# SENATE—*Tuesday, June 10, 1980*

*(Legislative day of Thursday, January 3, 1980)*

The Senate met at 10 a.m., on the expiration of the recess, and was called to order by Hon. HOWELL HEFLIN, a Senator from the State of Alabama.

## PRAYER

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

Eternal Father, we thank Thee for the moment of prayer when the day is new, the mind is clear, and the soul receptive to Thy presence. Move among us, O Divine Spirit, to lighten our burdens, lift our spirits, warm our hearts, and direct our actions. When hours grow tedious or tension is high, still give us Thy quickening power and Thy refining and steadying grace. When perplexity or bewilderment overtakes us and we are unsure of the course to follow, guide us through the difficulties to a victorious conclusion in accord with Thy will. So may we "serve the present age our calling to fulfill." And when the day is ended may we rest with Thy benediction upon us. Amen.

## APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

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

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
*Washington, D.C., June 10, 1980.*

*To the Senate:*

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable HOWELL HEFLIN, a Senator from the State of Alabama, to perform the duties of the Chair.

WARREN G. MAGNUSON,
*President pro tempore.*

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

## RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The majority leader is recognized.

## THE JOURNAL

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

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

## ORDER FOR CONVENING SENATE ON JUNE 11, 12, 13, 14, AND 16, 1980, AT 10 A.M.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that when the Senate completes its business today and tomorrow, Wednesday, and the next day, Thursday, and the next day, Friday, the Senate stand in recess, respectively, until the hour of 9 a.m. tomorrow, Thursday, Friday, and Saturday, and that if the Senate is in session on Saturday, when it completes its business on Saturday it stand in recess until the hour of 10 o'clock on Monday next—in any event, when the Senate meets on Monday next, it meet at 10 a.m.

Mr. NUNN. Mr. President, reserving the right to object, and I will not object——

Mr. ROBERT C. BYRD. Mr. President, I amend my request insofar as the daily meeting is concerned, to change it to 10 a.m. rather than 9 a.m.

The ACTING PRESIDENT pro tempore. Is there objection?

Mr. BAKER. Mr. President, reserving the right to object—and I will not object—I gather one of the reasons for the request for an extended series of convening hours is in reference to the possibility of the necessity for recurring votes on the draft registration bill.

Mr. ROBERT C. BYRD. Yes.

Mr. BAKER. I thank the majority leader.

Mr. President, I do not know whether we will get cloture today or not, but I hope we can dispose of this matter with reasonable promptness and without having to extend it into next week.

I announced on the floor that I hope Members on this side will vote to invoke cloture at an early time, and I do hope that. But I must tell the majority leader in all candor, as I told him privately yesterday, it is going to be difficult to do.

I will continue to vote for cloture. I will continue to try to bring this matter to a conclusion as speedily as possible, but I hope that on the second vote, if not on the first, we can get cloture and proceed to final disposition without having to continue the consideration and debate into next week.

Mr. ROBERT C. BYRD. Mr. President, I thank the distinguished minority leader.

I, too, have doubt that cloture will be achieved today. There are Senators who customarily wait until the second vote, the second cloture vote, before voting for cloture, and I am sure that is going to occur again in the case of some Senators.

I hope they will, however, consider the fact that 2 days passed before the cloture motion was entered on this occasion, thus allowing 4 days of debate before the vote, before the day on which the vote occurs.

Mr. President, will the Chair put the request?

Mr. BAKER. Mr. President, I have no objection to the request.

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

## MILITARY REGISTRATION

Mr. ROBERT C. BYRD. Mr. President, the debate on House Joint Resolution 521 began on Wednesday, June 4. This measure makes available by transfer $13.295 million for the Selective Service System for the current fiscal year. Today the Senate will vote on the question of invoking cloture. It is my hope that we will get the necessary 60 votes to limit debate on this measure.

Considerable difference of opinion exists on the need for premobilization registration. Arguments have been made—and reiterated—on both sides of this complex and emotional issue. The debate has been reasoned and thorough. I am confident that each of us has had ample time to become familiar with the issues.

Additional days given to unlimited debate would not, I believe, serve the interests of the Senate. Having had time to review the facts and weigh the arguments, our primary interest is to express the will of the Senate by voting this measure up or down.

On Friday, when I first filed a cloture motion to limit debate on this resolution I noted that I usually offer cloture motions on the very first day of debate. I did not do so in the case of House Joint Resolution 521, which was before the Senate 2 days prior to my offering the cloture motion. As of today the Senate has had 4 full days to debate this measure.

Even before the current debate, both the Senate and the House devoted considerable time to examining both peacetime registration and the overall matter of our manpower requirements and military preparedness.

Last year the Senate Armed Services Subcommittee on Manpower and Personnel held 3 days of intensive hearings and compiled extensive evidence supporting peacetime registration. Additional testimony on Selective Service registration was received by the committee during hearings on S. 428, the Department of Defense authorization bill for fiscal year 1980. This information was compiled in a set of hearings totaling 239 pages, and those hearings have been available since last fall.

On September 20, 1979, the Senate

● This "bullet" symbol identifies statements or insertions which are not spoken by the Member on the floor.

met in a closed session to consider classified information relating to the problems of wartime mobilization without peacetime registration. The closed session provided a forum for extensive, substantive debate on the issue of our manpower readiness.

Early last year, the House Armed Services Committee, during its consideration of the Department of Defense authorization for fiscal year 1980, held hearings on the current status of our military personnel. Military registration was considered under this category, and it filled over 200 pages of the committee's published hearings.

The House heard arguments on House Joint Resolution 521 over 1 month ago; it approved the resolution on April 22, by a vote of 218 to 188.

The Senate Appropriations Subcommittee on HUD-Independent Agencies held hearings on this measure several months ago and favorably reported House Joint Resolution 521 to the full committee. The subcommittee compiled over 200 pages of testimony and facts during its consideration of the measure. The full Appropriations Committee conducted 4 days of markup sessions, during which arguments—pro and con—received considerable attention. The committee ordered the measure favorably reported with an amendment on May 13. The report has been available for nearly 3 weeks.

The House has approved this resolution, but the Senate continues to debate it. While we continue to debate it, the message from the American public is clear—most Americans favor peacetime registration.

Letters which I have received from my constituents in West Virginia are indicative of the public support for military registration.

For example, Miss Brigetta M. Crimm, a student attending West Virginia University, writes:

> I believe that the United States should be ready to handle any conflict that may arise between the U.S. and other countries. I also believe that President Carter has asked to reinstate draft registration because the U.S. military is not completely capable to defend the U.S. in case of war. For these reasons alone, I am in support of draft registration.

She closes her letter by saying:

> I hope that you will vote for draft registration. Americans need to stand behind their country.

Another letter, from John and Teresa Boggs of Charmco, W. Va., notes:

> I think it is time we get our defenses built up, starting with reinstitution of [registration].

And a letter from Barbara Elwell in Rupert, W. Va., reads:

> I feel it is very necessary that we have the manpower readily available in case of an emergency. The days lost by having to register men after an emergency has arisen could be crucial. I believe the money spent for this would be well-used.

These letters express what I believe to be is the sentiment shared by a majority of Americans—their recognition that our military preparedness needs to be strengthened and their willingness to share in the defense of the country. And most Americans agree that peacetime registration is a step in the right direction.

Given these circumstances—given the fact that debate on military registration has been going on for over 1 year; given the fact that there are hundreds and hundreds of pages of testimony, facts and figures on the status of our military personnel and our defense preparedness; given that the House Armed Services Committee, the Senate Armed Services Committee, the House Appropriations Committee, and the Senate Appropriations Committee all recommend that peacetime registration be reinstituted; given that the House has already approved House Joint Resolution 521—I think it is imperative that the Senate move to limit debate on this measure so that we can begin considering amendments, and move toward taking a final vote—up or down. I urge my colleagues to vote for cloture on this first vote.

The ACTING PRESIDENT pro tempore. Who yields time?

Mr. BAKER. Mr. President, was there no leader time this morning?

Mr. ROBERT C. BYRD. Mr. President, yes, there was 5 minutes each for leader time.

## DEATH OF TENNESSEE CHIEF JUSTICE JOE W. HENRY

Mr. BAKER. Mr. President, it was with deep sorrow that I learned of the passing of the chief justice of the supreme court in my home State of Tennessee, the Honorable Joe W. Henry, on Monday.

Justice Henry was born on September 20, 1916, in Lynnville, Tenn. He attended Middle Tennessee State University and received his law degree from Cumberland University. He served in the Tennessee House of Representatives and was adjutant general of Tennessee from 1953 to 1959.

He was a member of the house of delegates of the American Bar Association and president of the Tennessee Trial Lawyers Association. I was proud to be a member of the Tennessee Bar Association when Justice Henry ably served as its president.

I loudly applauded Justice Henry when he became a member of the first elected supreme court in Tennessee and later when he was elevated to the position of chief justice in 1977.

I can vividly recall the day that Justice Henry, then a practicing attorney, came to Washington to testify on no-fault insurance. In his own resonant way, he termed no-fault as "the Trojan Horse in the House of Tort."

Justice Henry will be sorely missed in Tennessee. He was a skillful attorney, a dedicated public servant and a conscientious jurist. I extend my deep sympathy to his family during this time of sorrow.

Mr. President, I have no further need for my time under the standing order. I am prepared now to yield it back. I see no one on the floor requesting time.

Unless the majority leader has any need for it, I am prepared to do that.

Mr. ROBERT C. BYRD. Mr. President, I do not have any need for it. I thank the minority leader.

Mr. BAKER. Mr. President, I thank the majority leader. I yield back any time remaining under the standing order.

## TRANSFER OF FUNDS FOR THE SELECTIVE SERVICE SYSTEM

The ACTING PRESIDENT pro tempore. The Senate will now resume consideration of the pending business, which the clerk will state.

The assistant legislative clerk read as follows:

> A joint resolution (H.J. Res. 521) making additional funds available by transfer for the fiscal year ending September 30, 1980, for the Selective Service System.

The Senate resumed consideration of the joint resolution.

Mr. ROBERT C. BYRD. Mr. President, inasmuch as I am controlling time on this side, I yield the time to the Senator from Mississippi (Mr. STENNIS) on my side of the aisle.

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

Mr. STENNIS. Mr. President, I understand the majority leader has, at least temporarily, given me control of the time with reference to the pending matter. The Senator from Georgia (Mr. NUNN) is here. He and I can utilize this control of the time insofar as it needs any control; it is not a matter of wanting to control it.

If the Senator from Georgia wishes to use some time now, I would be glad to yield such time as he may use.

Mr. NUNN. Mr. President, I thank the chairman. I would prefer to wait until Senator Pressler arrives. We have a dialog that he would like to engage in. I think I better save the time, because I have two or three Senators that would like to speak. Senator JACKSON indicated that he has some remarks he would like to make; Senator WARNER would like to make some remarks, as well as Senator TOWER. So I would prefer to reserve the time until Senator PRESSLER arrives, at which time I will have a dialog with him.

Mr. STENNIS. Mr. President, may I ask the Senator from Oregon (Mr. HATFIELD) if he wishes to use some time now?

Mr. HATFIELD. Mr. President, I understand the pending matter is the amendment of the Senator from Georgia. So I assume that he would like to present that amendment.

Mr. NUNN. Mr. President, I would like to just get an indication from the Senator from Oregon about his feelings on a vote on that amendment between now and 11 o'clock, because that would make a difference as to the debate. Does the Senator envision having a vote on that?

Mr. HATFIELD. Mr. President, I would like to hear the amendment argued. I cannot very well predict what the situation is. I have to understand what the amendment proposes to do, and so forth. I do not think we could make any assumptions unless we hear what the business is.

Mr. NUNN. Mr. President, if the Senator from Oregon is not disposed to indicate his willingness to have a vote on the amendment, I see no need of having most of our time taken between now and 11 o'clock on that amendment. I would prefer to address it to the overall bill.

I understand from the Senator's remarks that he, at this time, is not disposed to having a vote on the amendment.

Mr. HATFIELD. Mr. President, it is not a question of being disposed or indisposed about voting on the amendment. I think it is very peculiar that the Senator from Georgia has offered an amendment he wants, then to get some kind of an agreement before we even hear the opening remarks about the amendment or an explanation about the thing. I am not buying a pig in the poke.

Mr. NUNN. Mr. President, the Senator must understand it. He wrote a "Dear Colleague" letter against it that has been circulated and went into considerable detail on it. I would gather from that very adamant position against the amendment that the Senator from Oregon fully comprehends it. I am certain he would not write a "Dear Colleague" letter opposing the amendment if he did not understand or comprehend it.

Mr. HATFIELD. Mr. President, the Senator is quite right, I fully understand it. But this is a matter involving the entire Senate and not just the Senator from Georgia and the Senator from Oregon. I do not understand why the Senator from Georgia is so reluctant to go ahead and present his amendment.

Mr. NUNN. Mr. President, the Senator is not reluctant to——

Mr. HATFIELD. Mr. President, I do not understand why——

Mr. NUNN. Mr. President, the Senator is not reluctant to go ahead. We have a cloture vote at 11 o'clock and the question is whether we spend our time——

Mr. HATFIELD. Mr. President, who has the floor? Mr. President, do I not have the floor? Mr. President, may we have order?

The ACTING PRESIDENT pro tempore. The Senator from Oregon.

Mr. HATFIELD. Mr. President, may we have order?

The ACTING PRESIDENT pro tempore. I believe we have order now.

Mr. HATFIELD. Mr. President, I believe the procedure is that one person speaks at a time. I would like to say to the Senator from Georgia that if he is not interested in pursuing his amendment, that is perfectly all right. But I think it ought to be clearly understood that that is his choice and not my choice. If the Senator from Georgia is not interested in pursuing that amendment, then let other matters be taken up.

I think it also ought to be pointed out, and I would like to make it clear for the record, that the amendment of the Senator from Georgia forecloses any other consideration of any other amendment before the cloture vote. It had been my clear understanding with Senator KASSEBAUM, of Kansas and Senator LEVIN, of Michigan that we would consider other amendments, as well as an amendment by the Senator from Iowa, Mr. JEPSEN.

Now that the Senator from Georgia has effectively foreclosed any other amendment to be considered before cloture, I would think he would be at least a little bit compelled to pursue his amendment and discuss it.

Mr. NUNN. Mr. President, I would say to my friend from Oregon, if I have the floor, that I am perfectly willing to enter into a unanimous-consent agreement to vote on the Jepsen amendment before the vote on the Nunn amendment. I am also prepared to enter into a unanimous consent to vote on the Kassebaum amendment before the Nunn amendment, if the Senator from Oregon is so disposed, provided it is done before 11 o'clock.

Mr. HATFIELD. Mr. President, I think this again shows the true strategy from the Senator from Georgia, which is that he has sought effectively to foreclose and shut off any meaningful consideration of any other amendment. This offer now to enter into unanimous consent, I think, ought to be taken on the face of it. It is no offer at all. It is 20 minutes after 10 and the Senator from Georgia says he is willing to enter into a unanimous-consent agreement to vote on some other amendment before 11 o'clock. He knows full well that no one is prepared at this time—the authors of such amendments are not here—nor is there adequate time to debate it.

Mr. NUNN. Mr. President, I am perfectly prepared to vote on the Nunn amendment at this time if the Senator would like to vote.

Mr. HATFIELD. Mr. President, this badminton game of throwing the shuttlecock back and forth between the two Senators is leading to no place, because I think it is very interesting that the Senator is so reluctant to take up the amendment that he was so anxious to offer last night and to discuss it.

If the Senator is not willing to discuss his amendment at this time, then let him choose the subject he is willing to discuss.

(Mr. CRANSTON assumed the chair.)

Mr. STENNIS. Mr. President, unless there is someone who wants the floor now, and there are Members who are unable to come to the floor now who do want to speak, I understand, I will yield myself 5 minutes. I will yield at any time someone should have a pressing need for the floor.

Mr. President, yesterday it was my privilege to address the Chamber about this problem and the consequences that go with an attempted solution for manpower, which I call the weakest link, by far, in the chain of our military preparedness. I did not have with me at the time the figures with reference to the investment that we have made in our Military Establishment. My point is that money alone is not all of the problem. You cannot buy the kind of talent, ability, and disposition that goes with military service in this day.

(Mr. HARRY F. BYRD, JR., assumed the chair.)

Mr. STENNIS. As an illustration of how we have been willing to spend money, we now have in physical property, counting the things that are in use now—not antedated items—we now have physical property owned by the Department of Defense as an investment, items like ships, guns, tanks, aircraft, trucks, and so forth—I call that general equipment—to the extent of $154 billion. Then supply equipment such as parts, major end items, and so forth, are listed with a present value of $67 billion, for a total of $221 billion in the way of capital investment. This does not include plant equipment and items like land and construction in progress or real property of any kind.

That is almost a quarter of a trillion dollars, Mr. President, which shows the enormity of the physical property that is involved in our daily operation of this massive military machine, and which extends, to some degree, around the world.

I bring those figures in now to show the importance of the manpower problem, the human side. We have been trying to solve that by just putting in more money, throwing in a pile of money, as I sometimes call it, in this direction and hoping that something good will come, hoping that this matter will be solved.

Those of us who are perhaps closer to it than others, who live with the problem, conclude over and over, and see it repeated time and time again, that it is character qualifications that it is a matter of talent, that it is a matter of personal coverage, that it is a matter of self-discipline and willingness to accept discipline from others. These are the vital ingredients that go to make up the manpower and womanpower situation in our military services.

It is in that type that we have the shortage; it is that type that I have tried to describe in practical terms as being those who you cannot get merely with money.

There is another point I want to make which I did not cover yesterday. I said that time has proven very clearly that the voluntary system for this massive worldwide commitment that we have, as well as the needs that are connected with our own economy, this exclusively volunteer system just does not meet the needs. I want to make it clear that that is true even though the military services themselves have done the very best they could, I believe—making some allowances, of course, here and there. I yield myself 2 more minutes, Mr. President.

Mr. NUNN. Mr. President, the Senator from South Dakota has now entered the Chamber for our dialog. Will the Senator yield to me for 5 minutes?

Mr. STENNIS. If I may yield under those conditions. I will come back to my point. I yield 5 minutes to the Senator from Georgia.

Mr. NUNN. Mr. President, the Senator from South Dakota and I have had a very important conversation concerning this whole debate. I will yield to him for the purpose of a statement or a question, or both.

The PRESIDING OFFICER. The Senator from South Dakota is recognized.

Mr. PRESSLER. Mr. President, I would like to quickly raise a few issues

that trouble me concerning the proposed reinstitution of selective service registration before we proceed to a cloture vote. These are points which may not have been raised yet and they are important enough not only to me, but also to millions of young people who will be subject to selective service registration and I do not want to miss this opportunity to bring them up.

Mr. President, I want to stress that there was a great feeling during the Vietnam era that the Vietnam draft was unfair. There have been numerous articles written which show that war was fought primarily by lower income persons and by persons of lower educational backgrounds.

There was also a feeling at the time, and indeed I served in the Army in Vietnam, at some of the graduate schools and elsewhere, that the draft could be avoided through certain steps if one were wealthy enough or able to go on to graduate school or through some other type of exemption. Therefore, that generation of young people lost confidence in the draft and, indeed, confidence in the Government. Both those who were not called and those who were called were very cynical about the whole system.

In order to support this registration proposal, which I understand is the first step before classification and induction, I would have to be assured that there would be a special effort to make it a fair draft—one that will not just draft certain social groups or certain educational groups with lower income backgrounds.

I certainly do not seek a commitment here to all the particular criteria, but my own thinking is along these lines:

First, people should be subject to a draft for only a limited period of 1 or 2 years of vulnerability.

Second, induction should be by a pure lottery system so that all individuals would be equally subject to the draft.

Third, there would be rare exemptions from service, but alternative service could be arranged according to specific standards spelled out in the Selective Service Act.

The concept of duty and service to our Nation can be preserved and effective if we guarantee these criteria.

Mr. President, on the basis of this, and keeping in mind the general points I have mentioned, I wonder if Senator NUNN or any other supporters or opponents of this bill can give me any assurances that they also will support me in what I am recommending.

