Act" insert a comma, and strike "in which one of the parties assumes an obligation which it would not otherwise be legally obligated or entitled to perform, or would not be obligated to perform at the standard established in the agreement or compact";

On page 8, line 19, strike "shall" and insert "may";

On page 8, line 22, strike "or" and insert "of";

On page 9, line 1, after the period, insert the following:

In determining the amount of Federal assistance, if any, to be provided the Secretary may consider among other things:

1. Whether or not the party assuming an obligation under the agreement or compact is already obligated or entitled to perform the function which is the subject of the compact.

2. Whether or not the Federal assistance will cause or enable the contracting party to perform the function at a standard above that which it is already obligated to perform.

3. The financial capacity of the contracting parties to underwrite the expenses without Federal assistance.

4. The extent to which the success or failure of the compact may depend upon Federal assistance.

5. The extent to which the proposed compact or agreement will contribute to fostering of community relations between Indian and non-Indian communities.

6. The extent to which the proposed compact or agreement will enhance protection of resources of both Indian and non-Indian communities.

7. The comparative costs if the function which the subject of the compact or agreement were to be performed by the United States.

8. The extent to which Federal funding is already supplied through revenue sharing, grants in aid, or other Federal program moneys.

On page 10, line 15, after the period, insert "In the event disputes arise between the parties, either party may request an audit.";

On page 10, line 19, strike "and copying";

On page 10, line 20, strike "the other party and by";

On page 11, beginning with line 15, strike through and including line 21, and insert in lieu thereof the following:

(g) There are authorized to be appropriated such sums as may be necessary during fiscal year 1980 not to exceed $10,000,000 and each subsequent fiscal year in order to carry out the agreements or compacts entered into pursuant to this title. Such funds shall be expended by the Secretary only after determination that there are no funds available from alternative sources as provided in subsection (d) of this section. The Secretary shall provide for such records as may be necessary for the accounting and justification of the funds expended under this authorization.

On page 12, line 10, strike "between" and insert "comprised of representatives of";

On page 12, line 19, strike "tribe" and insert "tribes";

On page 12, line 21, strike "or" and insert "of";

On page 12, line 24, after "appropriated" insert "not to exceed";

On page 13, beginning with line 3, insert the following:

TITLE III—JUDICIAL ENFORCEMENT

SEC. 301. The United States district courts shall have original jurisdiction of any civil action brought by any party to an agreement or compact entered into in accordance with this Act to secure equitable relief, including injunctive and declaratory relief, for the enforcement of any such agreement or compact, but no action to recover damages arising out of or in connection with such agreement or compact shall lie except as specifically provided for in such agreement or compact.

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, That this Act may be cited as the "Tribal-State Compact Act of 1978".

DECLARATION OF POLICY

SEC. 2. The Congress hereby declares that it is the policy of this Nation to continue to preserve and protect the tribes of the American Indian people. The policy of this Nation is premised on the status of tribal governments as a continuing part of the American political fabric. Accordingly, the United States has a responsibility to establish a legal framework which will enable the tribes and the States to achieve maximum harmony and facilitate their cooperative efforts in the orderly administration of their governments. Federal enabling authority for the establishment of viable intergovernmental agreements between the tribes and the States based on mutual consent must be established.

DEFINITIONS

SEC. 3. For purposes of this Act:

(a) "Indian tribe" means any Indian tribe, band, nation, or other organized group or community exercising powers of self-government which is recognized as eligible for services provided by the United States to Indians because of their status as Indians, including any Alaska Native villages included in the Alaska Native Claims Settlement Act (85 Stat. 688, 697).

(b) "State" means any of the States of the United States, including cities, counties, municipalities, or other political subdivisions thereof.

(c) "Secretary" means the Secretary of the Department of the Interior unless otherwise designated in this Act.

(d) "Indian country" shall be defined in accordance with the provisions in section 1151 of title 18, United States Code.

TITLE I—AUTHORIZATION OF COMPACTS AND AGREEMENTS

SEC. 101. (a) Notwithstanding the Act of August 15, 1953 (67 Stat. 588), as amended, or any other Act transferring civil or criminal jurisdiction over Indians within Indian country from the United States to the various States, or establishing a procedure for such transfers, and notwithstanding the provisions of any enabling Act for the admission of a State into the Union, the consent of the United States is hereby given the States and the Indian tribes and the same are hereby authorized to enter into compacts and agreements between and among themselves on matters relating to (1) the enforcement or application of civil, criminal, and regulatory laws of each within their respective jurisdiction, and (2) allocation or determination of governmental responsibility of States and tribes over specified subject matters or specified geographical areas, or both, including agreements or compacts which provide tribes, and (3) agreements or compacts which provide for transfer of jurisdiction of individual cases from tribal courts to State courts or State courts to tribal courts in accordance with procedures established by the laws of the tribes and States.