Mr. NUNN. Mr. President, if I can respond briefly to the Senator from South Dakota, I want to thank him for raising specific points about this joint resolution that I am sure he and others have raised in connection with the Selective Service System. Senator PRESSLER is one of the few people in the Congress who served in the Armed Forces in Vietnam during the war there, and I can certainly appreciate why he feels keenly and strongly about this registration. We are lucky to have him in our midst and I am sure that, as this debate goes on and as we talk, in the future, about other manpower problems including the problems of classification, he will play a very vital and important role in our deliberations. Let me assure my distinguished colleague from South Dakota that I do not support individually and I do not believe the Armed Services Committee supports returning to any draft like that used during the Vietnam era. It has never been the view of the Armed Services Committee to put the old Selective Service apparatus back in place as it existed during Vietnam

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

Mr. STENNIS. Mr. President, I yield an additional 3 minutes.

Mr. NUNN. I agree with the Senator from South Dakota that the registration system and any return to the draft, if subsequent events should require a draft, should be as universal as possible. We need a thorough overhaul of the old classification procedures and appeal procedures to insure that the evils that existed in the Vietnam period do not recur. I hope the Senator from South Dakota will provide us with his testimony when the hearings are held on these needed changes. Again, I assure him that his views will be given very careful consideration in any deliberations we have on this matter.

The Senator from South Dakota may be aware that last year, the Armed Services Committee reported S. 109, which is really still pending in the Senate. In the committee report, we specifically recommended that the President be prohibited from instituting classification for military service, unless a real emergency occurs, until after the classification and exemption process has been completely restudied and revamped. I stand by that position individually and I believe that our committee would still have that view. I believe that a revamping can and should be effected and achieved before any draft will be allowed to go into effect.

Mr. President, if the Senator from South Dakota has any further questions, I shall be glad to try to address them. I know the Senator from South Carolina has indicated he would like to comment on this.

Mr. PRESSLER. Mr. President, I should like to hear the comments of the Senator from South Carolina.

Mr. THURMOND. Mr. President, first, I commend the able Senator from South Dakota for being the only Vietnam veteran in the Senate. I can understand his concerns. I want to assure him that, in my opinion, whatever draft may follow this registration will be a fair and an equitable draft.

I realize that, during the Vietnam war, there were various exemptions. There were a lot of complaints and a lot of people were dissatisfied with the way it was handled. I do not think that will occur again. I want him to know that I shall do everything I can to see that whatever draft follows will be fair and equitable to all people.

Mr. STENNIS. Mr. President, I yield myself 1 minute.

Let me assure the Senator from South Dakota that we want his help and we need his help in laying down the plans and specifications, if we are called upon to pass such a bill. I have for my guide now the very points that he has made and, as a chairman of the Committee on Armed Services, I shall certainly use all the effort and influence that I shall be able to muster to see that we have a fair and honest application of the rules, as well as the rules themselves. It will be a matter of personal surveillance and responsibility for our committee. We shall have to pass on the direction of the program.

I am not in favor of any kind of Selective Service Act that does not carry these very qualities into its very terms, written in steel and stone.

The ACTING PRESIDENT pro tempore. The time of the Senator from Mississippi has expired.

Mr. STENNIS. I yield the floor, Mr. President.

Mr. HATFIELD. Mr. President, what is the time situation?

The ACTING PRESIDENT pro tempore. The Senator has 25 minutes and 30 seconds.

Mr. HATFIELD. What time does the other side have?

The ACTING PRESIDENT pro tempore. Zero.

Mr. HATFIELD. Zero. So I have the remaining time.

The ACTING PRESIDENT pro tempore. The Senator is correct.

Mr. HATFIELD. Mr. President, I should like to make a few comments on this same subject to the Senator from South Dakota. I do not know how to term the promises that have been made in order to get the Senator's support this morning, because they so obviously are meaningless promises or commitments that have been made.

First, the very subject of the discussion, the very title, "A Fair and Equitable Draft" is mutually contradictory and as contradictory on basic data and statistics. Let me remind the Senator from South Dakota that we have 4 million people in the 19- to 20-year-old age group that will be required to register under this pending business. Next year, that will drop to 18-year-olds. That will add another 2 million.

Let me also remind the Senator from South Dakota that the history of the Selective Service System was that they had to be selective. They could not accommodate the total numbers that would be available. Training stations and other such logistical support base are just nonexistent. It has never been existent. Consequently, the "selective" part of Selective Service was specifically designed in order to be selective and extrapolate out of the manpower pool numbers that they could accommodate and train and incorporate in the military service. Also, it provided the flexibility, depending on how the war as going, whether they need to accelerate or whether they need to level off for a period of time.

If the Senator from South Dakota is going to buy this kind of pig in a poke that has been offered him this morning, that, somehow, we are going to guarantee the Senator a fair and equitable draft system, I think all the Senator

from South Dakota has to do is look at the very basic statistics, because what I quoted does not even include women. That issue has not been settled.

We have in excess of 2 million in our standing Army today, 1.3 million Reserves. Does the Senator think that we are going to make a fair and equitable Selective Service, which must mean practically universal, that we are going to take 4 million, then 2 more million, without even considering women, and, within the next few months after the adoption of a so-called fair draft system, that we can actually accommodate millions—6, 8, 10 million people?

Of course, it is going to be discriminatory. That is another word for "selective." It could be called the discriminatory service system. How we do it is certainly still open for Congress to determine. Let me suggest that I assume that there will be some student deferment, as there was in the past. They will need some classifications of people—doctors, dentists, and others—who will then be deferred. As far as making a fair and equitable system, we are going to have to have a universal system if it is going to be fair and equitable. Otherwise, it is going to be discriminatory. It always has been, always will be.

In the first one, in the Civil War, if you had $300, you could go down and plunk your $300 down and you could escape that service in the Civil War. World War I, World War II, Vietnam—by the very logistics of the numbers we are dealing with, it will be discriminatory. It cannot be any other way.

Consequently, when the Senator is assured this morning, it is really one kind of one step below a campaign promise in the believability or the quality of that kind of response the Senator got this morning. I think it is a very interesting exercise here in fantasy.

I hope the Senator realizes that no system of draft or compulsory military service can be other than discriminatory. You can take the 4 million we have and if you discount one-quarter of that 4 million for physical incapacity or inability to pass a physical examination, you would have 1,500,000 immediately. Then, when you add the 18-year-olds, then you would have another group of people. If you add women, you would have another increment. So by the time you consider all these increments, you have a totally impossible pool with which to be other than discriminatory.

Mr. PRESSLER. Will the Senator yield for a question?

Mr. HATFIELD. Yes.

Mr. PRESSLER. Let me first say what a high regard I have for the Senator from Oregon and for his analysis of this issue. I greatly appreciate the tremendous effort he has put into this important debate.

Any system is going to have certain inequities. I suppose we could find something wrong with the procedures we use in the U.S. Senate, in committee assignments or the seniority system, or the system of grading in schools, or methods used in career promotion. It is difficult to think of any human endeavor in which there is true equality. Certainly it would be difficult to design a draft system which meets all hypothetical standards of equity and fairness. I recognize the difficulty of the task to which the Senator refers. It is important that we carefully evaluate these issues in making essential improvements in the Selective Service System.

My initial objective is to get away from the blatant and gross inequities we had during most of the Vietnam era. Toward the end of the Vietnam war, the System was improved substantially. I believe that it is necessary to make further substantial improvements. The number of individuals required by the military as the Senator from Oregon says, may change from one period to the next. Not all eligible persons would be needed at all times. But, for example, if people in categories were chosen by lottery, we could involve everybody, except in the most extreme circumstances. But, to restate my position, we must devise a system that would be fairer, certainly, than we had in the Vietnam era. I do not believe anybody could pretend that it would be a perfect system. No system would be perfect, but we must at least work toward that goal.

For example, if we needed so many thousand mechanics, or chemists or accountants, people in that category could be chosen perhaps by lottery. There are a number of other proposals which could also be explored to spread the burden in a fair and rational manner if we are to actually reinstitute the draft.

Mr. HATFIELD. What about doctors?

Mr. PRESSLER. That is a very special group.

Mr. HATFIELD. Yes.

Mr. PRESSLER. They would have to be dealt with in their classification. But, certainly, within that classification they would need to be chosen by lottery, as opposed to being chosen by some other helter-skelter system, as we had earlier in the Vietnam era.

Mr. HATFIELD. The Senator is aware that we had a lottery system, as well, within the period of the Vietnam war.

Mr. PRESSLER. Toward the end we did, yes. The system I was personally under in the draft was not the lottery system. That old system affected the majority of the people drafted during this period.

The point I make is that I do not pretend, or claim, or even expect that there will be perfection in the system. But I feel strongly that if we are to have registration, we should be moving in a direction that will insure a system that is much fairer than was imposed in the Vietnam era.

Mr. HATFIELD. I thank the Senator for his concern. But I think whether we roll the dice, or whether we have a system without lottery, that we still have a discriminatory system. So to call it a fair and equitable system is a contradiction.

Mr. PROXMIRE. Will the Senator yield?

Mr. HATFIELD. I am happy to yield to the Senator.

Mr. PROXMIRE. I think the Senator from Oregon is absolutely 100-percent right. There is no way to make it fair.

In the first place, it is unfair to 19- and 20-year-old people. No Senator is being drafted. Nobody is being drafted in their late twenties, thirties, forties, fifties. Only those 19 or 20 years old are being drafted, and, of course, as they become 18 they will be subject to the draft.

In the second place, as the Senator from Oregon said so well, women are not being drafted, only men, although the President did propose it be both sexes—and we will have an opportunity to vote on a Kassebaum amendment, which I strongly support, which would be much more equitable.

But what we are given now is something that is discriminating against males.

In the third place, the Senator from Oregon points out that only the physically fit would be drafted, only the mentally qualified would be drafted.

The main point, as the Senator from Oregon so well points out, is that only a tiny fraction of the 4 million people, or if we cut it down with those not qualified, only a tiny percentage of the 2 million people eligible each year would be drafted.

Because they need, at most, 100,000 or 150,000, probably not that, in the next 18 months, I predict they will not need anybody because of the unemployment situation we have in this country and the long record we have of having plenty of people volunteer for the military forces when we have unemployment.

But the point is, and this is the point I would like to leave with the Senator from Oregon and the Senator from South Dakota, that we have always wanted a fair draft. In the Vietnam period we were not anxious to have an unfair draft or a discriminatory one, but it was unfair, partly because there were deferments. But that was a small part of it.

The main reason was because those who want to stay out of the draft can hire a good lawyer. There are all kinds of ways we can escape from being drafted if we have the money and the will to do it. We know that in this country. It happened again and again. It will happen this time if we have a draft.

A draft may be necessary under some circumstances, and I certainly would support it enthusiastically if it were. The fact is that a draft is not necessary now. We need adequate pay, the kind Senator ARMSTRONG proposed, a bill that would provide incentive to put people in the military because they would want to be there.

We could, of course, resolve our problems budget-wise by cutting all Federal salaries in half and drafting everybody into the Federal service. Everybody in the post office, everybody in social security, and so forth, would be a draftee. We know how grossly unfair that would be.

In the same way, this country can certainly afford to pay adequately to have people in the military because they want to be there, proud of a career that can make anybody proud. We have a marvelous Army, Navy, Air Force, a great tra-

dition, and it can be greater if we pay people adequately and do not force them to come out of it.

Mr. LEAHY. Will the Senator yield?

Mr. HATFIELD. I am happy to yield 5 minutes to the Senator.

Mr. LEAHY. Mr. President, I ask unanimous consent that David Julyan of my staff be granted privilege of the floor throughout the rest of this debate and the vote on cloture.

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

Mr. LEAHY. Mr. President, the key issue in the debate on registration and a possible draft is fulfillment of our manpower goals with enough qualified people to defend our country.

If this Nation—for reasons of national security—needs a draft or predraft registration to realize this goal, I will support these actions.

But I do not believe that taking these steps today will most effectively and efficiently meet this goal.

We must remember that, as stated by the Senator from Oregon and others, coupled with our Reserve and National Guard units, the All-Volunteer Force is the only trained reliable force available to the United States today. In fact, under any system of registration and draft, there would be no significant change in the makeup of our Armed Forces for well over a year. What I believe we must do is apply the additional resources and national commitment to making the Volunteer Force work better for us today.

I wish the President had set specific goals for the All-Volunteer Force and a specified period of time—18 months—to carry out those goals. This should have been done with the understanding that if they were not reached within that period of time, we would go to an actual registration system.

Unfortunately, the President did not take this step—and I am troubled that he did not call on young Americans to serve their country before recommending registration.

Our modern military, with its sophisticated weapons, requires highly trained soldiers. Our experience has shown that if people are drafted, most leave the service by the time they are becoming proficient at their given positions. A draft cannot solve the present problems of our military.

We can maintain a strong military force only when we recognize the need for training and experience. We must address the problems of retention and recruitment. A fair, realistic, increased pay scale is one such step.

I join with the Senator from Colorado (Mr. ARMSTRONG) in that regard. I support efforts to increase the salary of our military personnel. I support efforts to improve training, education, and inducements for the best of our military to reenlist. Retention—not recruitment—is the immediate solution. The problems that do exist can be solved, but the country, the Congress, and the Defense Department must fully support the all-volunteer concept.

There is no question in my mind from the mail I have received—I have received a great deal, both pro and con on this registration—from those in favor of the registration plan, I find over and over again in letters I received from across the country, that those who are in favor of it are in favor of it as a means of doing away with the All-Volunteer Force, as a first step.

I am opposed to registration and a peacetime draft because they are the first steps in eliminating the All-Volunteer Force. This concept of volunteerism can work, and if we abandon it before we know its full potential we will have committed our country to conscription indefinitely.

In other words, if we let this go through, we make absolutely sure that those who support an All-Volunteer Force will be undercut for the rest of the time and we will never be able to make it work.

It is important to note that both those who support and those who oppose the administration's proposal believe that the Selective Service System must be brought out of its standby status so that it will meet the Defense Department's requirements in case of a national emergency. The President's proposal, while raising all the problems associated with a draft, will not help address the problems of the All-Volunteer Force.

Registration, whether pre- or post-mobilization, will have no appreciable effect on the personnel needs of the current volunteer Armed Forces. The central problem faced by the Armed Forces today is the retention of skilled and experienced soldiers.

Until steps are taken to make military service a more attractive career, the reenlistment of pilots, physicians, and other technically skilled individuals will continue to be problematic. The Army Chief of Staff concludes that we cannot solve this manpower problem by registration or a peacetime draft.

Opposition to draft registration cuts across the political spectrum. Presidential candidates Ronald Reagan, Senator EDWARD KENNEDY and Congressman JOHN ANDERSON, as well as former President Gerald R. Ford have all expressed disapproval of the registration plan.

It is clear that the decision represents a symbolic reaction to international events rather than a sincere attempt to improve our military posture. Even as a symbolic gesture, I believe it is cosmetic at best. Though it will not send a meaningful message to the Soviets, it may mislead the American people into thinking that something meaningful has been done.

There are serious questions regarding the equity and the constitutionality of a registration system limited to males. If, for reasons of national security, this Nation must move to registration or a draft, I believe there should be no exemption except for physical infirmities. This should be equally applied to all men and women.

I have voted against funding to implement registration in the Appropriations Committee, and I will vote against the proposal when it comes to a vote here in the full Senate. I have always tried to vote on the merits of any given issue, however, and therefore, have made it my policy to vote for cloture in the 5 years that I have served in the Senate.

Really, Mr. President, my most difficult vote in this whole matter, and I have supported the efforts of the Senator from Oregon, I support the amendment of the distinguished Senator from Kansas (Mrs. KASSEBAUM), my most difficult vote, and I think my only difficult choice today, is going to be on the cloture issue.

But I have no difficulty in opposing the registration plan.

It is the obligation of our Government in this free society to take the path least intrusive on individual freedom in defending the Nation. The Senate should reject the empty symbolism—that is all it is—of draft registration so that we may turn our attention to reasonable measures to improve our defense, and maintain the All-Volunteer Force in a free society. To reject the proposal is our clear duty, for it is not in keeping with our institutions, our experience, and does nothing to enhance our defense posture.

Mr. HATFIELD. Mr. President, I yield 2 minutes to the Senator from Virginia.

Mr. WARNER. Mr. President, as a member of the Senate Armed Services Committee and as a member of Senator NUNN's Subcommittee on Personnel, I have been very active in this matter. I have considered the matter carefully and I support the concept of registration.

I have talked with a number of my colleagues, among them my distinguished colleague from South Dakota (Mr. PRESSLER), and explained to him that I have been in a position to see this thing from both sides, now as a legislator and formerly, for more than 5 years, in the Department of Defense as Under Secretary of the Navy and Secretary of the Navy, during the Vietnam war. I saw firsthand the inequities of the draft system at that time.

I have given my colleague from South Dakota my personal assurance that in the work in the Armed Services Committee, I would do everything possible to see that we never bring back upon the youth of this Nation a system with such inequities as we experienced during the period of the Vietnam war. It was unfair. Nevertheless, I believe it is of paramount importance at this time that the Congress of the United States go forward and support the President's request at this time for registration—registration only, not a draft. The subject of a draft is not before this body at this time.

I thank the distinguished Senator from Oregon.

Mrs. KASSEBAUM. Mr. President, will the Senator from Oregon yield me 2 minutes?

Mr. HATFIELD. I am happy to yield 2 minutes to the Senator from Kansas.

Mrs. KASSEBAUM. I thank the Senator.

Mr. President. I have an amendment at the desk. It seeks to assure that, if we are to have registration, women will be included. Senators LEVIN, SIMPSON, and LEAHY have cosponsored the proposal.

It is not our intention to delay the Senate. I would like to call up the

amendment at the first parliamentary opportunity. After a reasonable time for debate, in which any Senator who wishes to express himself on the issue has had an opportunity to do so, I would seek a vote. I think 3 to 6 hours is a fair estimate of the time this matter will consume.

My intention in speaking at this time is to put Senators on notice that I have this amendment and will bring it up. It is my understanding that chances for getting a vote on the merits of the amendment are reduced if it is offered post cloture. I think the issue is sufficiently important to warrant a vote on the merits; therefore, I would like to complete action on the amendment before cloture is invoked.

In deference to the wishes of other Senators, I have withheld debate on the amendment prior to this first cloture vote. Whether cloture is invoked or not, I will, if I am permitted, bring my amendment to the floor as soon as the pending business is resolved.

Mr. HATFIELD. Mr. President, what is the time situation?

The ACTING PRESIDENT pro tempore. Six minutes and forty-nine seconds.

Mr. HATFIELD. I yield 1 minute to the Senator from South Dakota for a question.

Mr. PRESSLER. Mr. President, I commend the Senator from Oregon for his excellent leadership of one side of this issue.

My observation is that during the Vietnam war and during the voluntary service period following it, we have found that those from the lowest income and lowest educational groups have made up a substantial share of our Armed Forces. This is a very great problem.

I am not advocating the draft today; but if we do move in the direction of greater manpower mobilization, are we to be permanently locked into having a military that seems to be made up primarily of persons from a lower income and lower educational background?

For example, 6 years after World War II, nearly half the Members of Congress were people who had served in the military forces in World War II. At present, a very small number who serve in Congress, or in leadership positions in the country, served in the military during the Vietnam era.

Are there other steps we can take so that a broader cross-section of our society will become involved?

Mr. HATFIELD. I should like to respond to the Senator with documentation rather than with merely an opinion.

As the Senator knows, the Rand Corp. was commissioned to make a study of the entire recruitment program—voluntary forces, draft, and so forth. In that report, this is their finding:

> Medium- to low-income areas are similarly contributing approximately the same percentages as they did under the draft.

The point is that we are dealing here not with basically a military recruitment program or problem exclusively. We are dealing with a basic socioeconomic problem that involves our entire population, whether we are in a military procurement program or otherwise. When one looks at the gaps widen between the haves and the have-nots, not only in the world but in this country as well, it is very obvious that the military procurement program is not going to solve the problem but is going to reflect it.