Such agreements and compacts shall be subject to revocation by either party upon six months written notice to the other unless a different period of time is agreed upon. No agreement may provide for a period for revocation in excess of five years unless first approved by a majority of the adult enrolled Indians within the affected area voting at a special election as prescribed in Title IV, Sec. 406 of the Act of April 11, 1968 (82 Stat. 80; 25 U.S.C. 1326), but such approval shall not curtail the right of the parties to revoke the agreement by mutual consent within a shorter period of time.

Agreements or compacts entered into under the provision of this section must be filed with the Secretary within thirty days of consummation. In the event an agreement is not so filed, it shall be subject to immediate revocation by either party. The Secretary shall cause the jurisdictional provisions of any such agreement, compact, or revocation to be published in the Federal Register unless requested otherwise by all parties to the agreement or compact.

(d) Such agreements, compacts, or revocation thereof shall not affect any action or proceeding over which a court has already assumed jurisdiction and no such action or proceeding shall abate by reason of such agreement, compact, or revocation unless specifically agreed upon by all parties to any such action or proceedings and by the parties to the agreement or compact.

(e) Nothing in this Act shall be construed to: (1) enlarge or diminish the jurisdiction over civil or criminal matters which may be exercised by either State or tribal governments except as expressly provided in this Act; (2) authorize or empower State or tribal governments, either separately or pursuant to agreement or compact, to expand or diminish the jurisdiction presently exercised by the Government of the United States to make criminal laws for or enforce criminal laws in the Indian country; (3) authorize or empower the government of the State or any of its political subdivisions or the government of an Indian tribe from entering into agreements or exercising jurisdiction except as authorized by their own organizational documents or enabling laws; (4) authorize agreements or compacts which provide for the alienation, financial encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United

States or is subject to a restriction against alienation imposed by the United States; or (5) to enter into agreements or compacts for the transfer of unlimited, unspecified, or general civil and criminal jurisdiction of an Indian tribe, except as provided under Title IV, Sec. 406 of the Act of April 11, 1968 (82 Stat. 80; 25 U.S.C. 1326).

FUNDING AND IMPLEMENTATION—FEDERAL ASSISTANCE

SEC. 102. (a) In any agreement or compact between an Indian tribe and a State authorized under this Act, the United States, upon agreement of the parties and the Secretary, may provide financial assistance to such party for costs of personnel or administrative expenses in an amount up to 100 per centum of costs actually incurred as a consequence of such agreement or compact, including indirect costs of administration which are clearly attributable to the services performed under the agreement or compact. In determining the amount of Federal assistance, if any, to be provided the Secretary may consider among other things:

1. Whether or not the party assuming an obligation under the agreement or compact is already obligated or entitled to perform the function which is the subject of the compact.

2. Whether or not the Federal assistance will cause or enable the contracting party to perform the function at a standard above that which it is already obligated to perform.

3. The financial capacity of the contracting parties to underwrite the expenses without Federal assistance.

4. The extent to which the success or failure of the compact may depend upon Federal assistance.

5. The extent to which the proposed compact or agreement will contribute to fostering of community relations between Indian and non-Indian communities.

6. The extent to which the proposed compact or agreement will enhance protection of resources of both Indian and non-Indian communities.

7. The comparative costs if the function which is the subject of the compact or agreement were to be performed by the United States.

8. The extent to which Federal funding is already supplied through revenue sharing, grants in aid, or other Federal program moneys.

(b) Whenever a party to such agreement or compact seeks financial assistance from the United States, to offset their costs, such party shall prepare a detailed statement of the projected costs; a copy of such statement shall be supplied to the other party; and the original of such statement shall be supplied to the Secretary at the time said agreement or compact is tendered to him for his approval.

(c) In any agreement or compact in which one of the parties qualifies for Federal assistance, the other party shall be supplied with copies of all vouchers for payment at the time they are submitted and shall be fully informed of all payments made by the United States to the recipient party. In the event disputes arise between the parties, either party may request an audit. The books and records of the party receiving Federal assistance which are relevant to the agreement or compact shall be open to inspect by authorized representatives of the United States.