Also, in many instances, it might provide even an opportunity for some of those who are excluded from upward mobility in the economic system we have or in the economic culture we now have. So I do not think one can look to the draft or to the voluntary system to correct some of those problems. Those are beyond the question of the draft or the volunteer system.

Also, the increase in blacks within the military often has been raised as a question or a problem. Some of that increase has been due directly to the increased number of black officers in the military. Whereas they have been denied, perhaps, entrance into the mainstream of other socioeconomic life in this country, the military has provided them with some of those opportunities. Again, that is not the problem of the military as much as it is with our basic socioeconomic institution.

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

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

The ACTING PRESIDENT pro tempore. Three minutes and fifty-two seconds.

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

Mr. MELCHER. One minute.

Mr. HATFIELD. I yield to the Senator.

Mr. MELCHER. I thank the Senator for yielding.

Mr. President, I wish to follow up what the Senator from Oregon just said in response to the Senator from South Dakota.

I reiterate what the 1981 Department of Defense annual report stated:

> Peacetime conscription is by no means an obvious solution to our current personnel problems. These problems have more to do with the retention of skilled and experienced personnel who already have six to twelve years of service, than with recruits. We need accordingly, to expand current efforts to improve our recruiting and retention performance.

That is the Department of Defense. That is what the Army says. That is what the Navy says. That is what the Air Force says. That is what the Marine Corps says. We should believe them. We should act on the real problems, these retention problems, and adequate Reserves. We should act on what is needed, and that is better pay, better career opportunities, educational opportunities, training opportunities, a better GI bill—benefits in that regard. Then we would be doing something helpful for the military.

I am saddened that this is a step we are taking, leading back to a peacetime draft, which really will not correct the problem within our military and assuredly is the wrong step to be taken at this time.

I thank the Senator from Oregon for yielding. I do not want to use any more of his time.

Mr. HATFIELD. Mr. President, I should like to close, before the vote on cloture.

The desire to close off debate on this matter is very interesting. The administration indicated at the first of the year that they would have this matter pass through Congress within a few days, which has not happened, and they indicated that they would win the first cloture vote and cut off the debate. I do not know what their victory will be, or if it will be a victory on that question, until the vote is taken.

I just wish to point up one thing: Even this morning, in the closing minutes before the first cloture vote, we have had the question raised of how we are going to develop an equitable, fair draft system. So we are asked to close off debate on an issue that is of such great magnitude that we do not even have a plan for it; yet, we are saying that we are taking the first step toward the draft.

The advocates have said that this is the first step toward the draft. Yet, we are asked now to buy the assurance, the word, of these people, who initially probably will be drafting a program of compulsory service, that it will be a fair and equitable program. By its very nature, it cannot be. It will be inequitable, it will be discriminatory, as all drafts have been.

Let us not base our judgment on assurances here today. Let us go to history. The history of this Nation's draft experience gives us the evidence that is indisputable.

We also have not even considered today, or at any other time, what the enforceability of this program will be. The Justice Department has no plan in hand. At least, they told that to our committee. How are we going to enforce noncompliance? It will involve 2 percent of 4 million—80,000 is what the Justice Department estimates. What is the plan for that enforcement?

What is the problem of privacy? We have not even determined or discussed the rights of privacy that will be circumvented by any enforcement.

What about women? We have not even addressed Senator KASSEBAUM's issue about women registrants and women draftees.

● Mr. DOLE. Mr. President, first, I commend Senator HATFIELD from Oregon and Senator NUNN from Georgia and others for their leadership in managing a most informative and useful debate on the issue of peacetime draft registration.

CLOTURE VOTE

Senators who have participated in this debate have brought forth some very cogent arguments for and against this proposal—a process which is imperative if Senators are to make an informed decision on such an important piece of legislation. That is precisely why I intend to vote against cloture today, as I believe further substantive debate can only serve to provide the answers to the many questions that surround this very controversial issue.

Mr. President, once again, I want to state that this proposal does not in any way address the problems we face today

in maintaining or upgrading and maintaining a strong defense. There is no question that we are experiencing serious problems in attracting and keeping quality personnel.

Gen. Edward C. Meyer, Chief of Staff of the Army, testified before the Senate Armed Services Committee and said:

Registration does not do anything as far as near-term readiness of our Armed Forces is concerned. So, if you talk about short-term contingency in which we insert forces and are able to contain it with active forces, the Selective Service System would not bring people in, train them, and have them in the Army in time to have an effect.

Mr. President, other unanswered questions help explain General Meyer's conclusion: Do we have the proper training base to properly handle the influx of draftees? Does draft registration, without classification and physical examinations, help speed up the delivery of personnel? Can we retain an accurate, up-to-date list of registrant addresses?

In sum, Mr. President, I want to say that I am not concretely opposed to registration for the draft. But, I am definitely opposed to taking a step which has been documented to be no more than an empty gesture. I am opposed to taking this step when there seems to be an alternative in that we could accomplish the same thing as premobilization registration through an increased computer capability for the Selective Service System.

I would think the Senate would be much more interested in addressing the more serious and structural problems we face with respect to our personnel.

Mr. President, there is no question that we need to improve our capability to mobilize. However, registering young men and women will not address this problem.

Frankly, I would like to see us pay our military personnel enough to retain them and to also serve as an incentive to those considering a career in the military.

Mr. President, once again I join Senator HATFIELD and others in rejecting the call for premobilization registration at this time and urge continued debate on this important issue.●

## PREMOBILIZATION DRAFT REGISTRATION

● Mr. BAYH. Mr. President, today the Senate will vote on a motion to cut off debate on House Joint Resolution 521, a bill providing President Carter with the funds necessary to undertake a revitalization of the Selective Service System and provide for the registration of 19- and 20-year-old men for the military draft. I think that it is important to emphasize that approval of the draft registration program does not automatically mean a return to a peacetime draft as was the case for the first time in our Nation's history in 1940. For that to happen, the President would still have to come to the Congress for separate authority to conscript and, in all likelihood, at a time of imminent danger to the United States. So, it is clear that Congress, the representatives of those who may be called on to serve, would have to ratify such a decision.

Therefore, I cannot agree with those who sincerely advance the argument in opposition to registration that this is the first step leading to an inevitable return to conscription. Indeed, one of the most compelling arguments made in favor of draft registration is that it will demonstrate a national determination necessary to discourage situations from occurring which would lead a President to call for a return to the draft.

Let me also emphasize that House Joint Resolution 521 is a funding transfer measure which gives the President no new authority but rather gives the President the means to implement the premobilization program. While other issues involving upgrading * * * able to unilaterally induct unlimited numbers of people in the event of a return to the draft.

### THE CASE FOR PREMOBILIZATION REGISTRATION

Mr. President, I make these two observations in order to emphasize that if the bill we are considering passes, the responsibility of the Congress on this issue will not be lessened, it will intensify. It will be incumbent upon all in Congress to look even more closely and carefully at events in the world, at the definition of the vital interests of the United States, and at the real requirement that we not just provide greater defense spending to assure the security of our people, but that we obtain from that spending a genuinely improved defense effort.

In order to accomplish these tasks, it is far wiser, I believe, for the United States to demonstrate a measured determination to be prepared to defend our vital interests which do exist and extend beyond our shores. This does not mean the kind of preoccupation with global involvement which led us to the tragedy of Vietnam for which we are still paying a high price. It does mean not learning the wrong lessons from that wrenching experience. The capability to meet stated emergency goals in the event of a mobilization to deter or meet a challenge to America's declared vital interests or security commitments will in large measure determine whether and the extent to which hostilities will occur. If the United States is perceived as unwilling or unable to do what is in our interests, I am afraid we will not be able to expect those interests to be respected by potential adversaries.

So, how will the President's premobilization registration program accomplish this? The answer is that in and of itself it is not the total answer to following through on the Persian Gulf doctrine or any other stated policy intention. However, the rejection of the proposal will drive us to a situation where we must await an emergency to be declared before we act to shore up the shortfalls which now exists in the armed forces. That, I would submit, is not the best formula for demonstrating resolve.

### CURRENT DOD STATED REQUIREMENTS VS. CAPABILITIES

To understand why the registration system will help redress some of the shortcomings in the present system, it is important to keep in mind that the All-Volunteer Force (AVF) is a peacetime force which was to be supported by a strong reserve force component and a viable Selective Service System. As a Senator who has taken a special and careful interest in sponsoring and supporting legislation intended to strengthen the reserve force component of our total forces, I can express deep concern about shortfalls there as well as the failure to meet mobilization targets overall in the "Nifty Nugget" exercise which has been referred to in the course of the debate on the registration proposal. In this connection, it is particularly important to understand that if your reserve force components are not meeting emergency manning goals, compounding the problems of shortfalls in support of overall strength, it is likely that the commitment of Reserve Force units would have to be delayed absent a certain knowledge that replacement units could be formed by a certain date. Without a system of registration, the reliability of that knowledge crucial to make necessary military decisions is of a very low order. A premobilization draft registration system in place will give us a much better idea as to when additional forces can be available.

At the end of fiscal year 1980 the actual strengths of the Guard and Reserve forces fell short of emergency goals ranging from 6.3 percent with the Air Force Reserve to 31.2 percent for the Army Reserve. This meant a 200,000 shortfall throughout the actual Reserve Forces versus stated emergency requirements.

The current DOD mobilization requirements state that no more than 30 days should elapse between the decision to mobilize and the time the first inductee arrives for training. (The President's plan, once in place, could deliver the first inductee to training in 13 days.) Within 2 months, 100,000 inductees should have arrived at training centers. At the present time, the Selective Service System's capability to be prepared to begin registration, let alone be capable of actually inducting people, is severely questioned. While a draft SSS report of January of this year stated that inductees might arrive within 20 days of mobilization, this conclusion has been discounted by other manpower experts who assert that a post-registration plan could leave us facing a 60 to 90 day delay in the arrival of inductees to the training center. This would mean a period of confusion, disarray and uncertainty over national purpose. Such a formula which suggests everything will go according to plan in unforeseen circumstances does not provide deterrence; it invites disaster. And surely, should hostilities commence, both the AVF and Reserve Forces would be left in a situation where national decisionmakers could be faced with the awful choice between a defeat of U.S. conventional forces or crossing the nuclear threshold.

While premobilization registration is not by itself the answer to the many other problems which we must address in terms of the AVF and Reserve Forces, it is surely preferable to the undeniable shortfalls which we now face in the event of a national callup. I really do not see how we support the men and women now in uniform if, as indicated

by the "Nifty Nugget" exercise we are willing to accept the fact that without advance registration within 90 days after mobilization infantry positions will be short by almost one-half of planned strength; artillery positions will be short by almost one-quarter of planned strength, and armor positions will be down by almost three-fourths of planned strength.

REGISTRATION: PART OF A RESPONSE

Mr. President, this is not the world as I would wish to see it but it is the world of U.S. military readiness and capabilities as it really is when matched against emergency requirements. Perhaps we could change the assumptions of those requirements, but, regrettably, that would not change the dangerous and unpredictable nature of the world in which we live. Now, I am aware that there are many other issues which will have to be discussed and debated as the President's registration plan is implemented: Issues dealing with noncompliance, permitting those with deeply held religious beliefs against war in any form to obtain conscientious objector status which I did support in the Appropriation Committee; also, the President's request to include women in the registration program; what the system of classification might be in the event of a return to the draft as well as upgrading the levels of compensation for the AVF and providing increased incentives and benefits for the Reserve Forces. After agreement is reached to end debate. I am sure most of these issues will be fully considered.

DELAY OVER THE DECISION NO LONGER JUSTIFIED

Mr. President, we have had an opportunity over the past 5 months since the President proposed premobilization registration to look at this proposal in its many aspects. So, I believe we have now deliberated long enough. Some of us who will support registration today by voting to end debate may disagree with others also supporting this measure who think it does not go far enough; that we need the draft and we need it now. I do not subscribe to that belief at this time. Some of those Senators who are opposing the registration proposal do so out of a profound sense of conscience and are disturbed that passage of this legislation will lead us down another "Vietnam alley." As much as I share these concerns, I do not agree with that assessment.

We can ill afford to repeat the reticence of Mark Twain's cat that would never sit on cold stoves because he had been scorched by a hot one. The fact is that there are events occurring in the world which can directly jeopardize the political, economic, and security interests of the United States unless we do what is necessary to send a series of clear signals that our economic and military strength will be brought to bear to defend our vital interests.

The peacetime registration program will, I believe, help keep the peace if it is followed up by doing what is necessary to correct problems in the AVF and Reserve Forces as well as pursue the right kinds of defense procurement and management policies to improve the readiness of our forces-in-being. The peacetime registration program will help keep the peace if our Nation also demonstrates the willingness to wield our economic weight to tighten the screws against the Soviet Union and Iran. So I believe it is prudent that we proceed and approve this program with the knowledge that the task of repairing deficiencies in certain aspects of our Nation's defenses will not end with the vote today; in a very real sense it will have just begun. Whether that process will actually involve a return to the draft will depend upon the degree of success which we achieve in these other areas I have mentioned. Hopefully, this will not be necessary. I will vote for the registration measure because I believe that registration preparedness today will lessen the likelihood of the draft tomorrow.●

Mr. LEVIN. Mr. President, I again find myself in an uncomfortable position in regard to a cloture vote. I have consistently indicated that I believe that once the Senate has been given a reasonable period of time to debate an issue, then the Senate ought to be able to vote on the issue. My commitment to that concept remains unchanged.

In this case a very specific and technical problem compels me to reject cloture even though I believe the Senate has had an ample opportunity to debate the general issue of registration.

The problem that concerns me is simply this: A number of Senators, myself included, have indicated for some time that they wish to offer amendments to this legislation.

In almost all cases, these amendments are directly related to the purpose of this legislation. But despite their relevance, it is clear that they are not germane in the very technical sense that the Senate rules define that term. In essence, then, a vote for cloture will have the effect of allowing points of order to be raised against these relevant and significant amendments. We would then be denied an opportunity to vote on the merits of a number of important issues like registration of women. In this case, then, a vote for cloture would have the effect of preventing the Senate from considering, on their merits, a number of amendments which while not technically germane, are substantively relevant to the purpose and nature of the legislation before us.

I am more than willing to support cloture—and I intend to support it—once we have either considered these amendments or once we are assured that the Senate will be able to vote on their merits. In that connection, I would indicate publicly—as I have indicated privately—that I am more than willing to enter into time agreements which would facilitate our prompt consideration of these issues.

In conclusion, I still support the concept of cloture—I still reject the notion of filibusters as legitimate tools except where the fundamental rights or liberties are involved—but I find special circumstances operating here which make me unable to vote for cloture at this time.

● Mr. NELSON. Mr. President, the Senate today will decide whether to shut off debate on House Joint Resolution 521, legislation to reinstitute premobilization draft registration for 18- to 20-year-old males and to revitalize the Selective Service System. I shall vote no.

Mandatory premobilization registration ended in April 1975. President Carter has proposed its reinstitution in light of the Soviet invasion of Afghanistan last December.

In July of 1979, Secretary of Defense Harold Brown, speaking for the administration, advised the Congress that he opposed registration. In a letter to Representative CHARLES BENNETT, Democrat, of Florida, the ranking Democrat on the House Armed Services Committee, Secretary Brown wrote:

> I oppose peacetime registration at this point. Given adequate planning and funding, I believe the Selective Service System could be able to meet the Department of Defense requirement for delivery of new inductees without peacetime registration.

Now, suddenly, the President has stated that registration is necessary after all. The burden rests with the President to make a convincing argument to the Congress that circumstances have changed so as to require registration. In my view, he has not done so.

I agree with the President that the United States suffers serious military manpower problems. We simply do not have adequate numbers of trained, combat-ready servicemen and women.

But I disagree with the President's proposed response. In my view, the strengthening of our existing active duty and Reserve Forces, and not the institution of draft registration, is the key to resolving U.S. military manpower problems in the 1980's.

From a military needs standpoint, the experts seem to agree that peacetime registration is not necessary to the national security.

According to the Congressional Budget Office, the institution of premobilization registration would not make an appreciable difference in the speed with which the Selective Service could process inductees.

And in a January 16 report to the President, the Selective Service itself claimed that postmobilization registration was the "most cost-effective" and "least intrusive" registration option, and was its option of choice. With internal administrative improvements alone, the Service said, it could exceed Defense Department wartime induction requirements.

Our past wartime experiences, of course, are instructive. The U.S. registered 10 million men on a single day when it entered World War I, and 16 million men on a single day in preparation for World War II. Clearly, then, the country has been very successful with 1-day postmobilization registration in the face of a military emergency. There is simply no reason to believe that we would be any less successful in the future in the event of a genuine military threat to our vital national security interests.

Certainly there is no reason to risk

the divisiveness which the resumption of draft registration could cause if our military security does not require it.

Registration, then, does not provide the means to buttress America's Armed Forces. The answer lies rather in strengthening the Active and Reserve Forces we already have, particularly the Reserve Forces.

I doubt whether many of us realize the degree to which we are dependent upon our Reserve Forces for defending this country in time of war.

The Reserve Forces, comprised of the Army National Guard and Air National Guard, and the Services' Reserve Units, contain fully one-half of the country's combat power and two-thirds of its support capability.

Nor, I suspect, do many Americans realize the degree to which both the Guard and the Reserves are dangerously short of qualified, trained manpower, up-to-the-minute weapons and equipment, and modern, efficient training facilities.

In order to assure a swift and orderly transition from peace to war, the Guard and the Reserves must perform as disciplined teams. If war breaks out in Western Europe, theoretically within 90 days more than half the Army's combat troops, infantry, and armor would be made up of National Guard and Reserve units. Similarly, more than half our tactical airlift planes, airlift crews, tactical reconnaissance, fighter and air-defense planes would come from Air Guard and Reserve units.

But there are increasing signs that the National Guard and the Reserves—so vital to our defense—would be unable to carry out their mission if war were to break out in Europe tomorrow.

Since 1974, studies by the General Accounting Office, the Defense Manpower Commission, and the Brookings Institution have all warned of continuing problems with the Reserve Forces. Even the Pentagon itself concedes that the National Guard and Reserves are nowhere near their assigned combat readiness.

And, most recently, the Adjutant Generals of the United States, at their 68th annual meeting in Portland, Oreg., sounded the alarm about what they called "the perils now facing this country caused by its present and continuing failure to adequately fund and support the Reserve components of our Nation's Armed Forces."

According to the Adjutant Generals, the National Guard lacks the weapons, equipment, and training facilities it needs, support from the Pentagon leadership, and the recruiting and reenlistment bonuses and incentives that are available to the active Armed Forces.

"Changing these conditions is not only desirable—it is essential," these Guard commanders say. In my view, then, three steps are essential to strengthen the Guard and the Reserve, and enable them to perform their missions.

First, the Guard and the Reserves must be given the tools to attract and retain highly qualified, highly skilled, highly motivated men and women. The Reserve Forces now lack fully 200,000 of the men and women they would be required to provide in time of war. The key to solving the manpower problems in the Reserves and the National Guard is to make Reserve and Guard duty more financially attractive. We must take steps to encourage more people to join the Guard and the Reserves and, for those already serving, to reenlist. These steps should include improved recruiting efforts, competitive levels of pay, and reenlistment bonuses.

Second, America's Armed Forces, both Active and Reserve, must be provided with effective equipment and training in order to meet the challenge from the Soviet bloc.

Third, the Guard and the Reserves must be provided with the full-time staffing they so desperately need to achieve the higher standards of readiness now demanded of them.

The Guard and the Reserves will never be able to perform their wartime missions unless they overcome two key manpower problems: The shortage of qualified people and the high turnover rates. These two problems, in turn, cannot be solved without first improving the kind of training our guardsmen and reservists receive.

Strengthening the National Guard and the Reserves would send a clear signal to the Soviets that we are moving to improve the combat readiness of our Armed Forces. Registration does not do this. Writing in the Washington Post recently, Martin Anderson correctly pointed out that even with the names and addresses of young men and women neatly typed on computer printouts, it would take 3 to 4 months to contact them, induct them, and hastily train them—if the training facilities were ready. The end result would be hundreds of thousands of teenage soldiers, some serving reluctantly, most with no experience and little training, flooding into the ranks of the Armed Forces many months too late.