(d) In the funding of governmental operations authorized under this Act, the Secretary may enter into agreements or other cooperative arrangements with any and all other Federal departments, agencies, bureaus, or other executive branches for transfers of funds or contributions of funds appropriated for programs within the categoy of the functions to be performed by the parties under such agreements or compacts, and such departments, agencies, or bureaus are hereby authorized to use such funds in the implementation of this Act.

(e) All Federal departments, agencies, and other executive branches are authorized to provide technical assistance and material support and assign personnel to aid tribal and State authorities in the implementation of the agreements or compacts they may enter into under the terms of this Act.

(f) The Secretary is hereby authorized to promulgate such rules and regulations as may be necessary to carry out the purposes of this Act.

(g) There are authorized to be appropriated such sums as may be necessary during fiscal year 1980 not to exceed $10,000,000 and each subsequent fiscal year in order to carry out the agreements or compacts entered into pursuant to this title. Such funds shall be expended by the Secretary only after determination that there are no funds available from alternative sources as provided in subsection (d) of this section. The Secretary shall provide for such records as may be necessary for the accounting and justification of the funds expended under this authorization.

TITLE II—PLANNING AND MONITORING BOARDS

SEC. 201. (a) The Secretary is hereby authorized and directed to encourage the tribes and the States to establish councils, committees, boards, or task forces comprised of representatives of the States and individual tribes, or on a statewide or regional basis, to discuss and confer upon jurisdictional questions which exist between the parties, and to provide Federal representatives from his Department as may be used at such conferences.

(b) In furtherance of this objective, the Secretary is authorized and directed to provide adequate representation of tribal members at such conferences, and such further conferences among the tribes as may be necessary for their separate deliberations, and to participate in the payments of expenses in employment of reporters, transscription of statements, and preparation of reports as in his judgment may be appropriate.

(c) There are authorized to be appropriated not to exceed $1,000,000 during fiscal year 1980; and such sums thereafter as may be necessary during each subsequent fiscal year in order to carry out the purposes of this title.

TITLE III—JUDICIAL ENFORCEMENT

SEC. 301. The United States district courts shall have original jurisdiction of any civil action brought by any party to an agreement or compact entered into in accordance with this Act to secure equitable relief, including injunctive and declaratory relief, for the enforcement of any such agreement or compact, but no action to recover damages arising out of or in connection with such agreement or compact shall lie except as specifically provided for in such agreement or compact.

● Mr. PAUL G. HATFIELD. Mr. President, I cannot support S. 2502, the Tribal/State Compact Act, in its present form. I support the intent of this bill which seeks to change the long-standing policy of blanket-national solutions to, very often, local problems. I believe the compact approach to Indian jurisdiction is the correct approach to this most complex matter of sovereignty and Indian rights.

This bill authorizes a State or a political subdivision of a State to enter into compacts and agreements between and among the Indian tribes on matters relating to the enforcement or application of civil, criminal, and regulatory laws of each within their respective jurisdictions and an allocation or determination of governmental responsibility over specified subject matters or specified geographical areas. Nothing in this bill requires the States to enact implementing legislation prior to the creation of compacts and I believe that such a provision is important, if not essential.

I believe that a State should have on its books legislation which sets out in detail the limits and the boundaries within which compacts under this act are to be formed, before those compacts are formed. Such implementing legislation would be a valuable guide to the tribes and the political subdivisions as they form compacts under this act and should assure a degree of uniformity throughout a State that is needed by the State yet acceptable to the various tribes.

There are seven Indian tribes within the boundaries of the State of Montana. The State of Montana has 56 counties, 14 first and second class cities, 37 third class cities, and 75 incorporated towns for a total of 182 political subdivisions.

Under a State's implementing legislation, the State could be given the right of prior approval before compacts are entered into. Such prior approval by a State would further insure that compacts authorized by S. 2502 do not usurp State authority in matters that transcend purely local affairs.

I believe such a provision is desirable and I believe it is necessary, if we are to avoid an unmanageable crazy-quilt of agreements, compacts, and understandings between Indian tribes and political subdivisions of a single State.●

● Mr. ABOUREZK. Mr. President, Senator MELCHER and Senator PAUL HATFIELD of Montana have brought to my attention a question raised by the attorney general of that State regarding S. 2502, the Tribal-State Compact Act. Specifically, the Attorney General asks whether or not it is necessary or permissible in light of section 101(e)(3) for the legislature of the individual States to enact their own enabling legislation in order to implement the provisions of this legislation when it becomes law.

S. 2502 does not specifically address the question of whether or not a State needs to enact enabling legislation before entering into the types of inter-governmental agreements or compacts authorized under title I. As chairman of the Indian Affairs Committee, it is my understanding that this question was left for the States to answer for themselves on the basis of applicable State law and the specifics of such agreements. In any event, S. 2502 woud not, by its own terms, require State implementing legislation.

Because the House Interior Committee has not yet had an opportunity to act on the House companion bill, it is certain that it will be up to the 96th Congress to enact this, in my opinion, meritorious legislation.

If there were time available, I would be more than happy to consider clarifying amendments addressing the questions raised by Senators MELCHER and HATFIELD. I am sure that when Congress next has the opportunity to consider the Tri-

bal-State compact bill, this question can be sufficiently clarified.

In summary, even though this issue in question could certainly benefit from increased attention, I am sure that S. 2502 in its present form will provide an admirable record for the Senate in its future deliberations.●

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 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.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 95–1178), 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 MEASURE

This bill is intended to serve as a Federal enabling statute authorizing Indian tribes and States and their political subdivisions to enter into compacts and agreements between themselves on matters relating to: (1) the enforcement or application of civil, criminal, and regulatory laws of each within their respective jurisdictions; (2) allocation or determination of governmental responsibility over specified subject matters or specified geographical areas, or both; and (3) agreements or compacts which provide for the transfer of jurisdiction of individual cases from tribal courts to State courts or State courts to tribal courts in accordance with procedures established by the laws of the tribes and States.

The use of intergovernmental agreements as an effective tool for meeting the complex and diverse needs of States for joint regulation of a wide range of government activities as well as mutual administration of services has been well accepted. In the context of the tribal/State relationship, any actual transfer of jurisdiction involving the application or enforcement by one political body of the civil, criminal, or regulatory laws of the other would seem to require congressional consent. On the other hand, compacts or agreements between States and tribes which call for the mutual or cooperative administration of services or concurrent, joint application of uniform laws probably does not require Federal involvement or congressional consent.

For a variety of reasons there has been little development or definition of Federal law on this subject although cooperative agreements, compacts or contracts between tribes and States have been increasingly made use of in the past 5 to 10 years. Nevertheless, because the law on this issue is unclear and ambiguous, there have been reports of unwillingness on the part of tribes and States to proceed with proposed compacts or inter-governmental agreements simply because their officials have been unsure of their authority to do so under the law. S. 2502 proposes a broadly stated, clear Federal authorization and consent for such tribal/State compacts.

SUMMARY OF MAJOR PROVISIONS

Title I of this bill provides that notwithstanding Public Law 83–280 or any other jurisdictional act either transferring or retaining Federal jurisdiction over Indian affairs, the governing bodies of Indian tribes and the governments of States and their political subdivisions are authorized to enter into compacts or agreements between themselves on matters relating to the enforcement or application of the civil, criminal, and regulatory laws of each other, including transfers of jurisdiction over specific subject matters or geographic areas. Compacts providing for the orderly transfer of cases from the courts of one entity to the courts of another are also authorized.

A most important part of this title is that agreements entered into under the terms of this legislation will be revocable by either party and thus will be premised on the continuing consent of both. From the standpoint of an Indian tribe, if an agreement provides a period of time greater than 5 years in which to withdraw, then the agreement must be approved by a referendum as provided under existing law. (Act of April 11, 1978, title IV, sec. 406, 82 Stat. 80.) There is no requirement for approval of such agreements by the Secretary of the Interior unless Federal funds are sought to underwrite the costs of administration.

Title I also provides that the United States may, in the discretion of the Secretary of the Interior, pay up to 100 percent of any personnel or administrative costs assumed by a contracting party under the terms of a compact. Such costs must be agreed upon by the parties and by the Secretary of the Interior. Criteria is established for evaluation of providing Federal support funds.

A sum of up to $10 million is authorized to be appropriated to fund this program in its first year of operation. This fund is to be utilized as a secondary funding source, such funds to be utilized only after the Secretary has determined that no funds are available from alternative Federal sources. In addition, none of these funds are to be utilized for Federal administration purposes. The Secretary is directed to maintain separate records of the allocation of funds appropriated under this authority in order to assure congressional or executive monitoring capacity.

Title II of the bill authorizes appropriation of funds not to exceed $1 million in the first year of operation to pay expenses of Indian representatives at meetings with State and tribal planners, costs of transcripts, reports, etc. Title II contemplates the establishment of State or regional planning boards having full Indian representation and participation.

Finally, title III of the bill provides for enforcement of such compacts or agreements in the courts of the United States.

BATAVIA TURF FARMS, INC.

The bill (H.R. 12556) for the relief of Batavia Turf Farms, Inc., was considered, ordered to a third reading, read the third time, and passed.