Registration is not the answer to strengthening America's Armed Forces. The answer lies in beefing up the Active and Reserve Forces we already have—particularly the Reserve Forces. Therein lies the key to America's security in the turbulent decade ahead.

I strongly urge the Defense Department to review its fiscal year 1981 budget authorization with an eye toward redirecting significant amounts of money to projects designed to strengthen the combat readiness of the Reserves and the National Guard.●

Mr. HATFIELD. Mr. President, I ask unanimous consent that a statement by the Senator from Massachusetts (Mr. KENNEDY) on the draft registration be printed in the RECORD.

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

STATEMENT BY SENATOR KENNEDY

I am strongly opposed to the pending measure to reinstate military registration, and I lend my full support to the efforts of Senator Hatfield and others to defeat the proposal now before us.

The Administration has argued that draft registration is necessary "to increase our preparedness" and to demonstrate "our resolve as a nation."

But, as I have emphasized on numerous occasions, peacetime registration, under current requirements, is essentially meaningless in terms of the two most important mobilization manpower problems we would face during the crucial early stages of a war: (1) the need to deploy large numbers of combat troops abroad; and (2) the need to avoid shortages of skilled personnel.

With regard to the need for a quick deployment of troops abroad, draft registration would not even be a cosmetic solution. We might save a total of seven or eight days by registering young persons in a pre-mobilization period. But classification, training, and transportation requirements would prevent newly-called inductees from getting to the front until some five to six months after being conscripted. And it is precisely during these months that casualties would be at their highest level and that the outcome of any conflict is likely to be decided. Thus, registration in itself is irrelevant to our most pressing mobilization needs.

Similarly, registration would do nothing to halt the sharp decline in reenlistments of middle-grade personnel. The loss of skilled career personnel has severely degraded our overall combat readiness. Retention rates are now so low that our military forces are becoming incapable of performing many of their designated missions.

All branches of the armed services are experiencing shortfalls in reenlistment. The Air Force has a shortage of more than 2,000 pilots; the Army has a shortage of more than 46,000 non-commissioned officers; the Navy has a shortage of nearly 20,000 mid-grade skilled personnel, including 2,600 officers. Last year, the Navy suffered reenlistment shortfalls in 59 of its 85 major skill areas; as a result, our present fleet manning is at only 85 percent of combat readiness.

A resumption of registration or the draft will have no bearing on these retention problems: we cannot draft sergeants and colonels, trained technicians and squadron commanders. The only way to counter the decline in reenlistments is by providing military personnel with a living wage and decent compensation. While I welcome the recent announcement of a new program—based on the Nunn-Warner amendment—to increase pay and benefits, I believe the Administration's pay proposals for next year are still far from adequate. A May 1980 study by the Congressional Budget Office warned that unless improvements are made in pay and compensation, the shortfalls in recruitment and reenlistment will grow even worse.

Former Under Secretary of the Navy James Woolsey recently estimated that selective pay and benefit improvements could increase the career proportion of our enlisted force from 42 to 50 percent. That step alone could reduce our enlistment requirements by 70,000 persons a year, or more than twice the recruitment shortfall that occurred last year.

It is also imperative that we take genuine and effective steps to upgrade our mobilization capabilities.

For example, we should revitalize the Selective Service System and upgrade it from its current "deep standby" status to a functioning level. It is particularly important to develop an effective post-mobilization registration plan that will meet our military needs.

We should also enhance our mobility forces, particularly our airlift and sealift capability. We must increase the strength of our reserve forces, which now face serious problems. Manpower shortfalls remain critical, particularly in the Army reserves: equipment is often inadequate; training is generally lacking; and military preparedness is inhibited by the lack of a proper mangement structure. Since one-half of our

combat power and two-thirds of our support capability are maintained in our reserves, it is essential that they be properly manned, equipped, and trained.

In deciding to support draft registration, the President apparently ignored the advice of his own Director of Selective Service. In a report prepared last January, a week before the President made his proposal in the State of the Union address, the Selective Service made clear that registration conducted in a post-mobilization phase is the most efficient and cost-effective procedure of mobilizing our forces:

The post-mobilization option should substantially exceed Defense requirements, employs the fewest number of full-time personnel, and costs the least . . . [T]he reduced delivery time provided by the other [pre-mobilization] options is redundant and unnecessary.

It is clear that draft registration will not enhance our military preparedness. The decision to resume registration was a weak and even dangerous response to the Soviet invasion of Afghanistan. The Soviets are well aware of the difference between a clear, effective more to strengthen U.S. combat capability and a symbolic gesture, and they will respond accordingly.

By its action, the Administration also risks diverting the attention of the American people from the real steps that must be taken to increase our military strength. Enactment of draft registration may well create a false sense of security that our military manpower problems are being solved. They are not.

Our primary attention must be directed to the need to improve the overall readiness of our forces. On any given day, one-third to one-half of our ships and tanks and planes are not prepared for battle. Neither registration nor a draft will solve this problem. We can solve it only by giving much greater attention than we have in the past to such basic necessities as fuel supplies, spare parts, combat training, and ammunition stocks.

There are a number of other considerations that undermine any purported benefits of registration.

The registration lists will quickly become outdated and useless. Individuals directly affected by the legislation—those in the 18- to 20-year-old age bracket—are a highly mobile group. According to the Census Bureau, 30 percent of all males move in the 12-month period between their 20th and 21st birthdays. The Selective Service System has estimated that half of the addresses recorded during the initial registration will become obsolete within two years. In the end, we will be left with reams of computer printouts in need of constant updating.

The proposal to reinstate draft registration for men and not for women also raises serious problems of sex discrimination. Even if the transfer of funds is approved and registration is enacted, a court challenge may halt the entire process. The General Counsel to the Selective Service has advised that "to meet current Constitutional law requirements of equal protection, any system of registration for and induction into the armed forces must include both men and women." I share the view that it is unwise and unconstitutional to exclude women from future selective service requirements, and I urge the Senate to reject the proposed measure on this ground as well.

Finally, draft registration may have a divisive effect on the American public. Young Americans will oppose a system they perceive to be unnecessary and unfair. In addition, registration will be conducted under the seriously flawed Military Selective Service Act, which does not even provide basic due process protections.

In short, the reinstitution of draft registration will not solve our military problems, but it will divert attention from more pressing military needs. There is no present emergency that warrants a drastic change in existing selective service procedures. In the event of such an emergency, it would be essential to reinstate the draft itself, and not merely registration for the draft. The proposal for draft registration alone is ill-conceived. In a dangerous world, America needs more than symbolic gestures to restore its military strength. The Senate should reject the pending transfer of funds for registration and begin the more difficult task of truly strengthening our military capability.

The ACTING PRESIDENT pro tempore. The Chair dislikes to interrupt the Senator from Oregon, but 1 hour having passed since the Senate convened, the clerk will report the motion to invoke cloture.

The legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on House Joint Resolution 521, a joint resolution making additional funds available by transfer for the fiscal year ending September 30, 1980 for the Selective Service System.

Robert C. Byrd, Lawton Chiles, George J. Mitchell, John Glenn, J. James Exon, John C. Stennis, Robert Morgan, Sam Nunn, Jennings Randolph, Ernest F. Hollings, Howard Baker, Strom Thurmond, John W. Warner, John Tower, Robert T. Stafford, John H. Chafee, Claiborne Pell, Henry M. Jackson.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the clerk repeat the name after each vote.

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

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## VOTE

The ACTING PRESIDENT pro tempore. The question is, Is it the sense of the Senate that debate on House Joint Resolution 521, a joint resolution making additional funds available by transfer for the fiscal year ending September 30, 1980, for the Selective Service System, shall be brought to a close. The yeas and nays are mandatory under the rule.

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

The PRESIDING OFFICER (Mr. BOREN). The clerk will suspend.

The Senate will be in order. Senators clear the well and take their seats. Senators will clear the well.

The clerk may continue.

The legislative clerk resumed the call of the roll.

Mr. HATFIELD. Mr. President, may we have order, please, and have the well cleared?

The PRESIDING OFFICER. Senators will clear the well. The clerk will suspend until the Senate is in order. Senators will take their seats. Senators will clear the well.

Mr. HATFIELD. Mr. President, we are not in order. The well is not cleared.

The PRESIDING OFFICER. The Senator is correct. The well is not cleared.

Senators will clear the well and return to their seats.

The clerk may continue.

The legislative clerk resumed and concluded the call of the roll.

The PRESIDING OFFICER. Are there other Senators present who desire to vote? Are there any Senators wishing to vote?

Mr. PACKWOOD voted in the affirmative.

Mr. WEICKER voted in the affirmative.

Mr. CRANSTON. I announce that the Senator from Idaho (Mr. CHURCH), the Senator from Alaska (Mr. GRAVEL), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Louisiana (Mr. LONG) and the Senator from New Jersey (Mr. WILLIAMS) are necessarily absent.

Mr. STEVENS. I announce that the Senator from Maryland (Mr. MATHIAS) is necessarily absent.

The yeas and nays resulted—yeas 62, nays 32, as follows:

[Rollcall Vote No. 176 Leg.]

YEAS—62

| | | |
|---|---|---|
| Baker | Ford | Nunn |
| Baucus | Garn | Packwood |
| Bayh | Glenn | Pell |
| Bentsen | Goldwater | Percy |
| Biden | Hart | Pressler |
| Boren | Hayakawa | Pryor |
| Boschwitz | Heflin | Randolph |
| Bumpers | Hollings | Ribicoff |
| Burdick | Huddleston | Sasser |
| Byrd, Harry F., Jr. | Humphrey | Schweiker |
| | Inouye | Stafford |
| Byrd, Robert C. | Jackson | Stennis |
| Cannon | Javits | Stevenson |
| Chafee | Johnston | Stewart |
| Chiles | Laxalt | Stone |
| Cochran | Leahy | Talmadge |
| DeConcini | Lugar | Thurmond |
| Domenici | Magnuson | Tower |
| Durenberger | Mitchell | Warner |
| Durkin | Morgan | Weicker |
| Exon | Moynihan | Zorinsky |

NAYS—32

| | | |
|---|---|---|
| Armstrong | Heinz | Proxmire |
| Bellmon | Helms | Riegle |
| Bradley | Jepsen | Roth |
| Cohen | Kassebaum | Sarbanes |
| Cranston | Levin | Schmitt |
| Culver | Matsunaga | Simpson |
| Danforth | McClure | Stevens |
| Dole | McGovern | Tsongas |
| Eagleton | Melcher | Wallop |
| Hatch | Metzenbaum | Young |
| Hatfield | Nelson | |

NOT VOTING—6

| | | |
|---|---|---|
| Church | Kennedy | Mathias |
| Gravel | Long | Williams |

The PRESIDING OFFICER. On this vote, the yeas are 62, the nays are 32. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative. the motion is agreed to.

The PRESIDING OFFICER. Time on this measure is now limited to 100 hours.

Who yields time?

Mr. THURMOND addressed the Chair.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. THURMOND. Mr. President, I yield myself such time as may be required.

The PRESIDING OFFICER. The Chair states that, cloture having been invoked, the committee amendment is not germane—the Senate will be in order

Mr. MOYNIHAN. Mr. President, may we have order?

Mr. THURMOND addressed the Chair.

The PRESIDING OFFICER. The Senator will suspend. The Senate is not in order.

The Chair announces that, cloture

having been invoked, the committee amendment, on the face of it, is not germane.

Several Senators addressed the Chair.

The PRESIDING OFFICER. Therefore, it is not in order and the pending amendment to it, therefore, also falls.

Mr. HATFIELD. Mr. President, I appeal the ruling of the Chair.

Mr. NUNN. Mr. President, will the Presiding Officer ask for order? This is a very important ruling. I think the Senator from Oregon and I would agree everyone ought to listen to the ruling. I would ask the Chair to repeat the ruling, please.

The PRESIDING OFFICER. The Chair has ruled that the committee amendment is not germane and that both it and the pending amendment, therefore, fall.

Mr. HATFIELD. Mr. President, I appeal the ruling of the Chair. I ask for the yeas and nays.

Mr. NUNN. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state his inquiry.

Mr. NUNN. Mr. President, is it the ruling of the Chair that the committee amendment is not germane and, cloture having been invoked, that amendment is not germane and also the Nunn amendment to that amendment is not germane and that both would fall?

The PRESIDING OFFICER. The Senator is correct.

Mr. NUNN. 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 are ordered.

Mr. ROBERT C. BYRD addressed the Chair.

The PRESIDING OFFICER. The appeal is not debatable.

Mr. ROBERT C. BYRD. I understand. I move to table the appeal.

The PRESIDING OFFICER. The question is on the motion to table.

Mr. NUNN. 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.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Idaho (Mr. CHURCH), the Senator from Alaska (Mr. GRAVEL), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Louisiana (Mr. LONG), and the Senator from New Jersey (Mr. WILLIAMS) are necessarily absent.

Mr. STEVENS. I announce that the Senator from Maryland (Mr. MATHIAS) is necessarily absent.

The PRESIDING OFFICER. Are there Senators present desiring to vote?

The result was announced—yeas 37, nays 57, as follows:

[Rollcall Vote No. 177 Leg.]

YEAS—37

| | | |
|---|---|---|
| Baucus | Byrd, Robert C. | Ford |
| Bentsen | Cannon | Glenn |
| Biden | Chiles | Hart |
| Boren | Cochran | Heflin |
| Bumpers | DeConcini | Hollings |
| Burdick | Exon | Huddleston |
| Inouye | Randolph | Stone |
| Jackson | Ribicoff | Talmadge |
| Johnston | Sasser | Tower |
| Mitchell | Simpson | Warner |
| Morgan | Stennis | Young |
| Nunn | Stevenson | |
| Pryor | Stewart | |

NAYS—57

| | | |
|---|---|---|
| Armstrong | Hatch | Nelson |
| Baker | Hatfield | Packwood |
| Bayh | Hayakawa | Pell |
| Bellmon | Heinz | Percy |
| Boschwitz | Helms | Pressler |
| Bradley | Humphrey | Proxmire |
| Byrd, Harry F., Jr. | Javits | Riegle |
| Chafee | Jepsen | Roth |
| Cohen | Kassebaum | Sarbanes |
| Cranston | Laxalt | Schmitt |
| Culver | Leahy | Schweiker |
| Danforth | Levin | Stafford |
| Dole | Lugar | Stevens |
| Domenici | Magnuson | Thurmond |
| Durenberger | Matsunaga | Tsongas |
| Durkin | McClure | Wallop |
| Eagleton | McGovern | Weicker |
| Garn | Melcher | Zorinsky |
| Goldwater | Metzenbaum | |
| | Moynihan | |

NOT VOTING—6

| | | |
|---|---|---|
| Church | Kennedy | Mathias |
| Gravel | Long | Williams |

So the motion to lay on the table the appeal of the ruling of the Chair was rejected.

UNANIMOUS-CONSENT AGREEMENT

Mr. ROBERT C. BYRD. Mr. President, appeals are not debatable under cloture, but I believe that if Senators could have just a few minutes to debate the appeal, they would have a better understanding of what they are voting on and, I hope, will then uphold the Chair. I ask unanimous consent that there be 30 minutes, equally divided, on the appeal. I ask unanimous consent that the time be divided between Mr. HATFIELD and Mr. NUNN.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

ORDER OF BUSINESS

The PRESIDING OFFICER. Who yields time?

Mr. HATFIELD. Mr. President, I yield myself 5 minutes.

The PRESIDING OFFICER. The Senate will be in order.

The Senator from Oregon is recognized.

Mr. HATFIELD. Mr. President, let me briefly outline the issue before us. The Appropriations Committee, in full committee markup, by rather a good margin, determined that there should be included on the registration card a box or some way in which a person who is called upon to register would be able to check his view as to whether he expected to claim a conscientious objector classification later down the road. This in no way established the right of a conscientious objector at the time of registration, but merely gives an indication of what we may be faced with in terms of compliance.

Mr. President, may we have order?

The PRESIDING OFFICER. The Senator is correct. The Senate will be in order so that the Senator may be heard. Members will dispense with conversations.

The Senator may proceed.

Mr. HATFIELD. Mr. President, this is not a theoretical situation, because we have published in the press, as of March 27, 1960, a report by Donald Guritz, a former Selective Service Regional Counsel for the Midwestern States. Mr. Guritz indicated, in that report to the Selective Service System, that he was deeply concerned about the possibility of a high number of registrants being of the conscientious objector viewpoint. He suggested that there might be ways to anticipate that and thus avoid a great amount of noncompliance or having to deal with up to possibly 50 percent of those registrants, who would check out a possible conscientious objector request. This amendment that was passed by the committee in no way establishes that right of conscientious objection.

That person still will have to go through the administrative procedure outlined by the statute to establish his position as a conscientious objector.

I do not believe I have to argue the point we have had a historic position on this since the very founding of the Republic, that we provided for that right from the very beginning of the Republic's history.

We are not establishing any new right here. What we are trying to do is to ascertain what kind of problem we have for the simple reason that the Justice Department has not in any way presented the committee with any data on how they expect to enforce this law, or this requirement of registration, if we pass it.

They have estimated that up to 20 percent of the 4 million may be in the group of noncompliance. That leaves 80 percent in compliance. Others have indicated it may be as high as 10 percent in noncompliance. That is 400,000.

They have no plans at all at this time on how many investigators, and so forth, will be required to enforce a registration act.

Therefore, it seems to me, as it did to the committee, even those who supported registration in the committee voted for this provision for the simple reason it is necessary to get as much data, as much a sense of what we have as a problem, before us in terms of compliance as possible.

There is an amendment to this amendment offered by the Senator from Georgia which would say, "Well, let this happen at the time of classification."

That has nothing to do with compliance at a time of registration because registration does not incorporate classification. Classification has to come under a later act by the Congress and the action of the President. But this procedure does give us, if we want a census-taking activity, an opportunity to find out how many 19- and 20-year-olds there are and where they are. It seems to me we ought to at least know the additional factor of how many of them expect to at least indicate by this box on their form to become, or file for, the classification of conscientious objector.

Again, let me emphasize that no one becomes a conscientious objector by merely checking off the box. It does, though, I believe, give us that additional information and understanding of what kind of job we have.

This is the one thing I have been arguing, primarily to an empty Chamber, from the very beginning, that we have not, really, any kind of blueprint or pro-

gram presented by the administration of how they expect to enforce this.

We are asked to buy a pig in a poke, in a sense, because they have at no time been able to give the committee any plan of what kind of enforcement program they expect to impose if we pass a registration requirement, and no concern about whether it is subscribed to, obeyed, or acquiesced to, by the people involved.

I think that is irresponsible. I think the administration has acted irresponsibly on this part of their proposal.

It has been indicated that they have already gone ahead, printed forms, and, therefore, it will cost money to change the forms.

This is another example of the presumption on the part of an executive agency.

Mr. President, I do not challenge the legal authority that the President already has. There is no question that the President has the authority today to commit himself to a registration program. But I think it is very interesting that simultaneous to his asking the Congress for $13-plus million in order to implement that plan, the agency proceeds to go ahead and print the forms without the congressional action.

If that is a problem, that is their problem, in a sense, for having been so presumptuous as to go ahead and print forms before they actually had their request cleared by the Congress.

I do not challenge the legal authority of the President. That has been very well established in our record of debate up to this point.

I say that several witnesses appeared before our Appropriations Committee and indicated that failure to provide members of some religious groups, the historic peace people, and others defined by the Supreme Court, with an opportunity to state such intentions at the time of registration would lead to a substantial amount of nonregistration.

That was well established in our record, that the fear was that without this provision there would be many who would say that the only way they could state their position of dissent, or the position to apply for conscientious objector, is to not register, is to refuse to register and take the consequences.

I do not think we ought to put our 19- and 20-year-olds in such a position. We are going to have enough noncompliance, in my opinion, based on the evidence of studies, and so forth.

It seems to me we must be very careful and make this as workable as possible.

I am opposed to the whole registration procedure. But if we must have one, and I face those realities, then it ought to be able to function, to be functional and operative.

I think this would assist in making such a registration procedure more operative than otherwise it would be.

Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. HATFIELD. Does the unanimous-consent agreement entered into by the request of the majority leader include the question as to whether or not the time to which I am now addressing this issue is taken out of my 1 hour under cloture, or was this unanimous-consent agreement in addition to?

The PRESIDING OFFICER. It is the opinion of the Chair that the time would come out of the 1 hour.

Mr. ROBERT C. BYRD. Mr. President, I do not want to treat my friend in that fashion, and the Chair is right, but I ask unanimous consent that the time in this instance not come out of the time of the Senator from Oregon under cloture and that the time not come out of the time of the Senator from Georgia under cloture, but that come out of the overall 100 hours.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. HATFIELD. I thank the Senator from West Virginia, the majority leader, for that additional time.

The PRESIDING OFFICER. Who yields time?

Mr. NUNN addressed the Chair.

The PRESIDING OFFICER. The Senator from Georgia.

Mr. NUNN. Mr. President, will the Chair advise the time that remains on each side?

The PRESIDING OFFICER. The Senator from Oregon has 12 minutes remaining. The Senator from Georgia has 15 minutes remaining.

Mr. NUNN. Mr. President, the unfortunate posture we are in now——

The PRESIDING OFFICER. The Chair will correct what it just told the Senator from Georgia.

The Senator from Oregon has used 8 minutes. The Senator from Georgia has all 15 minutes remaining.

Mr. NUNN. Mr. President, I will comment on where we are now on this matter.

The Chair's ruling on germaneness is no surprise. I think all people on both sides of this debate have understood this would have been the Chair's ruling if cloture was invoked.

But we had a dialog on that yesterday afternoon. The CONGRESSIONAL RECORD will reflect that the Chair, in fact, stated this would be the ruling. So there is no surprise here about the question of germaneness.

Also, I say that this matter was never brought for a vote in 3½ days of debate. I know that the people who favor the committee amendment recognized that both the administration and the proponents of registration would oppose that amendment, but there was never any request for a vote.

I indicated my willingness to vote in the last 3½ days on any issue.

I filed an amendment yesterday afternoon on this which I think would clarify the amendment, which would make the amendment meaningful, and would also make it clear we are protecting the rights of a conscientious objector.

I stipulated yesterday afternoon that I would like to vote on that amendment this morning. But I think we recognize, and this is certainly a legitimate tactic, I do not in any way criticize this tactic, but the Senator from Oregon has been in a position of not wanting any votes on amendments because that might have had people more willing to invoke cloture.

Of course, now we have cloture, and the Senator from Oregon is appealing the ruling of the Chair on germaneness. I do not think that position should be sustained by the Senate. No one has been surprised by this ruling. Everyone knew what the ruling was going to be.

The Senator from Kansas and the Senator from Michigan have an amendment, and they were fully aware that if cloture were invoked, their amendment would be ruled nongermane. The Senator from Iowa (Mr. JEPSEN), who is in the Chamber, has an amendment on classification; and he understood last week, and still understands, that the Chair will rule that amendment nongermane.

So if we are going to make an exception here, the interesting question is, Where do we draw a line, and what does cloture mean?

Very briefly, I should like to address the merits of the amendment, because Senators should understand what they are voting on.

The Senator from Oregon has indicated that, in the past, a conscientious objector could file some kind of statement during the registration procedure. It is my understanding that that never has been the case, that it always has been a matter of filing a conscientious objector status on classification.

I am absolutely in favor of anyone who is a legitimate conscientious objector being able to make that fact known before any draft occurs, and a draft cannot occur until there is classification.

All we are dealing with here is registration. In the past, a question has been asked of registrants who already registered about any characteristics that would lead to deferment or exemption. Registrants could indicate on the questionnaire that they intended to file for conscientious objector status or for a hardship deferment or for an exemption because of physical reasons.

If the registrant indicated on the questionnaire that he intended to file for conscientious objector status, form 150 was then sent. If he intended to file for an exemption because of physical reasons, he was asked to send a doctor's statement, and so forth. Form 150, which provided for conscientious objector status, never was part of the registration process. It was part of the classification process.

If this amendment is ruled germane, it is the understanding of the Senator from Georgia that the amendment the Senator from Georgia has filed also will be ruled germane, and that means we will be voting on the amendment first.

I urge my colleagues, first, not to vote for overturning the ruling of the Chair. I believe it is a bad precedent, and I leave it to the Senator from West Virginia, who is much better acquainted with these matters than I am, to discuss this in full.

It is important for Senators to recognize that this amendment is misleading to conscientious objectors. A declaration of a conscientious objector status at the

time of registration has absolutely no legal consequences for the registrant. Nobody is going to examine that to determine if he or she really is a conscientious objector. If we go to classification, the whole process will have to be repeated.

So what we have is an amendment that will cloud the registration process and will mislead conscientious objectors, because many of them are going to think, "If I fill out this form, the Government is going to know I am a conscientious objector; therefore, I will not be called in a draft." Nothing could be further from the truth. That is not the case.

The registration does not guarantee anyone that they will be exempt, no matter what they write on the form.

So we have here an amendment that I believe would be misleading to those it is intended to serve.

I completely concur with the Senator from Oregon that before we have any classification, conscientious objectors should be able to make that fact known and we should have an exemption. I am going to be working with the Senator from Iowa in the future on trying to study the consequences of some of the laws we have on the books now and the regulations relating to classification. This is not the appropriate time to deal with the conscientious objector subject.

People should recognize one other thing. What about the blind person who is registered? What about the lame person who is registered? What about the deaf person who is registered? Are they going to be deprived of stating that they are blind and that, therefore, they should have an exemption? Are people who are deaf going to be deprived of that? Are people in wheelchairs going to be deprived of making that known? Are we creating a conscientious objector status that has priority over the deaf, the blind, the lame?

I do not think that is the intention of the Senator from Oregon. I do not think that is the intention of anyone here. That is exactly what the amendment of the Senator from Oregon would do. It would do that because it would say to anyone who files for conscientious objector status that presumably somebody in the Government is going to look at it. They presume that somebody is going to examine it. That is not going to happen, because we do not have the conscientious objector status filed at the appropriate time.

So I urge my colleagues to uphold the ruling of the Chair, so that we can proceed in an orderly fashion, under the Senate rules.

Also, if the ruling of the Chair is not upheld, I strongly urge my colleagues to support, on the merits, the Nunn-Jepsen-Tower amendment to the Hatfield amendment. By doing that, we would make this misleading kind of amendment become an amendment which states the true facts—that is, that a conscientious objector will be able to make that fact known on classification.

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

The PRESIDING OFFICER. Who yields time?

Mr. CHAFEE. Mr. President, will the Senator from Georgia yield for a 30-second question and answer?

Mr. NUNN. I yield.

Mr. CHAFEE. The question I propound is this: How have we done it in the past? In prior years, when we had the draft, when we had registration, when a person went to register, would there be questions such as this, or did that solely come up in classification?

Mr. NUNN. That came up in classification. Part of the form involved conscientious objector status, along with physical and mental hardships. Then the person was able to ask for form 150, which was the conscientious objector form. It all took place in the context of classification, not registration.

Mr. CHAFEE. So am I correct in saying that the suggestion of the Senator from Oregon is a departure from past practices?

Perhaps I should direct that to the Senator from Oregon. Is that correct? I am not choosing sides. I just do not know the answer.

Mr. HATFIELD. I will be happy to yield for the question.

Mr. NUNN. Mr. President, I reserve the remainder of my time, and I yield the floor.

Mr. HATFIELD. My proposal precisely puts this into the same tradition and precedent; because, as the Senator from Georgia has just indicated, in the past, at the time of registration, a registrant was handed a form.

Mr. CHAFEE. But that was for classification?

Mr. HATFIELD. For classification. But, simultaneously, at the time of registration, he was able to indicate his exception or plan to file for conscientious objector status, and was provided the form. In this case, that is not true. He is given a registration form. If, down the road, we decide to have a draft, at that point down the road it is assumed that we would incorporate that within the draft law.

However, in this amendment that the committee considered, this is one of the reasons why the committee adopted it, with the votes of those who support registration, to maintain that right precisely at the time he registers, as we always have done.

Mr. CHAFEE. I thank the Senator.

Mr. HATFIELD. Mr. President, I should like the floor in my own right at this point.

I do not think anybody would consider the arguments that the lame, the deaf, and the blind are being discriminated against. That argument is specious on its face, and it is more specious as we look into it, for the simple reason that we have much evidence that there are many with handicaps who would like to serve in the armed services.

I indicated early on that I had a classmate, at the time we all marched out of the fraternity—after President Roosevelt's declaration of war—to sign up, whose failure to be accepted in any branch of the service was such a traumatic experience that he took his life. Consequently, I do not think that is the question at hand.

The Senator from Hawaii and others have indicated, with respect to nondiscrimination toward the handicapped, that we have provided for access to public buildings by the handicapped, provided for special education for the handicapped. Many other things we have done establish the right of the handicapped to sign up and find some appropriate place to serve, if that be the desire, under a true program. So that is a specious argument.

The question relates to the person who is not physically handicapped and who intends to file as a conscientious objector. That is the issue.

As the Senator from Rhode Island, in his question, has brought into focus, we have had in the tradition of the draft the right established at the time of registration, by form 150. It was handed to the person. We are denying that person that right today.

If we vote to sustain the Chair, we are, in a sense, sending the signal, after the committee has considered this carefully and incorporated it, that we are going to delete it, because we are going to deny the historic right to establish at least some sign or indication at the time of registration, which has been traditional in our country, of a conscientious objector.

I am not carrying the cause.

I must say to the Senator that some of my classmates ended up being conscientious objectors in World War II and we had nothing but disdain for them. We thought they had such conscientious objection that some took jobs in the shipyards. They were willing to make the instruments of war and get paid much more than we were being paid in the military. That created in our mind at least at that time some question as to whether there was a great depth of commitment.

That is neither here nor there, whether one supports the proposition of the conscientious objector as far as his views are concerned. The question is that we have had established in our historical constitutional system that right. Historical peace churches would violate their religious convictions. The Supreme Court broadened that to those not in historical peace churches to be considered by the draft board on the local level, and the same criteria base that they granted those came out of the historical peace churches.

Mr. GOLDWATER. Mr. President, will the Senator yield for a question?

Mr. HATFIELD. I yield.

Mr. GOLDWATER. Does the Senator feel that the language in the proposed joint resolution is adequate and complete enough to cover conscientious objectors? I ask that question because I cannot remember the number of times that I was asked to go down after World War II and testify as to whether or not a boy was a conscientious objector. That is a very tough thing to do unless one happens to have known the boy and his family for years.

Does the Senator think the language is adequate?

Mr. HATFIELD. In the actual statute that would be established?

Mr. GOLDWATER. Yes.

Mr. HATFIELD. I do not know what this Senate will do if we are called upon to enact a Selective Service Act which would have criteria or establish some base upon which conscientious objector status could be granted to those who apply. I have no way to foresee that.

I hope that we could make it so definitive that it would be as objective and less subjective as possible because the Senator is quite correct.

Let us go back to the Supreme Court case. The Supreme Court looked at this and if one had been a Mennonite or a Quaker in the past, that more or less was prima facie evidence that he had a right for a classification of conscientious objector. Then they found people had the same depth of feeling if not more so and they might not be a Mennonite or a Quaker; yet they were forced in. The Supreme Court tried to broaden that by setting up a criterion, and I think that is always subject to review and becomes more definitive.

I agree with the Senator. I was asked the same thing to testify on occasion. How can one crawl in the mind and the heart of someone else and make a judgment? It is very difficult.

Mr. GOLDWATER. Another point that might be raised is that one does not have to base it on religious objections.

Mr. HATFIELD. That is right.

Mr. GOLDWATER. One could have moral objection.

Mr. HATFIELD. Exactly.

Mr. GOLDWATER. I think there were more moral objectors to war than religious. I am getting to the point that was raised by our friend from Rhode Island about the handicapped. I think that is a very valid thing we have to take care of.

Mr. HATFIELD. That is right.

Mr. GOLDWATER. I remember one man who served under me and it took me 3 years to get him. He had tuberculosis. He was 4–F. But he was the best man I ever had work for me.

There is a place for the handicapped if they wish to work.

Mr. HATFIELD. Certainly.

Mr. GOLDWATER. I will discuss it with the Senator as we go along to make sure that we have language that makes all of these things a little more simple than it was the last time around.

Mr. HATFIELD. Yes. I agree fully with the Senator and wish to work with him.

But the point we must bear in mind, I say to the Senator from Arizona——

The PRESIDING OFFICER (Mr. NELSON). The time of the Senator from Oregon has expired.

Mr. HATFIELD. I will tell the Senator privately.

Mr. GOLDWATER. I am sorry.

The PRESIDING OFFICER. The Senator from Georgia has 6 minutes remaining.

Mr. NUNN. Mr. President. I shall just take 1 minute, and then I believe the Senator from West Virginia and the Senator from Mississippi wish to speak.

Mr. President, the Senator from Arizona (Mr. GOLDWATER) has put his finger right on the problem with this well-meaning, sincere amendment proposed by the Senator from Oregon. If this amendment is agreed to, not only are we setting up a conscientious objector privilege which exceeds that of the blind, the lame, the deaf, and the disabled, but we are doing it in a way that no evidence would be presented whatsoever and there would be no examining body, no one to examine them, and there would be no opportunity for a conscientious objector to state whether he is opposed to any service in the military which would be noncombat service, which has been done by many sincere, dedicated conscientious objectors. They served in military occupations that did not go into combat. There would be no opportunity for them to say they would be willing to serve in a civilian capacity to support the overall national effort, even though they are opposed to combat.

This is the wrong place and the wrong time to express the conscientious objector status. I think it is going to be very misleading and very disillusioning to the sincere, dedicated conscientious objectors who really are legitimate because they are going to wake and find they went in and filled out a form on registration and it had absolutely no meaning. No one in Government looked at it. No one questioned it. And when they get into the classification stage, then they will have to go through everything again. So it has no meaning and it will substantially delay this overall process.

Mr. President, I yield such time as the Senator from Mississippi desires.

How much time do we have remaining?

The PRESIDING OFFICER. The Senator from Georgia has 4½ minutes remaining.

Mr. NUNN. I yield 2 minutes to the Senator from Mississippi.

Mr. STENNIS. I thank the Senator from Georgia.

Mr. President, notify me at the end of 2 minutes, please.

I say to Members of the Senate that I make this point for clarity and for certainty. We now have a positive law in what we call the old law that was not repealed. The Selective Service law is still on the books as to this point. There is no power to make inductions. But it is there. It is preserved and can be used now if necessary.

No. 2, I think there will be no chance to avoid a full consideration of this subject matter again should there be a new law proposed with complete provisions.

That would be not only considered but it would also be recognized and favorably passed. Not only those who are conscientious objectors but everyone who is an honest conscientious objector would be given this special dispensation.

I never have heard a member of our committee present or past since I have been around who had any idea to the contrary. I believe that is fully accepted by the people at large over the Nation.

So there is not any chance being taken, and nothing is being neglected.

With all deference, this would bring confusion and compound confusion if we should inject this in the law.

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

Mr. STENNIS. I thank the Senator.

Mr. HATFIELD. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. Does the Senator from Georgia yield for a parliamentary inquiry?

Mr. NUNN. Not on my time, Mr. President; on the time of the Senator from Oregon, yes.

I yield the remainder of my time to the Senator from West Virginia.

Mr. ROBERT C. BYRD. Mr. President, the Senate will be voting not on the substance of the amendment but on a matter of procedure. I hope that Senators will keep their eye on that ball.

The Senate a little earlier today invoked cloture on debate, and under Senate rule XXII, once cloture is invoked, no amendment not germane shall be in order.

If we are going to invoke cloture, we should live by the cloture rule, and one of the reasons for invoking cloture is to rule out nongermane amendments.

The Chair has ruled that the committee amendment is not—n-o-t—not germane. Now the committee amendment refers to registration, and it refers indirectly to conscientious objectors, neither of which terms is germane to the original language of the joint resolution.

This is an appropriations joint resolution, not an authorization bill for the selective service or the draft or classification. The place for this amendment is on an authorization bill where it could be germane, but the Senate has invoked cloture. This amendment is not germane. It does not pertain to the joint resolution itself. It does not pertain to an authorization but to an appropriation.

I hope that the Senate will keep in mind that the vote is on a procedural question, to wit, Shall the decision of the Chair be sustained?

That question has been appealed by the distinguished Senator from Oregon. A vote "aye" would sustain the Chair. Is that not the question?

The PRESIDING OFFICER. The Senator is correct.

Mr. ROBERT C. BYRD. And the Chair should be sustained.

Are we going to play by the rules or are we going to make our own rules? The Chair has ruled the amendment not germane. Under cloture any amendment not germane is not in order, and I hope the Chair will be sustained by a vote of "aye" on the part of the majority of the Senate.

The PRESIDING OFFICER. All time has expired. The question is——

Mr. HATFIELD. Mr. President, are the yeas and nays ordered?

The PRESIDING OFFICER. The yeas and nays have been ordered.

The question is, Shall the ruling of the Chair stand as the judgment of the Senate?

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 Idaho (Mr. CHURCH), the Senator from Alaska (Mr. GRAVEL), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Louisiana (Mr.

LONG), the Senator from New Jersey (Mr. WILLIAMS), the Senator from Washington (Mr. MAGNUSON), and the Senator from Illinois (Mr. STEVENSON) are necessarily absent.

Mr. STEVENS. I announce that the Senator from Maryland (Mr. MATHIAS) is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber wishing to vote who have not voted?

The yeas and nays resulted—yeas 43, nays 49, as follows:

[Rollcall Vote No. 178 Leg.]

YEAS—43

| | | |
|---|---|---|
| Baker | Hart | Pryor |
| Bentsen | Hayakawa | Randolph |
| Boren | Heflin | Ribicoff |
| Bumpers | Helms | Sasser |
| Burdick | Hollings | Schmitt |
| Byrd, Robert C. | Huddleston | Simpson |
| Cannon | Humphrey | Stennis |
| Chafee | Inouye | Stewart |
| Chiles | Jackson | Stone |
| Cochran | Johnston | Talmadge |
| Domenici | McClure | Tower |
| Exon | Mitchell | Warner |
| Ford | Morgan | Zorinsky |
| Glenn | Nunn | |
| Goldwater | Pressler | |

NAYS—49

| | | |
|---|---|---|
| Armstrong | Eagleton | Nelson |
| Baucus | Garn | Packwood |
| Bayh | Hatch | Pell |
| Bellmon | Hatfield | Percy |
| Biden | Heinz | Proxmire |
| Boschwitz | Javits | Riegle |
| Bradley | Jepsen | Roth |
| Byrd, Harry F., Jr. | Kassebaum | Sarbanes |
| | Lavalt | Schweiker |
| Cohen | Leahy | Stafford |
| Cranston | Levin | Stevens |
| Culver | Lugar | Thurmond |
| Danforth | Matsunaga | Tsongas |
| DeConcini | McGovern | Wallop |
| Dole | Melcher | Weicker |
| Durenberger | Metzenbaum | Young |
| Durkin | Moynihan | |

NOT VOTING—8

| | | |
|---|---|---|
| Church | Long | Stevenson |
| Gravel | Magnuson | Williams |
| Kennedy | Mathias | |

The PRESIDING OFFICER. The ruling of the Chair does not stand as the judgment of the Senate.

AMENDMENT NO. 1886

Mr. NUNN. Mr. President, what is the pending business?

The PRESIDING OFFICER. The pending business is the Nunn amendment to the committee amendment.

Mr. ROBERT C. BYRD. Vote. Put the question.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Georgia.

Mr. HATFIELD addressed the Chair.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. HATFIELD. Mr. President, I would like to share with the Senate a history of the conscientious objector. I think we recognize that this is not something that we have merely concocted at this particular time to try to delay or to try to encumber the registration procedure. But I would like to assure my colleagues that it is simply an effort to try to minimize noncompliance. I hope the Senators have all viewed the report from the Selective Service System itself which has indicated the possibility that up to 50 percent—

The PRESIDING OFFICER. May we have order in the Chamber? Will Senators who wish to converse please retire to the cloakrooms?