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.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 95–1271), explaining the purposes of the measure.

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

PURPOSE

H.R. 12556 authorizes and directs the Secretary of the Treasury to pay, out of any money in the Treasury not otherwise appropriated, to Batavia Turf Farms, Inc., an amount to be determined by the Secretary of Agriculture to have been lost by the farms during any calendar year commencing with calendar year 1977 through calendar year 1982. The losses involved came through no fault of Batavia Turf Farms but rather as a result of restrictions on the movement of grass sod from the farms under the Federal golden nematode quarantine imposed by the U.S. Department of Agriculture to prevent the spread of the golden nematode. The amounts to be paid in any calendar year shall be in full settlement of any and all claims; and no more than 10 percent of the moneys appropriated shall be paid to any agency or attorney for services rendered in connection with this claim. Any person violating this act shall be deemed guilty of a misdemeanor, and upon conviction shall be fined in any sum not exceeding $2,000.

AMENDING TITLE IX OF THE MERCHANT MARINE ACT, 1936

Mr. INOUYE. Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on H.R. 11658.

The PRESIDING OFFICER (Mr. HODGES) laid before the Senate H.R. 11658, an act to amend title XI of the Merchant Marine Act, 1936, to permit the guarantee of obligations for financing Great Lakes vessels in an amount not exceeding 87½ per centum of the actual or depreciated actual cost of each vessel which was read twice by its title.

Without objection, the Senate will proceed to its consideration.

The bill was considered, ordered to a third reading, read the third time, and passed.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed.

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

The motion to lay on the table was agreed to.

ORDER FOR TECHNICAL AND CLERICAL CORRECTIONS—H.R. 8200

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Secretary of the Senate be authorized to make technical and clerical corrections in the engrossment of the Senate amendment to H.R. 8200.

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

JOINT REFERRAL

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that a bill introduced earlier by Senator LEAHY to charter a national rural development bank be referred jointly to the committees on Agriculture, Nutrition and Forestry and Banking, Housing, and Urban Affairs.

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

Mr. BAKER. Mr. President, in that respect I might say for the RECORD that the distinguished Senator from Vermont requested this earlier today, and it was not possible to grant the request. I am happy to say we have cleared it, and there is no objection.

Mr. ROBERT C. BYRD. I thank the Senator.

APPOINTMENT BY THE VICE PRESIDENT

The PRESIDING OFFICER (Mr. HODGES). The Chair, on behalf of the Vice President pursuant to Public Law 84–689, appoints the following Senators to attend the North Atlantic Assembly, to be held in Lisbon, Portugal, November 26–30, 1978: the Senator from South Carolina (Mr. HOLLINGS), the Senator from Idaho (Mr. MCCLURE), and the Senator from New Mexico (Mr. DOMENICI).

SPECIAL ORDER

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that after the two leaders have been recognized under the standing order that Mr. STAFFORD and Mr. SCHMITT be recognized each for 15 minutes.

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

ORDER FOR RECESS UNTIL 8:30 TOMORROW MORNING

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that when the Senate completes its business today it stand in recess until the hour of 8:30 tomorrow morning.

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

TIME-LIMITATION AGREEMENT—H.R. 7843

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that at such time as the judgeship conference report on H.R. 7843 is called up for action, the following agreement obtain: 45 minutes overall to be equally divided between Mr. EASTLAND and Mr. THURMOND, with 15 minutes under the control of Mr. LUGAR.

Mr. BAKER. Mr. President, reserving the right to object, I might advise the majority leader there is also an indication on our calendar that there will be a request for a rollcall on this.

Mr. ROBERT C. BYRD. All right.

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

ORDER FOR THE CONSIDERATION OF H.R. 7843 TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that it be in order at 1 p.m. tomorrow for the Senate to proceed to the consideration of the conference report on H.R. 7843.

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

ORDER FOR THE CONSIDERATION OF THE CONFERENCE REPORT ON INTERIOR APPROPRIATIONS AND THE ROLLCALL VOTE THEREON, IF REQUESTED

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that on the conference report on Interior appropriations, on which there is no controversy that I know of, and on which I think there will be a rollcall requested, I ask unanimous consent that that conference report be in order in the morning during the leaders' time but that if a rollcall vote is ordered thereon that it occur back-to-back following the disposition of the judgeship conference report.

The PRESIDING OFFICER. Is there objection?

Mr. BAKER. Mr. President, reserving the right to object, that is a good arrangement. But I will advise the majority leader once again that there will be a request on this side for a rollcall.