Mr. HATFIELD. Mr. President, this simply provides the same procedure that we have had in the past where a person who, at the time of registration, is able to secure a specific form indicating his intention to file for a classification of conscientious objector. This does not grant him that at all. But before, when he went to register and sign his name, he was handed a form simultaneously. If we do not adopt this as a committee amendment, then all it does is to delay that possibility, to give rise to a generation of felons who would be prosecuted for noncompliance, based again upon the Selective Service estimates themselves.

Mr. NUNN's amendment I hope will be voted down because all the Nunn amendment does is simply to delay that right until the time this Senate acts upon a new selective service law and then, hopefully—and who knows down the road—there will be a provision in that law to provide for a person to become classified as a conscientious objector.

It seems to me that it would be very important for us to minimize noncompliance at this time, based upon the estimates that have already been made, because we do not have the personpower in the Justice Department to prosecute every noncompliance that we may have.

We have no opportunity for these people to express themselves except through the committee amendment. Again I emphasize, all the Nunn amendment does is to delay this, to deny the people the right for that opportunity to establish their intentions at the time of registration as we have had in other selective service times.

Remember, we have not had in the past a registration act and then delayed by who knows how many years until the time would arise for the adoption of a Selective Service Act for them to be able to establish that position.

Mr. President, I yield the floor and am ready to vote on the Nunn amendment.

Mr. NUNN addressed the Chair.

The PRESIDING OFFICER. The Senator from Georgia.

Mr. NUNN. Mr. President, I just want to briefly repeat the argument that most of my colleagues who were on the floor a little while ago have already heard. I think it is very important. It is essential that the committee amendment be amended. The reason for that is that the committee amendment would be misleading every sincere conscientious objector. We have never, in all the time we have had registration, had declaration of conscientious objector status at the time of registration. It has always come at the time of classification.

I favor conscientious objectors being able to register their status at the appropriate time. But the committee amendment, unless it is amended by the Nunn amendment, provides that this declaration would be at the time of classification. It is going to have a very serious, in my opinion, and disillusioning effect on legitimate conscientious objectors who realize they have a form to fill out that nobody is going to pay any attention to whatever, that has no legal status whatsoever, that does not exempt them from any service whatsoever.

I think it is important for them to recognize that. I think it is important for the Members of the Senate to recognize that if they leave the committee amendment unamended, that is, if they vote down the Nunn amendment which will be the next vote—we will be voting, I assume, on the Nunn amendment or a motion to table, whichever the case may be—if that amendment fails, then what we have done is we have placed anyone who wants to sign a conscientious objector statement on registration in a position that has precedent over people who are blind, over people who are deaf, over people who register in a wheelchair, because they do not have any form to fill out. They do not have any way of saying, "I am physically disabled" or "I have had some emotional or mental problem."

All of those are legitimate issues but those issues should be decided at the appropriate time, in the appropriate forum. That is when we have classification.

I would like to quote briefly from Secretary of Defense Harold Brown on this issue in a letter dated June 5 to Senator STENNIS. He states:

> I urge the Senate to approve the same bill that passed the House. The amendment to the House bill added by the Senate Appropriations Committee would allow those who conscientiously object to war in any form to express that belief at the time of registration.

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. HARRY F. BYRD, JR. 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. HARRY F. BYRD, JR. Mr. President, I was one of those Senators who voted twice against the ruling of the Chair that the amendment approved by the committee was not germane. It appears to me that it is germane and I disagreed with the ruling of the Chair in that regard.

The pending amendment is an amendment by the Senator from Georgia dealing with conscientious objectors. The Senator from Georgia would amend the joint resolution now before the Senate by providing that conscientious objectors shall have the right to claim conscientious objector status when the classification process begins.

That differs from the committee language which would permit an individual to note his objection to war at the time he registers.

Mr. President, I am one of those who believe very strongly that if we have a Selective Service System, that those with conscientious convictions, those with strong convictions in opposition to participating in any war, those who hold those views, that the law should permit them their full rights and the law should

deal sympathetically with those who hold such strong views.

The Senator from Georgia's amendment to the joint resolution would grant just such opportunity to any individual who seeks to claim conscientious objector status.

The time to do it, and I think the Senator from Georgia is correct, is when the classification process takes place, not during registration.

In the first place, it would single out just one group which would have the right to present reasons why he would not want to participate in the Selective Service System.

I think the Senator from Georgia's amendment is superior to the committee amendment. I think it fully and adequately protects the rights and the views of any individual who seeks to claim conscientious objector status.

For that reason, I shall support the amendment offered by the Senator from Georgia.

I think it is not only a reasonable one, but I think it is the only workable proposal as compared to the committee amendment supplemented by the Senator from Oregon.

But I say again, I voted against the ruling of the Chair on two occasions because I thought the Chair was wrong and that the committee proposal should be considered by the Senate. It is now being considered by the Senate. The Senator from Georgia is offering an amendment to it which greatly improves the committee proposal.

I shall support the proposal of the Senator from Georgia.

Mr. NUNN. I thank the Senator from Virginia for his statement and his understanding of this issue.

Mr. President, I had begun to quote from a letter of June 5 to Senator STENNIS from Secretary of Defense Harold Brown. I will quote that letter on the relevant portion in toto. It states:

> I urge the Senate to approve the same bill that passed the House. The amendment to the House bill added by the Senate Appropriations Committee would allow those who conscientiously object to war in any form to express that belief at the time of registration. Such an expression, at that time, would serve no useful purpose. A later exemption on this basis could not be established by this essentially meaningless action. But an officially invited indication of intent would mislead some to think it guaranteed an exemption. This sort of information is appropriate to the process of classification, not registration. Finally, the amendment added by the Senate Appropriations Committee could serve to entice many young men (the Committee estimates as many as 40%) to make a mockery of the act of registration by appearing to take back with one signature the responsibility they will have recognized with another.
>
> If accepted by the Senate, this, or any other amendment, would require further action by the House and would, therefore, delay registration even more—at least until early autumn. Such a delay would be highly undesirable, and would be viewed abroad as evidence of a lack of American resolve to meet the grave international challenges we face.

Mr. President, I assure we are going to be voting on the Nunn amendment to the committee amendment at some point within the next hour or so. Rather than taking more of my time that I have limited under the cloture motion that has been approved by the Senate, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. EXON. 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. EXON. Mr. President, I rise in support of the Nunn amendment.

On the issues that have been brought forth here, I have some concern, of course, with the conscientious objector proposition. I could not go, though, as far as suggested by my friend from Oregon because I believe that the suggestion by the Senator from Oregon would simply cause great harm to the registration process that many of us feel is critically necessary at this particular juncture.

At the same time, I believe it is fundamental and, therefore, a historic part of our conscription process that legitimate—and I emphasize the word "legitimate"—conscientious objectors have a chance to state their case for proper appeal.

Therefore, I believe that the amendment that has been suggested by Senator NUNN is one that I can support in good conscience.

I agree completely with the brief explanation that I heard Senator HATFIELD give on the floor of the Senate within the last hour. That very simply is that while the Senate, if it adopts the amendment offered by the Senator from Georgia, is saying that we recognize that there are some who have legitimate conscientious objector interests and they should be taken into consideration. It does, indeed, as the Senator from Oregon has pointed out, put this over until some future time if—and I emphasize the word "if"—it is the decision of the Congress of the United States that we must return to some type of a full draft system.

Therefore, it seems to me that the amendment offered by the Senator from Georgia is probably the best of all worlds that we could have to address this particular issue.

It is true, Mr. President, that if we adopt the amendment offered by the Senator from Georgia, we will have to go back to conference with the House of Representatives on this particular issue.

According to the letter just read into the RECORD by the Senator from Georgia, which was sent by the Secretary of Defense, that would cause some delay. However, I suggest that this is not an issue that would cause great consternation between the Senate-House conference committees, and I believe it could be resolved rather simply.

I wish the Senator from Georgia could find himself in a position to support the Nunn amendment, because I believe that the Nunn amendment goes a considerable way to addressing the issue about which the Senator from Oregon is concerned.

I hope all my colleagues in the Senate, before we vote on the Nunn amendment in the very near future, will recognize and realize that the Nunn amendment, in my opinion, is a reasonable compromise, because it proceeds with the matter of registration and still allows and identifies that there is a sense of the Senate that we need to take into consideration legitimate conscientious objectors, only when and if we find it necessary to return to a military draft.

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

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

Who seeks recognition?

Mr. ROBERT C. BYRD. Mr. President, I shall take just a minute, hoping that Senators will be prepared for a rollcall vote. If no Senator seeks the floor, the Chair will be putting the question and the vote will occur on the amendment by Mr. NUNN to the amendment by Mr. HATFIELD.

Mr. BAKER. Mr. President, I have sent word to the distinguished Senator from Oregon (Mr. HATFIELD) that we are ready to proceed. I believe that the Chair will indulge me, with the agreement of the majority leader, and if we can find Senator HATFIELD in a few minutes, we shall be ready to proceed in very short order. While we are trying to do that, 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. HATFIELD. 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. HATFIELD. Mr. President, what is the pending question?

The PRESIDING OFFICER. The amendment of the Senator from Georgia to the committee amendment.

Mr. HATFIELD. I thank the Chair.

Mr. President, at an appropriate moment, if everyone who wishes to speak has spoken, I shall make a motion to lay on the table the amendment of the Senator from Georgia to the committee amendment.

Mr. NUNN. Mr. President, I understand the position of the Senator from Oregon and understand that he will move to table. I do not need a lot more time on this amendment. I think it has been discussed pro and con a good bit this day.

I do repeat, though, that unless my amendment is attached as a part of the committee amendment, the committee amendment itself is very misleading. Conscientious objectors are going to feel that they will be given some exemption or some status that is different from those other people who register without signing some form if the committee

amendment fails. That will be false. They will not be given any status. There is no recognition that they will be given, there is no exemption. They will simply be voicing their own conscientious views. There is an appropriate time and place for that. The appropriate time and place for that is under classification, which has historically been the place that we have had the expression of conscientious objections.

I think it ought to be repeated that, under the registration procedure, there will be no evidence offered by the conscientious objectors, there will be no examining body to determine if they are sincere in their beliefs.

There will be no category of conscientious objector. We will not know whether that particular individual is willing to serve in the military in a noncombat position, or whether that individual is willing to serve in a civilian position, and all those are directly relevant.

I also say, Mr. President, that there will be no provision for those who are physically or mentally unable to serve. The people who are blind, deaf, lame, will have to file their address and name if this amendment becomes the law, and the conscientious objector will have a special exemption.

I do believe conscientious objectors should have an exemption, but I believe it ought to be on classification and not on registration.

This would greatly complicate the procedure and slow down the whole registration. It would make it much more difficult and delay it.

I urge my colleagues to vote against the motion to table the Nunn amendment to the committee amendment when the Senator from Oregon makes that motion.

Mr. HATFIELD addressed the Chair.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. HATFIELD. Mr. President, there is nothing misleading about this amendment whatsoever.

I think to state that is to denigrate the intelligence of the American public.

It has been very clearly stated by the Senator, and the record in the Committee on Appropriations, as well as here on the floor, that this committee amendment does nothing to establish classification. It merely preserves the historic right of people to make a declaration of intent at the time of registration.

That is what we have done in every kind of selective service system we have had. At the time of registration, the individual had the right to declare his intent by a form 150 that was either handed him at the time or mailed to him very soon thereafter.

The Nunn amendment destroys that traditional historic right of the people to declare their intent at the time, and the Nunn amendment also invites massive noncompliance.

If we are interested in developing a generation of felons here, and we are going to have enough problem with compliance without denying this historic right, then we should vote against tabling the amendment.

But if we want to preserve the historic right that we have established through selective service programs in the past, we should vote to table this amendment, because the Committee on Appropriations has preserved the historic right. The Nunn amendment destroys the historic right and invites noncompliance.

This specious argument that somehow we should provide for the helpless, the lame, the blind, the handicapped, is nothing but throwing sand in the air, hoping it will light in our eyes so that we do not see the real issue.

That is a matter that will be determined at a time of classification, as well as the classification of conscientious objector. But the conscience, the matter of conscience, the matter of intent to declare that conscience, is different than being handicapped.

Besides, I, for one, will move, if we get to that place, which I hope we do not in peacetime, to the place of establishing a draft, to provide the right of handicapped people to serve their Nation in military uniform.

There are many positions they could occupy. Having spent over 3 years in a world war in the U.S. Navy, I know of many positions that could have been effectively handled and performed by people we could classify as handicapped, denying them the right to defend their country in time of national emergency.

I think this Senate and the Congress generally, have done much to improve the lot of the handicapped; access to public buildings, educational benefits and rights. I cannot conceive that this Congress would continue to deny those who may be physically handicapped from occupying important positions in our military if that be their desire.

Consequently, that is entirely a specious argument.

I think if one person, one individual, goes to jail because of the Nunn amendment, it would be a great tragedy.

I know that many more, perhaps tens of thousands, will be prosecuted, if we prosecute under this regulation, or this policy, if we decide to fulfill it under the President's request, will be imprisoned, or at least prosecuted and leading to possible prison. That is why I want to minimize that kind of situation for our young people.

The Nunn amendment certainly exacerbates what will be a difficult policy to administer in the first place, and by voting that amendment down and supporting the committee amendment we will reduce measurably that particular issue in the administration of the policy, which I assume by the vote this morning ultimately will prevail.

But I also want to make the record very clear to the majority leader and others that it is my intent to utilize even the full 100 hours we have under the cloture motion. So that no one is misled and no one is caught by surprise, I say that I have about 75 amendments at the desk. I shall strive in every legitimate parliamentary procedure that is open to me to continue to delay this as long as possible.

Mr. ROBERT C. BYRD addressed the Chair.

Mr. HATFIELD. I yield to the majority leader and then I want to make my motion.

Mr. ROBERT C. BYRD. Mr. President, I thank the distinguished Senator. He has made clear what his intentions are. I respect him for that. I suppose we just have to govern ourselves accordingly. But I admire him for his courage and his determination, and I respect him and admire him for laying his cards right out on the table.

I was going to ask him later what his intentions were, but I do not need to ask him now. He has stated what his intentions are. I thank him.

Mr. HATFIELD. Mr. President, the majority leader has been very fair and very helpful. I thank him again.

That is why I felt I should lay my cards out on the table and catch nobody by surprise. We can plan accordingly. But I wanted to mention this for the record at this time.

Mr. President, I move to table the Nunn amendment to the committee amendment and I ask for the yeas and nays.

Mr. NUNN. 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.

The PRESIDING OFFICER. The question is on agreeing to the motion to lay on the table the Nunn amendment to the committee amendment. 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 IDAHO (Mr. CHURCH), the Senator from ALASKA (Mr. GRAVEL), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Louisiana (Mr. LONG), the Senator from New Jersey (Mr. WILLIAMS), and the Senator from Washington (Mr. MAGNUSON) are necessarily absent.

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

Mr. STEVENS. I announce that the Senator from Maryland (Mr. MATHIAS) is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber who wish to vote?

The result was announced—yeas 44, nays 49, as follows:

[Rollcall Vote No. 179 Leg.]

YEAS—44

| | | |
|---|---|---|
| Armstrong | Hatch | Packwood |
| Baker | Hatfield | Pell |
| Baucus | Heinz | Percy |
| Bayh | Javits | Proxmire |
| Biden | Kassebaum | Riegle |
| Bradley | Laxalt | Roth |
| Bumpers | Leahy | Sarbanes |
| Cohen | Levin | Schmitt |
| Cranston | Matsunaga | Schweiker |
| Culver | McClure | Stafford |
| Danforth | McGovern | Stevens |
| DeConcini | Melcher | Stevenson |
| Durenberger | Metzenbaum | Tsongas |
| Durkin | Moynihan | Weicker |
| Eagleton | Nelson | |

NAYS—49

| | | |
|---|---|---|
| Bellmon | Glenn | Pressler |
| Bentsen | Goldwater | Pryor |
| Boren | Hart | Randolph |
| Boschwitz | Hayakawa | Ribicoff |
| Burdick | Heflin | Sasser |
| Byrd, Harry F., Jr. | Helms | Simpson |
| | Hollings | Stennis |
| Byrd, Robert C. | Huddleston | Stewart |
| Cannon | Humphrey | Stone |
| Chafee | Inouye | Talmadge |
| Chiles | Jackson | Thurmond |
| Cochran | Jepsen | Tower |
| Dole | Johnston | Wallop |
| Domenici | Lugar | Warner |
| Exon | Mitchell | Young |
| Ford | Morgan | Zorinsky |
| Garn | Nunn | |

NOT VOTING—7

| | | |
|---|---|---|
| Church | Long | Williams |
| Gravel | Magnuson | |
| Kennedy | Mathias | |

So the motion to lay on the table Mr. NUNN's amendment (No. 1886) was rejected.

The PRESIDING OFFICER. The question recurs on agreeing to the amendment of the Senator from Georgia.

Mr. HATFIELD. 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.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Georgia. 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 Idaho (Mr. CHURCH), the Senator from Alaska (Mr. GRAVEL), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Louisiana (Mr. LONG), the Senator from Washington (Mr. MAGNUSON), and the Senator from New Jersey (Mr. WILLIAMS) are necessarily absent.

Mr. STEVENS. I announce that the Senator from Maryland (Mr. MATHIAS) is necessarily absent.

The PRESIDING OFFICER. Are any other Senators in the Chamber who desire to vote?

The result was announced—yeas 51, nays 42, as follows:

[Rollcall Vote No. 180 Leg.]

YEAS—51

| | | |
|---|---|---|
| Baker | Glenn | Pressler |
| Bellmon | Goldwater | Pryor |
| Bentsen | Hart | Randolph |
| Boren | Hatch | Ribicoff |
| Boschwitz | Hayakawa | Sasser |
| Burdick | Heflin | Simpson |
| Byrd, Harry F., Jr. | Helms | Stafford |
| | Hollings | Stennis |
| Byrd, Robert C. | Huddleston | Stewart |
| Cannon | Humphrey | Stone |
| Chafee | Inouye | Talmadge |
| Chiles | Jackson | Thurmond |
| Cochran | Jepsen | Tower |
| Dole | Johnston | Wallop |
| Domenici | Lugar | Warner |
| Exon | Mitchell | Zorinsky |
| Ford | Morgan | |
| Garn | Nunn | |

NAYS—42

| | | |
|---|---|---|
| Armstrong | Danforth | Laxalt |
| Baucus | DeConcini | Leahy |
| Bayh | Durenberger | Levin |
| Biden | Durkin | Matsunaga |
| Bradley | Eagleton | McClure |
| Bumpers | Hatfield | McGovern |
| Cohen | Heinz | Melcher |
| Cranston | Javits | Metzenbaum |
| Culver | Kassebaum | Moynihan |
| Nelson | Riegle | Stevens |
| Packwood | Roth | Stevenson |
| Pell | Sarbanes | Tsongas |
| Percy | Schmitt | Weicker |
| Proxmire | Schweiker | Young |

NOT VOTING—7

| | | |
|---|---|---|
| Church | Long | Williams |
| Gravel | Magnuson | |
| Kennedy | Mathias | |

So Mr. NUNN's amendment (No. 1886) was agreed to.

Mr. THURMOND addressed the Chair.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. THURMOND. Mr. President, I yield to the distinguished Senator from North Dakota (Mr. YOUNG).

Mr. YOUNG. Mr. President, as the ranking member of the Senate Appropriations Committee, I wish to designate the senior Senator from Oregon (Mr. HATFIELD) for the handling of this bill for consideration by the Senate.

Mr. ROBERT C. BYRD. Mr. President, will the Senator yield?

Mr. THURMOND. Mr. President, I yield to the majority leader.

Mr. ROBERT C. BYRD. Mr. President, may we have the attention of the Senate?

The PRESIDING OFFICER. The Senate will be in order.

Mr. ROBERT C. BYRD. Mr. President, I ask that the time I consume be charged against me and not against Mr. THURMOND.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. ROBERT C. BYRD. Mr. President, technically Mr. PROXMIRE is the manager of this bill. Under the cloture rule, Senators may yield to the manager of the bill and to the ranking manager and to the majority and minority leaders up to a total of 2 hours, making it a total of 3 hours. Is that correct?

The PRESIDING OFFICER. The Senator is stating it correctly.

Mr. ROBERT C. BYRD. Mr. President, Senators may yield to Mr. PROXMIRE up to a total of 2 hours. He has 1 hour under the rule. They may do the same for the minority leader, the majority leader, and for the ranking manager of the bill. I believe the ranking manager has just been designated as the Senator from Oregon, Mr. HATFIELD.

Now, may I ask the Senator from Wisconsin (Mr. PROXMIRE) if it is agreeable to him, with the understanding that this is not to establish a precedent—technically, he is the manager of the bill—if it is agreeable to him that, if Senators wish to yield the time up to a maximum of 2 hours to the manager of the bill on this side, that that manager, for the purposes of handling this bill under the cloture situation, would be either Mr. STENNIS or Mr. NUNN.

Mr. PROXMIRE. Mr. President, I think that is only fair and I would intend to certainly do that. That was my absolute intention.

But I do feel, as chairman of the subcommittee in charge of the resolution, I want to maintain my authority over the bill. But, as I told Senator STENNIS and Senator NUNN, I would be delighted to have them handle the 2 hours or whatever I have, because that is only fair.

Mr. ROBERT C. BYRD. Mr. President, is it my understanding that, based on my conversation with Mr. STENNIS, that Mr. NUNN should be designated as the manager of the bill on this side of the aisle for the purpose of controlling that 2 hours if any Senator is wishing to yield?

Mr. STENNIS. That is correct.

Mr. President, may I thank the Senator from Wisconsin for his fine attitude about this matter all the way through since he held the hearings.

Mr. ROBERT C. BYRD. Very well, Mr. NUNN will be the manager of the bill on this side.

Mr. HATFIELD. Mr. President, will the Senator yield for a question on this point? In the hours that are yielded to the respective managers, what form must that action take on the part of the Senator willing to yield such hour?

Mr. ROBERT C. BYRD. Mr. President, a Senator who wishes to yield such time needs only to stand up on the floor and say, "I yield to Mr. HATFIELD" or Mr. NUNN, or whomever.

Mr. HATFIELD. As a matter of official record?

Mr. ROBERT C. BYRD. Yes. But, beyond that, it would require unanimous consent for any Senators to yield any of their time to any other Senators.

Mr. President, for the purpose only of attempting to indicate to my colleagues what the situation is so that they may govern themselves accordingly, let me say this: Many of the Senators were not on the floor when Mr. HATFIELD indicated—and I would prefer that he indicated it in his own words so that I do not misrepresent him—as to what his intentions are now that cloture has been invoked.

Would the Senator do that, please?

Mr. HATFIELD. Mr. President, I am happy to; I assume on the majority leader's hour.

Mr. President, I indicated to the majority leader and to those present in the Chamber at the time that I had no desire to play games or to provide any surprises and that I had every intention of utilizing every parliamentary procedure open to me to fully use the 100 hours that are allocated under the cloture rule.

In other words, I have every expectation of pushing this issue to final vote as far down the road as I can, and I only have 100 hours to do it. Now, I do not control all of those 100 hours, but I shall use such things as rollcalls, quorum calls, and every other such parliamentary procedure that is open under the rules in order to use up, fully exhaust, the 100-hour period.

Mr. ROBERT C. BYRD. Mr. President, I thank the Senator.

Senators will understand that what I say is not with any animus toward the Senator from Oregon. I admire him; I respect him. He is my friend and he will be my friend after this matter is disposed of. He has said, without any equivocation, that it is his intention, insofar as he is able to do so, to fully utilize the entire 100 hours allowed under the cloture rule.

I think that is fair. He has laid his cards on the table and he has done so voluntarily earlier today. So he has made no bones about it. I respect him for that.

Let me say to the Members of the Sen-

ate that, after today, only 55 working days remain prior to October 1, not counting Saturdays. During those 55 working days—and any Saturdays that are included—the Senate has an enormous workload. It has the first concurrent budget resolution, which is still in conference. Once that is disposed of, the Senate will have the supplemental appropriations bill, which involves black lung payments, trade assistance, and so on.

It has 13 regular appropriation bills yet to enact. There remain 50 or more expiring authorization bills. There is the Alaska lands bill. There are other measures. The second concurrent budget resolution, for example, will be coming along. The extension of the debt limit will have to be faced up to again, and maybe again and again. I cannot say.

May I have the attention of Senators, Mr. President? What I am saying affects every Senator here and his schedule. I do not want any misunderstanding to be abroad. This is just a preview of what the Senate has remaining before it.

One hundred hours would be 8 12-hour days plus 4 hours, or it would be 12½ 8-hour days. The Senate just cannot afford to spend that kind of time on this joint resolution. We have already been on this measure for 4 days. The committees have spent time on it. The House spent time on it. If the amendment by Mr. HATFIELD, as amended by the amendment by Mr. NUNN, is agreed to, this measure has to go to conference if the House does not accept the Senate amendments. That would mean we would probably have another filibuster on the conference report.

So I say to my friends, we are up against a rather sobering problem and we might as well think about it now.

We have all of this workload and we only have 55 days, unless we crank in Saturdays, until October 1.

We can, of course, go beyond October 1. We can come back after the elections. We can come in on Saturdays. We can come in early and we can stay late. But we are going to have to do some of these things, if not all of these things, under the very best of circumstances to complete what work has to be done before this Senate adjourns sine die.

May I say to my friends that I hope they will be very understanding and as cooperative as they can be as we deal with this postcloture filibuster. That is what it is. I say that with all respect to the Senator from Oregon. He has the right to utilize the rules, but we can also utilize the rules.

I want to try to eclipse that 100 hours as much as possible, but that will require the cooperation of Senators. I would hope that Senators would not use their 1 hour if they can avoid it. If they want to use 10 minutes, fine, or whatever they want to use. If they want to use the hour, fine. But keep in mind that this Senate can go 100 hours on this measure and no other measure can be taken up except by unanimous consent until the business now before us is disposed of. That means that if the conference report on the first concurrent resolution is brought in that door, it cannot be taken up except by unanimous consent until this matter is first disposed of.

The distinguished Senator from Oregon has said he is going to utilize the rules. He has that right. He feels strongly about this matter. He speaks with conviction. He has stated what his intentions are. I can only say that I admire him but that I, too, will attempt to use the rules as best I can to bring this to a close as early as possible. But it is going to require the cooperation of Senators on both sides of the aisle.

Senators should know what they are doing. Know that we may be here all night more than one night. We cannot afford to spend 12½ 8-hour days on this joint resolution now. We have already spent 4 days on it. We cannot afford to do that, with only 55 days remaining. Who want to be in here on Saturdays? I do not want to be in on Saturdays, but every day we spend on this joint resolution, is 1 off of the 55, and every day we spend on this matter may be a Saturday session in the long run.

So I say to my friends, schedule your days accordingly. Do not get too far away from the Senate because there may be many quorum calls and rollcalls tonight.

Mr. BUMPERS. Will the Senator yield for a question?

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. BAKER. I will be happy to yield.

Mr. BUMPERS. The Senator talked about the amount of time we could yield to the floor managers, a total of 2 hours which gives them 3 hours, counting the 1 hour of their own time.

Mr. ROBERT C. BYRD. That is correct.

Mr. BUMPERS. Can we yield to other Senators debating amendments?

Mr. ROBERT C. BYRD. Only by unanimous consent.

Mr. BAKER. Mr. President, I am opposed to the Hatfield amendment and I shall vote against it when that time arrives. I am in favor of the joint resolution and I will vote for it. I have lost count of how many cloture motions are now on hand and available to file from day to day which are no longer necessary since cloture was invoked with my vote on the first try.

I think we need draft registration and I will support it.

Mr. President, I owe a responsibility as well to the Senator from Oregon.

I have one slight departure from the majority leader's statement. I, too, do not wish the Senate to spend 100 hours on this measure, but I owe the obligation to protect the rights of the distinguished Senator from Oregon to make his cases as fully and abundantly as he may wish.

So I will join in trying to encourage brevity, in trying to see that we proceed as promptly as possible. I will not join in trying to terminate the rights of the Senator from Oregon in the debate.

One other thing: Notwithstanding that I will oppose the Senator from Oregon, I want our majority leader to know that under the rules, as I understand them, he and I are entitled to receive on yielding 2 additional hours. So that there is no misunderstanding, I will solicit Senators to yield to me those 2 hours so I can make them available for further debate on this side. I cannot yield the 2 hours to the Senator from Oregon since he has a right to extra time as minority manager of the bill. But that will be my contribution to full and fair debate.

I will conclude now by saying I urge Members of the Senate to adopt this joint resolution. I think we need registration. I hope this measure will be abbreviated as much as possible, but I will protect to the full extent of my abilities the right of the Senator from Oregon to make his case as fully as he can.

(Mr. BAUCUS assumed the chair.)

Mr. ROBERT C. BYRD. Will the Senator from South Carolina yield to me on my own time?

Mr. THURMOND. I yield.

Mr. ROBERT C. BYRD. Mr. President, I yield to nobody in this body, on the other side of the aisle or on my own, in protecting the rights of other Senators. I, too, will protect the rights of the Senator from Oregon. I have in the past protected the rights of the minority leader—once against my own Vice President. So I will protect his rights, but within the rules I will do everything I can in protecting the Senate's right to bring this to a close. But that is up to the Senators. Senators may keep it going.

I call this to the attention of Senators, and then I will sit down, that any Senator who wishes to yield time back may do so under the cloture rule and the time yielded back comes off the 100 hours.

Mr. STONE. Will the Senator from West Virginia yield?

Mr. ROBERT C. BYRD. Yes.

Mr. STONE. How and when does a Senator yield back his 1 hour? Is that now appropriate?

Mr. ROBERT C. BYRD. A Senator may deal with that at any time.

Mr. STONE. This Senator from Florida yields back his 1 hour, Mr. President.

Mr. HATFIELD. Will the Senator from South Carolina yield on my time?

Mr. THURMOND. I yield, Mr. President.

Mr. HATFIELD. Mr. President, I appreciate the efforts of trying to resolve the Senate business and on an expeditious basis, and I appreciate the majority leader giving us that list of vital and important legislation.

Mr. President, I know of no issue that the Senate will undertake in this particular Congress that will be of more importance to our Nation than the one that we have before us now. It literally involves the potential lives of our young people and there is no issue that, to me, takes precedence over that. I say that I expect to push the Senate to the full use of the 100 hours, because there are many unresolved questions, questions that have not even been debated on this floor.

When the majority leader says that the House took up the issue, he implies that it gave full consideration to the question. The House of Representatives did this in 1 day—1 day.

Let me say that because cloture was

laid down today, this precludes our being able to consider such an amendment as is to be offered by the Senator from Kansas (Mrs. KASSEBAUM) involving the possibility of registering women. That matter has not even been brought before this body in terms of a possible vote. It involves such matters as the right of privacy. It involves such matters as enforceability.

These are very serious parts of this whole program that have not yet been debated or voted on on this floor. To run the pressure of time upon us at this moment and to put the onus on those of us who are trying to defend the civil rights, the human rights of the people of this Nation, the 19- and 20-year-olds, I think is not necessarily quite an accurate picture.

I have no alternative. I have been put in this position by the leadership that has, in effect, said, "We are going to cut off debate after three and a half days." Let me remind the leadership that we set aside this issue frequently to take up other Senate business because we were cooperative on it and wanted to maintain the dual activity of the Senate.

Mr. President, I only want to say this: I think the American people have the right to have this matter fully debated, fully aired. I do not plan to make a telephone-book filibuster. I have not done so up to this point. I think if anyone takes the time to read the Record, they will know there has been substantive debate. It has been on the issue, it has been on the subject. Therefore, that is what I plan to maintain, that kind of discussion. We are not engaged in a filibuster on the telephone-book reading procedure that we have seen in the past.

Mr. President, I am sure there are many Senators who have not yet been heard who want to use their hour fully to express their viewpoint. So it is not going to be a waste of time. It is going to be a focus upon the issue that is most important to the American people.

Mr. DURKIN. Mr. President, I yield back my hour.

Mr. BAKER. Mr. President, a point of order.

The PRESIDING OFFICER. The Senator from Tennessee is recognized.

Mr. BAKER. Mr. President, is it possible to yield back the hour under the rules as they now stand?

The PRESIDING OFFICER. Will the Senator please restate his question?

Mr. BAKER. Mr. President, I did not hear the Chair.

The PRESIDING OFFICER. Will the Senator please restate his question?

Mr. BAKER. Is it possible to yield back the hour provided for in the rules with the effect of reducing the 100 hours permitted under the rules?

The PRESIDING OFFICER. The Chair is of the opinion that a Senator may yield back his 1 hour. However, that does not reduce the total 100 hours available.

Mr. BAKER. Mr. President, may I inquire what happens to that hour? Who has control of that?

The PRESIDING OFFICER. It is the understanding of the Chair that no Senator would control that hour.

Mr. BAKER. I am sorry?

The PRESIDING OFFICER. It is the understanding of the Chair that no Senator will control that time.

Mr. ROBERT C. BYRD. Mr. President, will the Senator yield to me?

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. ROBERT C. BYRD. I think the minority leader has raised a pertinent question, Mr. President. Let me read the rule: "After no more than 100 hours of consideration"—it does not say it has to be 100 hours. It says, "After no more than 100 hours of consideration of the measure, motion, or other matter on which cloture has been invoked."

Of course, if all Senators yield back their hour, who can do anything? What do we do, just sit here for 100 hours and look at the Chair?

When Senators yield back their hour, that should come off the 100 hours.

Mr. LEAHY. A parliamentary inquiry, Mr. President.

Mr. BAKER. I have the floor, Mr. President.

The PRESIDING OFFICER. The Senator from Tennessee has the floor.

Mr. BAKER. A further parliamentary inquiry: Is it not true, Mr. President, that if a Senator yields back his hour, the 100 hours remains and might be consumed in a number of ways—in quorum calls for instance, or a number of other devices that would not require the control of an individual Senator?

The PRESIDING OFFICER. The Senator is absolutely correct.

Mr. BAKER. And the 100 hours provided for in this rule XXII is not the sum total of 100 hours, but rather, the 100 one-hours provided for under the rules.

Mr. ROBERT C. BYRD. Will the Senator yield?

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. ROBERT C. BYRD. Mr. President, if what the Chair says is true, then the rule would not read as it reads. It reads "After no more than 100 hours of consideration." It can be 99 hours, it can be 90 hours, it can be 50 hours. I am sorry to have to differ with the Chair, and I do so respectfully.

What is the purpose of cloture? The purpose of cloture is to bring the matter at issue before the Senate to a close as expeditiously as is possible. If 99 Senators yield back their hour, what, under God's heaven, are we going to do for the remaining 99 hours? It just is not reasonable. It is not logical in the context of the meaning of the cloture rule and the purpose of it.

Mr. LEAHY. Mr. President, will the Senator yield to me on my time for a parliamentary inquiry?

Mr. BAKER. Do I have the floor, Mr. President?

Mr. THURMOND. Mr. President, I believe I have the floor and I have yielded and yielded. I wonder when I am going to get to speak for just a few minutes.

Mr. BAKER. If I may have the floor, Mr. President, I have one further thing to say.

Mr. THURMOND. Who wants the floor? The minority leader? I yield to him.

Mr. BAKER. All I wanted to say, Mr. President, is that I recall in 1979, there was a Republican proposal for a rules change that would have done precisely, I believe, what the majority leader has suggested; that is, permit Senators to yield back their time and reduce the 100 hours. That was proposed here, on the floor, was resisted by the majority, and defeated.

Mr. President, it is my contention, and I am gratified that the Chair agrees and has so ruled, that the yielding back of an hour has no effect on the 100 hours. Indeed, there are any number of things that can be done in that 100 hours. The 1 hour is for debate. The 100 hours can be for the calling up and reporting of amendments, for quorum calls, for any variety of other things that do not recall the 1 hour provided for, under rule XXII, for debate.

Mr. LEAHY. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. LEAHY. Mr. President, the parliamentary inquiry is, what is the effect of time being yielded back? Does it have no effect whatsoever on the rule?

The PRESIDING OFFICER. It is simply a statement of the Senator to the effect that he has no intention of using his 1 hour.

Mr. LEAHY. A further parliamentary inquiry. If 99 Senators yielded back all their time and one remaining Senator yielded back 45 minutes, then, within a matter of 10 or 15 seconds of that time, called up an amendment at the desk and asked for the yeas and nays and vote, is it correct that he might be able to string that out for 100 hours, that 15 minutes? Ninety-nine and a half hours having been yielded back so somebody might be able actually to string out 100 hours?

The PRESIDING OFFICER. The Senator is correct. It is possible.

Mr. LEAHY. I thank the Chair.

Mr. THURMOND. Mr. President, I rise in support of this joint resolution. This is a matter upon which I can speak at considerable length, but I am going to cut my remarks to about 12 minutes.

Mr. President, to any nation, its security is a function of its military capability. In order to maintain a reasonable level of security a nation must have the ability to mobilize human, natural and material resources within a short period of time. Today in the Senate we are locked in a debate as to whether or not this Nation will undertake a very limited step to mobilize its human resources in the event of a national emergency.

This limited step is embodied in House Joint Resolution 521 which transfers from the Air Force to the Selective Service System $13.2 million to allow that System to initiate registration of young men as recommended by the President.

This resolution has passed the House—now it is the role of the Senate to exercise its judgment. I strongly support this legislation, and urge my colleagues to support it also.

SIMPLE POSTAL REGISTRATION

As stated in the Appropriations Committee report:

The President's draft registration plan

calls for the U.S. Postal Service to undertake the task of face-to-face registration. In June of this year, young men, ages 19 and 20 would be asked to go to their local post offices to register, where they would fill out a simple form with their name, address, date of birth and social security number.

Subsequently, the registrant would receive a short letter from the Selective Service System, indicating that he had been registered, and asking that the system be kept informed of a change in address. In January of next year, all 18-year-olds would be asked to register in the same manner, thus reinstituting continuous registration for those who reach the age of 18 in the future.

Mr. President, it is obvious that this plan constitutes only a minimum registration of our manpower pool. I would favor a more comprehensive plan to include classification, but the issue before the Senate now is this austere plan, proposed by the President.

Why should this appropriation be approved? Initially, I would like to give my thoughts as to why it is necessary. Then, I would like to quote from our civilian and military leaders as to their opinions on this important issue. Finally, I will summarize my views.

WHY WE NEED REGISTRATION

First, testimony before the Senate Armed Services Committee is overwhelming that without a registration system in place our Nation could not meet its manpower needs in any significant national emergency.

It is obvious from military exercises that we simply could not fulfill mobilization plans in a timely and orderly way without registration. Army Chief of Staff Edward Meyer stated during Senate hearings:

Mobilization accomplished during a war is wasteful, clumsy and potentially disastrous.

He continued:

A system of selective service is mandatory.

DANGEROUS PERIOD

Second, the world has become more dangerous in the past year and I firmly believe that if we show the resolve to meet this and future crises, it is far less likely we will have to engage in hostilities anywhere.

We are entering a period where our Nation will no longer enjoy a strategic equivalence with the Soviet Union. This will be a dangerous period which will last for at least 5 years, possibly more depending upon how rapidly we move to correct our weapon shortages. It would be foolish to enter this period without some capability to mobilize manpower quickly in the event of a perceived or real military crisis.

SERVICE OBLIGATION

Third, I think it is past time that we tell our young people they have an obligation to be prepared to serve their country if necessary.

Many of our young people are willing to give a small period of their time to help strengthen our forces to deter any aggressor. However, they are being told that someone else will do it if these volunteers are paid sufficiently. The honor and duty of military service is being degraded when it should be paramount over any financial considerations.

VOLUNTEER FORCE INADEQUATE

Fourth, the volunteer concept is not meeting our peacetime needs. It is unaffordable, it cannot be depended upon in emergencies and is unfairly exempting the middle and upper classes of our society from military service.

Our military needs to represent our people, and I believe registration will start moving us back toward that concept. A people unwilling to defend themselves will soon have nothing to defend.