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

MODIFICATION OF ORDER FOR RECOGNITION OF SENATORS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the orders for the recognition of Mr. STAFFORD and then Mr. SCHMITT tomorrow morning be reversed.

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

Mr. ROBERT C. BYRD. Mr. President, I would like to wait 1 minute before I make the motion to recess.

WHITE HOUSE PERSONNEL AUTHORIZATION—CONFERENCE REPORT

Mr. ROBERT C. BYRD. Mr. President, I submit a report of the committee of conference on H.R. 11003, the White House personnel authorization bill, and ask for its immediate consideration.

The PRESIDING OFFICER. The report will be stated.

Mr. ROBERT C. BYRD. Mr. President, I withdraw that submission.

THE WITCHING HOUR

Mr. ROBERT C. BYRD. What is the hour, Mr. President?

The PRESIDING OFFICER. The hour is 12 o'clock.

Mr. ROBERT C. BYRD. Twelve midnight?

The PRESIDING OFFICER. Yes, it is.

TERMINATION OF COLUMBIA SLOUGH, OREG., NAVIGATION PROJECT

Mr. ROBERT C. BYRD. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on H.R. 13803.

The PRESIDING OFFICER. The bill be stated by title.

The legislative clerk read as follows:

A bill (H.R. 13803) to terminate the authorization of the navigation project on the Columbia Slough, Oregon.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the bill be considered as having been read twice, and that the Senate proceed to its immediate consideration.

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

If there be no amendment to be offered, the question is on the third reading and passage of the bill.

The bill (H.R. 13803) was ordered to a third reading, was read the third time, and passed.

● Mr. MARK O. HATFIELD. Mr. President, the purpose of this bill is to deauthorize the Columbia Slough project in Oregon.

In June of this year, the Portland City Council voted in support of the city engineer's report which coincided with an economic feasibility report done by the Corps of Engineers on whether it was economically feasible to proceed with the necessary channel work to facilitate through traffic on the slough. Both reports indicated that it was not economically feasible to carry out the work of this 1950 authorization.

This legislation, which passed the House of Representatives on October 4, was introduced by Congressman ROBERT DUNCAN of Oregon and is supported by all members of the Oregon congressional delegation.

I urge approval of H.R. 13803.●

RECESS UNTIL 8:30 A.M.

Mr. ROBERT C. BYRD. Mr. President, what is the time and day?

The PRESIDING OFFICER. The time is 12:01 a.m. The date is October 7, 1978.

Mr. ROBERT C. BYRD. Mr. President, my watch tells me that it is 12:01½.

The PRESIDING OFFICER. The Senator is, as usual, correct.

Mr. ROBERT C. BYRD. I thank the Chair. Mr. President, if there be no further business to come before the Senate, I move, in accordance with the previous order, that the Senate stand in recess until the hour of 8:30 a.m. later today.

The motion was agreed to; and, at 12:01 a.m. Saturday, October 7, 1978, the Senate took a recess until 8:30 a.m. the same day.

NOMINATIONS

Executive nominations received by the Senate October 6, 1978:

IN THE AIR FORCE

The following officer for appointment in the Regular Air Force, in the grade indicated, under the provisions of section 8284, title 10, United States Code, with the date of rank to be determined by the Secretary of the Air Force:

LINE OF THE AIR FORCE

To be captain

Johns, William E., [redacted]

The following officers for appointment in the Regular Air Force, in the grades indicated, under the provisions of section 8284, title 10, United States Code, with a view to designation under the provisions of section 8067, title 10, United States Code, to perform the duties indicated, and with dates of rank to be determined by the Secretary of the Air Force:

MEDICAL CORPS

To be major

Koskinen, Kenneth R., [redacted].

To be first lieutenant

Gleason, Stephen D., [redacted].

MEDICAL SERVICE CORPS

To be first lieutenant

Ludwick, James F., [redacted].

The following persons for appointment as

Reserve of the Air Force, in the grades indicated, under the provisions of section 593, title 10, United States Code, with a view to designation under the provisions of section 8067, title 10, United States Code, to perform the duties indicated:

MEDICAL CORPS

To be lieutenant colonel

Dinmore, Richard C., [redacted].
Harness, John H., [redacted].
Hayward, Robert M., [redacted].
Hinckley, Herbert M., [redacted].
Hughell, James E., [redacted].
Knauf, Daniel G., [redacted].
Koch, Harvey B., [redacted].
Martin, Patrick, [redacted].
Moriarty, Joseph A., [redacted].
Murillo, Sergio L., [redacted].
Nomicos, Eugene N., [redacted].
Piano, Arthur G. F., [redacted].
Pollina, Philip J., [redacted].
Rose, Howard R., [redacted].
Ruiz-Bueno, Juan C., [redacted].
Strauss, Andries Menzo, [redacted].
Woodward, Douglas James, [redacted].

The following officers for appointment as Reserve of the Air Force in the grade indicated, under the provisions of section 593, title 10, United States Code:

LINE OF THE AIR FORCE

To be lieutenant colonel

McIntosh, James, [redacted].
Whipple, Dale E., [redacted].

The following officers for promotion in the Air Force Reserve, under the provisions of sections 8376 and 593, title 10, United States Code:

LINE OF THE AIR FORCE

Major to lieutenant colonel

Bennett, George R., [redacted].
Bogan, Robert L., [redacted].
Drew, Vernon O., Jr., [redacted].
Locke, John E., [redacted].
Zigrino, Angelo R., [redacted].

CHAPLAIN CORPS

Taitano, Miguel A., [redacted].

MEDICAL CORPS

Calcagni, John A., [redacted].
Gahunia, Udhe S., [redacted].
McDonald, Robert E., [redacted].

NURSE CORPS

Cummings, Barbara A., [redacted].

The following officers for promotion in the Regular Air Force, under the provisions of chapter 835, title 10, United States Code, as amended. Officers are subject to physical examination required by law:

LINE OF THE AIR FORCE

Major to lieutenant colonel

Christensen, Robert E., [redacted].

DENTAL CORPS

Birdman, Murray J., [redacted].

The following named officer for promotion in the U.S. Air Force in the temporary grade indicated, under the appropriate provisions of chapter 839, title 10, United States Code:

LINE OF THE AIR FORCE

Major to lieutenant colonel

Blackmon, Norman V., [redacted].

IN THE NAVY

The following temporary officers of the U.S. Navy for permanent promotion to the grades as indicated, pursuant to title 10, United States Code, sections 5780 (line), 5782 (staff), and 5791:

LINE

To be captain

James F. Wetzel

LINE

To be commander

William J. Balles
John A. Coffey
Robert M. Walters

SUPPLY CORPS

To be commander

Anthony C. Brennan

LINE

To be lieutenant commander

Wayne R. Farris
Ernest E. Johns
Jeremy D. Jones
Robert O. Sandlin, Jr.
Allen R. Sherwood
Robert W. B. Stoddert
David A. Warshawsky
Marshall J. Wilkes

CHAPLAIN CORPS

To be lieutenant commander

Wayne L. Bouck
Gail E. Buckley
Edward A. Roberts
Aquinas J. J. Smith
Merle E. Strickland

JUDGE ADVOCATE GENERAL'S CORPS

To be lieutenant commander

Stephen L. Awe
Russell A. Johnson
James E. Orr, Jr.
Roger F. Pitkin
Merle E. Strickland
Terry D. Sattler
Jeffrey S. Sawtelle
William T. Vest, Jr.

MEDICAL SERVICE CORPS

To be lieutenant commander

Orlin E. Cunningham
Roland S. Grand
James T. Ingram
Billy W. Kendrick
Charles R. Loar
Ernest J. Loos
William A. Monaco
Donald D. Thorson

LINE

To be lieutenant

Robert R. Albertson
Gary A. Barrett
Gregory "H" Bergh
Roger A. Burnett
John K. Bussey, Jr.
Ronald O. Byrum
Andrew L. Creed
David G. Fritsch
Raymond J. Griep
Richard A. Kellar
Robert M. Lanning
John L. McCain
George A. Mullen
Paul E. O'Brien, Jr.
Aubrey P. Sauls
Clifford J. Strohofer, Jr.
Phillip M. Tomlinson
Frank H. Utermohlen
Roger N. Whiteway
John H. Winter
Kenneth R. Youngman, Jr.

SUPPLY CORPS

To be lieutenant

James L. Heikkila
Stewart L. Manley
Roy D. Van Horn
George G. Woodward, Jr.

CHAPLAIN CORPS

To be lieutenant

Jose F. Salas, Jr.

JUDGE ADVOCATE GENERAL'S CORPS

To be lieutenant

Richard R. Bloxom
John D. Hutson
Homer S. Pointer
Gordon W. Trask, II
Jeffry A. Williams

MEDICAL SERVICE CORPS

To be lieutenant

Joseph V. Baltrukonis
Roy M. Garrigues
Thomas M. Hickey
Richard E. Struempler
Arthur B. Wood

NURSE CORPS

To be lieutenant

Carol J. Bickford
Linwood W. Norris
Rosalinda Hasselbacker

The following temporary officers of the Naval Reserve for permanent promotion to the grade of commander, pursuant to title 10, United States Code, sections 5911 (line and staff), and 5912:

LINE

Luther B. Beck
John W. Bishop
Clyde A. Bonar
Larry R. Earls
John R. Geaney
Allan F. Geimer
Dennis J. Hickey, IV
Howard E. Mayfield
Gary L. Nelson
James A. Nichols
Felix P. Quinn
James J. Raleigh, III
Reginald R. Sander
James R. Titus
Philip J. Unser

SUPPLY CORPS

Robert E. Osmon

IN THE MARINE CORPS

The following-named male officers of the Marine Corps Reserve for temporary appointment to the grade of lieutenant colonel under the provisions of title 10, U.S. Code, section 5902:

Tommy L. Adair
Merrel F. Adams, Jr.
Richard G. Adams
James L. Anderst
Daniel T. Armstrong
Joseph F. Ashe
Enos A. Axtell, Jr.
George W. Ayers
Lester D. Bacon
Samuel Badiner
Clarence L. H. Baer
Claude Baldwin, III
Robert L. Ballantyne
Gilbert A. Bartlett
Stanley K. Bazant
Leonard C. Bieberbach
Dean S. Billik
Darwin E. Bremer
Roger L. Brooks
Frank A. Buethe
Harold J. Campbell, Jr.
John G. Carlton, Jr.
Marshall N. Carter
William E. Chase
James W. F. Clark
Eldred W. Cline, Jr.
William H. Cook, Jr.
Thomas M. Cooper
Daniel B. Corts
Kenneth R. Couch
John T. Coyne
Edward P. Craft
James A. Daugherty
Ronnie O. Davis
John H. Deaver, Jr.
Douglas S. Dexter
Eldon R. Dilworth
Robert L. Doyon
Michael F. Eddy
Richard M. Eklund
Frederick D. Ellis
Robert J. Everett
Crockett Farnell
Alan D. Fiers, Jr.
Michael Fiorillo, Jr.
Joseph T. Fisher
John F. Follett
Michael D. Fowler
Jackie W. Fraim
Frank W. Gill, Jr.
Perry C. Gillette, Jr.
Robert A. Godwin, Jr.
George W. Goertz
Paul A. Gorgos
Melvin T. Graves
John A. Harris
Mark T. Hehnen
Richard L. Hemenez
Hamilton E. Hicks, Jr.
John E. Hixon
Lemuel W. Houston, Jr
Harris D. Husted
Jack J. James
Philip L. Johnson
Robert C. Keeler
Kenneth J. Kelly
Stuart O. Kendall
Frederick E. Kienel
David J. Kindt
Richard S. Kulczycki
Stephen A. Leroux
John J. Lowrey
James L. McGee
John J. McNamara
John G. McPheeters
William B. Mooney
Harvey B. Moore
Stanley M. Mori
Normand L. Noel
Richard A. Partee
Thomas L. Pristavec
Robert H. Rathert
John C. Reale
Larry E. Renfro
William R. Rice
Robert C. Richards
John C. Riley
Frank D. Rimer, III
Larry M. Roberts
Frank J. Robinson
John L. Roe
Lewis F. Rogers
Anthony J. Roszak
Walter L. Sanders
Robert P. Scheinblum
Steven J. Sewell
Jack T. Seymour
Lundie L. Sherretz
Gordon M. Shoemaker, Jr.
Harry S. Shoemaker
Tenney R. Spofford
James H. Stewart, Jr.
Harold R. Sullivan
David C. Terry, Jr.
Dudley E. Thomas, Jr.
James L. Trudeau
Robert J. Walker
Daniel T. Wallace
Larry G. Willoughby
John R. Wingert
William L. Wilson
Ehrhard K. Winkelbrandt
George S. Woodall, Jr.
Wayne P. Zetzman

The following-named women officers of the Marine Corps Reserve for permanent appointment to the grade of lieutenant colonel under the provisions of title 10, U.S. Code, section 5902:

Jeanne B. Humphrey
Mary S. League

FEDERAL COMMUNICATIONS COMMISSION

Anne J. Jones, of Massachusetts, to be a member of the Federal Communications Commission for a term of 7 years from July 1, 1978, vice Margareta E. White, term expired.

RAILROAD RETIREMENT BOARD

Earl Oliver, of Illinois, to be a member of the Railroad Retirement Board for the term of 5 years from August 29, 1978 (reappointment).