Mr. President, I would like to now draw attention to the wide support for restoring registration.

VIEWS OF LEADERS

The Senate should give great weight to the views of our elected and appointed leaders who have the primary responsibility to maintain adequate forces and respond to our security needs in an emergency. I would like to quote from some of these officials:

President Jimmy Carter:

Registration for the draft is needed to increase our preparedness and is a further demonstration of our resolve as a nation.

Secretary Harold Brown:

The registration of men should not be delayed to include the registration of women.

Gen. David C. Jones, Chairman of the Joint Chiefs of Staff:

This manpower situation is further compounded by the lack of a responsive Selective Service System to meet mobilization manpower needs of the Services.

Since registration is one of the most crucial aspects of manpower mobilization the establishment of a mechanism which provides for peacetime registration is needed now.

Gen. Edward Meyer, Army Chief of Staff:

Volunteering will not produce sufficient military manpower for a large-scale protracted war. A system of selective service is mandatory. Mobilization accomplished during a war is wasteful, clumsy and potentially disastrous.

Today, the Selective Service System, in deep-standby status, would require 85 days to deliver the first inductees from a cold start. Approximately 100 additional days are required to process, train and transport these inductees to their assignments in theater. This permits twelve weeks of pre-deployment training as required by law. The President's plan would assure the Selective Service System a capability to deliver the first inductees twelve days after mobilization. Delivery of the first trained inductees to theater would be improved from M+85 to M+12, for a saving of 73 days.

Mr. President, if the majority leader is going to hold a conference, I wonder if he could not hold it in the cloakroom, or somewhere?

Mr. ROBERT C. BYRD. Mr. President, I apologize to the Senator. He is entitled to be heard, and under the rules there should be order in the Senate. I apologize to him.

Mr. THURMOND. I think it is well for the majority leader to set an example. I thought he wanted to do that.

Dr. John White, Deputy Director of the Office of Management and Budget:

Peacetime registration helps us to increase our preparedness, assures our ability to respond and further demonstrate our resolve.

Army Secretary Clifford Alexander:

It seems to me that a limited registration would be in order so that the availability of people would be in front of us.

Gen. Bernard Rogers, NATO Commander, former Army Chief of Staff:

As a minimum, we should go to registration just as soon as we can.

Adm. Thomas B. Hayward, Chief of Naval Operations:

I am convinced that registration is a logical and sensible thing to do.

Gen. Lew Allen, Jr., Chief of Staff, U.S. Air Force:

I support registration and limited classification.

Gen. R. H. Barrow, Commandant, U.S. Marine Corps:

Registration is one step that I do concur with wholeheartedly.

Mr. President, the Senate should also be aware that the Joint Chiefs as a group have long favored registration and last year took the extraordinary step of so advising Secretary Brown of their position as a group.

In addition, Mr. President, the American public was asked the question in April of 1979 as to whether or not they supported registration of males and the response was 76 percent in favor. Doubtless the percentage would be even higher today in view of the crisis in the Middle East, which took place after this particular poll.

Mr. President, I think this great unanimity in our civilian and military leaders, and the public as a whole, on this subject should be very persuasive on the Senate. We are merely being asked to fund registration, not begin the draft at this time.

DRAFT MAY BE NEEDED

It may be come necessary to return to the draft and I am of the opinion that such a step would be in our national interests. But if the draft does return, it should be as fair as possible, because I believe that the inequity of the draft during the Vietnam war was a major factor in the problems and results of that period.

In conclusion, I would like to summarize my points as to why we need registration now: First, we lack the capability to mobilize promptly if it should be in our national interest to do so. Second, the world situation is more dangerous today and will be more dangerous in the immediate years ahead. Third, I believe our youth have an obligation to be ready to serve if needed and that they will respond to that need. Fourth, the all-volunteer concept is too costly and has not developed a representative military force.

Mr. President, the registration in this resolution is a very modest step to deter aggression and strengthen our military potential. If we fail to take this modest step, I predict we will in effect encourage those who are steadily capturing the free nations of the world and moving

rapidly to strangle America through denial to us of essential natural resources. We must show our resolve, and I urge we begin immediately.

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

Mrs. KASSEBAUM addressed the Chair.

The PRESIDING OFFICER. The Senator from Kansas is recognized.

AMENDMENT NO. 1805

Mrs. KASSEBAUM. Mr. President, I am appreciative of the majority leader's desire to move ahead with the business of the Senate. It certainly is not my intention to delay it any further than necessary.

In a moment, I will call up my amendment No. 1805, which is an amendment to the committee amendment. It is very important and crucial to have a debate on this amendment.

It has been suggested that I consume my hour and that of my cosponsors before calling up the amendment, but that resembles a colloquy instead of a debate. Thus, I will call up my amendment; and when the Chair rules it nongermane, I will appeal that ruling.

I am disappointed that I have to handle it this way, Mr. President, because we had hoped to work out some other arrangement. However, that not having been successful, I hope the Senate will indulge a debate on this important matter.

Mr. President, I call up my amendment No. 1805.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Kansas (Mrs. KASSEBAUM) proposes an amendment numbered 1805:

On page 2, line 14, strike the period and insert a comma and the following language: "or shall be made available for implementing a system of registration which does not include women.".

● Mr. DOLE. Mr. President, I want to commend the distinguished sponsors of this amendment, Senators KASSEBAUM and LEVIN, dealing with women being registered for the military draft. Because of the controversial and sensitive nature of this issue my distinguished colleagues have served the Senate well in providing an opportunity for thorough debate.

REGISTRATION: AN EMPTY GESTURE

Mr. President, in recent days I have expressed my opposition to registration and the draft in general and now I must extend this opposition to include this amendment.

Mr. President the role of women in the Armed Forces is due to two major factors. First, since the end of the draft and the beginning of the All-Volunteer Force in December 1973, the military services have had difficulty in recruiting and retaining enough qualified males, thereby turning attention to recruiting women. Second, the movement for equal rights for women has led to demands for equal opportunity in all fields, including national defense. Thus, women have been recruited in increasing numbers and assigned to a wider variety of occupations as one method of meeting shortfalls in enlistments by qualified men.

Parallel with the increase in the numbers of women in the military services has been a gradual removal of restrictions against them. During World War II, women served in the various services under temporary arrangements and in consistent policies.

Mr. President, the fact is that women have, for several years now, played a vital role in our military without having had to draft one of them. Mr. President, I want to make it very clear that I am not opposed to females serving in the defense of their country. If women want to serve their country that option is open to them now as it has been for several years. The matter of the fact is, that I am opposed to the mandatory conscription of any one.

THE ALL-VOLUNTEER FORCE

There are those, Mr. President, who are quick to point to the fact that the All-Volunteer Force is not working, thus justifying the registration of our young men and women for potential military service.

Mr. President, I have often said before that if Congress would have paid attention to the needs of the All-Volunteer Force in its infant stage we would not have the manpower problems we have today. While these problems have reached a level of extreme seriousness I still believe that we have several options available to us today other than the first step toward the military draft; namely, the registration for military service.

Mr. President, once again, I want to commend Senators KASSEBAUM and LEVIN for their service to the Senate in providing this opportunity to debate this very important issue. Even though I do not intend to vote for this measure, I greatly appreciate the commitment and dedication in which they have pursued this measure.●

Mr. NUNN. Mr. President, what is the pending business?

The PRESIDING OFFICER. The pending business is the amendment of the Senator from Kansas, as an amendment to the committee amendment.

Mr. NUNN. To the committee amendment. This is in the form of an amendment to the committee amendment?

The PRESIDING OFFICER. The Senator is correct.

Mr. NUNN. Mr. President, at some point, I will raise the question of germaneness on this amendment, but I should like the matter to be discussed. I have no objection to it being discussed.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

Mr. NUNN. Mr. President, I object at this point. I will not object for long. I want the majority leader to be here, if the Senator from Kansas will give us about 5 minutes.

Mrs. KASSEBAUM. I will be happy to do so.

Mr. NUNN. At this point, I object.

Mr. HATFIELD. Mr. President, a parliamentary inquiry. From whose time is this being taken?

The PRESIDING OFFICER. The quorum call is in progress. Accordingly, a parliamentary inquiry is not in order.

The legislative clerk continued the call of the roll.

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

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

Mrs. KASSEBAUM. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mrs. KASSEBAUM. What then is the pending business?

The PRESIDING OFFICER. The pending business is the amendment of the Senator from Kansas which is an amendment to the committee amendment.

Mrs. KASSEBAUM. I thank the Chair.

Is the Chair prepared to make a ruling on that amendment?

The PRESIDING OFFICER. The Chair is prepared to make a ruling unless the Senator wishes to withdraw the amendment.

Mrs. KASSEBAUM. Mr. President, I do not wish to withdraw the amendment.

The PRESIDING OFFICER. Under the precedents of the Senate, cloture having been invoked, the Chair is required to rule out of order amendments which on their face are not germane. The amendment offered by the Senator from Kansas is not germane. Accordingly, the amendment is out of order.

Mrs. KASSEBAUM. Mr. President, I appeal the ruling of the Chair and 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. NUNN. Mr. President, is that motion debatable at this time?

The PRESIDING OFFICER. The appeal is not debatable.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the distinguished Senator may have 1 minute to debate the appeal and that there may be 1 minute on this side.

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

Mr. NUNN. Mr. President, let me just say that I asked the authors of this amendment last week if they would bring this amendment up before cloture was voted on. I was perfectly willing to debate this issue. It certainly is an issue that is important.

Our committee and subcommittee have considered it at length. I was perfectly prepared to debate the issue and vote on it.

Now that cloture has been invoked, we are in a different posture. The authors of the amendment are aware of the fact that we served notice that this eventuality could take place and if it did, I would be opposed to any nongermane amendment after cloture.

So it is unfortunate. I do think we have a right to debate this amendment and will have an opportunity to debate it on the authorization bill that will be forthcoming within the next 30 days.

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

Mrs. KASSEBAUM. Mr. President, as I said earlier, it is not my intent to try to delay. We had tried to work out an agreement which we were not able to do, and I wish very much to have a debate on this amendment, as others have said that they would so desire as well.

So I will yield back any of my remaining time so we may move ahead with this vote.

The PRESIDING OFFICER. The question is, Shall the decision of the Chair stand as the judgment of the Senate?

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 Idaho (Mr. CHURCH), the Senator from Alaska (Mr. GRAVEL), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Louisiana (Mr. LONG), the Senator from South Carolina (Mr. HOLLINGS), the Senator from Washington (Mr. MAGNUSON), and the Senator from North Dakota (Mr. WILLIAMS) are necessarily absent.

Mr. STEVENS. I announce that the Senator from Maryland (Mr. MATHIAS) is necessarily absent.

The PRESIDING OFFICER (Mr. PRYOR). Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 37, nays 55, as follows:

[Rollcall Vote No. 181 Leg.]

YEAS—37

| | | |
|---|---|---|
| Bentsen | Ford | Nelson |
| Biden | Garn | Nunn |
| Boren | Glenn | Randolph |
| Bumpers | Hart | Ribicoff |
| Burdick | Heflin | Sasser |
| Byrd, Harry F., Jr. | Huddleston | Stennis |
| Byrd, Robert C. | Inouye | Stevenson |
| Chiles | Jackson | Stewart |
| Cochran | Johnston | Stone |
| DeConcini | Matsunaga | Talmadge |
| Durkin | Melcher | Warner |
| Exon | Mitchell | Zorinsky |
| | Morgan | |

NAYS—55

| | | |
|---|---|---|
| Armstrong | Hatfield | Pressler |
| Baker | Hayakawa | Proxmire |
| Baucus | Heinz | Pryor |
| Bayh | Helms | Riegle |
| Bellmon | Humphrey | Roth |
| Boschwitz | Javits | Sarbanes |
| Bradley | Jepsen | Schmitt |
| Cannon | Kassebaum | Schweiker |
| Chafee | Laxalt | Simpson |
| Cohen | Leahy | Stafford |
| Cranston | Levin | Stevens |
| Culver | Lugar | Thurmond |
| Danforth | McClure | Tower |
| Dole | McGovern | Tsongas |
| Domenici | Metzenbaum | Wallop |
| Durenberger | Moynihan | Weicker |
| Eagleton | Packwood | Young |
| Goldwater | Pell | |
| Hatch | Percy | |

NOT VOTING—8

| | | |
|---|---|---|
| Church | Kennedy | Mathias |
| Gravel | Long | Williams |
| Hollings | Magnuson | |

The PRESIDING OFFICER. The decision of the Chair is not sustained as the judgment of the Senate.

The question is on agreeing to the amendment offered by the Senator from Kansas (Mrs. KASSEBAUM) to the committee amendment.

Mrs. KASSEBAUM addressed the Chair.

The PRESIDING OFFICER. The Senator from Kansas.

Mrs. KASSEBAUM. Mr. President, I would like to yield some time to the Senator from Maine, just a few minutes.

The PRESIDING OFFICER. Is there objection?

Mr. NUNN. Mr. President, what was the request? I did not understand it.

Mr. President, I do not believe, under the rules——

The PRESIDING OFFICER. The Senator from Kansas has the floor at the moment.

Mr. NUNN. Mr. President, you asked if there was an objection. I object.

The PRESIDING OFFICER. The Senator from Georgia objects.

Several Senators addressed the Chair.

Mrs. KASSEBAUM. Mr. President, I yield to the Senator from Kansas (Mr. DOLE).

Mr. DOLE. Mr. President, this Senator from Kansas yields 30 minutes to the Senator from Tennessee (Mr. BAKER) who could yield 30 minutes to the Senator from Kansas (Mrs. KASSEBAUM).

Mr. NUNN. Mr. President, the question is whether it comes out of the time of the Senator holding the floor. If that is the question, if it is unanimous consent to have the time counted against switching time, I would have to object. If it is simply for the purpose of putting something in the RECORD, I think the unanimous-consent request has to state that.

The PRESIDING OFFICER. The Senator from Kansas has the floor. The objection has been heard to her request.

Mrs. KASSEBAUM. Mr. President, I yield to the minority leader.

Mr. BAKER. Mr. President, I think we are making a mountain out of a molehill. All the Senator wants to do is put something in the RECORD. He has an hour of his own.

Mr. NUNN. Mr. President, will the Senator from Kansas yield to me for a moment?

Mrs. KASSEBAUM. Mr. President, I am happy to yield.

Mr. NUNN. Mr. President, the question is whether we are going to begin switching time around. As long as the Senator from Kansas is not requesting anything by the time and simply yielding for that purpose, I withdraw my objection.

Mr. ROBERT C. BYRD. Mr. President, reserving the right to object, all debate has to be germane, also. I do not have any objection to the Senator taking 30 seconds and putting something in the RECORD. But I do want to state that I am going to reserve my rights to object if Senators start transacting morning business or speaking on nongermane matters.

Mrs. KASSEBAUM. Mr. President, the Senator from Maine cannot remain in the Chamber. He would like to introduce his statement for the RECORD, which is pertaining to my amendment. So I just yielded some time to him before I continue with my debate.

The PRESIDING OFFICER. The Senator from Maine is recognized.

Mr. COHEN. Mr. President, if I could perhaps clarify this, the majority leader requested me to help chair a meeting in the Indian Affairs Committee. I was simply going to rise to express my support for the amendment offered by Senator KASSEBAUM and Senator LEVIN.

If it is determined at some point that registration is needed, whether in a pre- or post-mobilization plan, there is no rational basis for excluding women. Women have proven a valuable asset to the military, and they are performing a wide variety of military jobs with distinction.

Over 90 percent of all military occupations—basically, all those not related to combat—are now open to women. Defense Department studies have found that unit performance is not impaired by the presence of females. A 1972 naval experimental assignment, on the U.S.S. *Sanctuary*, found that women performed every shipboard function with "equal ease, expertise, and dedication" as their male counterparts.

A Defense Department study, "The Use of Women in the Military," concentrated on enlisted women. The analysis included promotion, accession prospects, retention, distribution of occupational groups, attrition, physical differences, cost comparisons, deployability, and combat restriction. The results showed that there was little difference between the performances of men and women. The study also indicated that more women were willing to enlist than were being taken and that women could be used to a much more productive extent.

Those findings are in line with the conclusions of a Brookings Institution study, prepared by Martin Binkin and Air Force Lt. Col. Shirley Bach. They concluded that the number of enlisted women in the Armed Forces could be increased by up to 33 percent.

At present, 150,000 service members, or about 9 percent of our Armed Forces, are female. The services intend to increase this number to about 250,000 women in 1985. Sufficient numbers of women are now volunteering to meet the services' requirements, just as the numbers of male volunteers since the advent of the Volunteer Force have run about at the level of requirements.

In time of mobilization and conscription, however, it may be necessary to significantly expand the size of our forces in a very short period of time. The requirements for combat soldiers will be high, but so will the requirements for the large numbers of military personnel who fill noncombat roles. What will happen if there are not enough women volunteers to meet the target of 250,000 by 1985? Will we take male draftees who could fill combat positions and place them in noncombat positions intended for women?

Debate about assignment of women to combat roles unnecessarily clouds the central issue—how the Nation can best meet its personnel requirements in time of mobilization.

The issue of women being directly assigned to combat positions has not been

challenged. Neither the Defense Department nor the other administration witnesses were in favor of assigning women to "combat" positions. Neither suggested that women and men would have to be drafted in equal numbers. All assumed a separate draft that would select women only for those positions which have been identified by the military as capable of being filled by women.

As Selective Service, Defense Department, and Office of Management and Budget witnesses said at a March 19 hearing of the Armed Services Committee's Manpower Subcommittee:

> The President's request for authority to register young women recognizes the reality that women are already providing all types of skills in every profession, including the military. The fact that women can perform effective service in the military is strongly supported by their record in past wars and in the peacetime Armed Forces. While often unrecognized, women have played an important role in the defense of the Nation in previous wars.

As the witnesses pointed out, women served as Army nurses and telephone operators in World War I. In World War II, Navy and Coast Guard women served as nurses, mechanics, truck drivers, parachute riggers, airtraffic controllers, and typists. Women landed on the beaches of Normandy and served in the South Pacific, North Africa, and during the invasion of Italy. In Vietnam, more than 7,000 women served in support roles which qualified for combat pay.

Our military services have opened many new jobs to women in the past few years. Today, 46 percent of all enlisted women are in nontraditional jobs. As administration witnesses told this subcommittee:

> The work women in the Armed Forces do today is essential to the readiness and capability of the forces. Our experience shows women performing well in a wide variety of jobs; being promoted as soon as men on the average; having higher test score averages and rates of high school completion. The President's decision to ask for authority to register women is therefore based on considerations of performance and equity.

The administration witnesses suggested that the question should be why women should not be registered, rather than why they should be. I agree with the contention that the burden of proof falls on those who would exclude women from this obligation.

If there is a mobilization, we will need a large infusion of both combat and noncombat personnel. It simply does not make sense to eliminate over half the eligible population of this Nation from consideration to fill those noncombat roles.

I share fully the position stated by the administration at the March 19 hearing:

> Finally, we would emphasize that although the equity argument is important, it does not lead to the conclusion that men and women should be inducted in equal numbers. Equity is achieved when both men and women are asked to serve in proportion to the ability of the Armed Forces to use them effectively. The administration's firm policy is that women will not be assigned to units in which close combat would be part of their duties. At the time of mobilization, the criterion of military efficiency will determine how many women will be used. The rate of induction for women as well as men will be determined by military need.

That hearing brought out the fact that the administration had not given sufficient consideration to those changes in the law which are necessary so that the services can draft according to their needs. I would hope that effort is underway right now. If we should face an emergency, we must be able to meet it with the full and most effective use of all our resources—which includes the talents of both our men and women.

Contrary to the conclusion of the Armed Services Committee, I believe that the constitutionality of excluding women remains to be resolved. No one who has addressed the issue of constitutionality has adequately resolved the following question: If the Department of Defense states it can accept 250,000 women by 1985, if mobilization occurs at that time, and if we have an insufficient number of women volunteers for those positions, what is the rational basis for drafting men for those noncombat positions?

So, I feel that registration of women, if there is to be a registration at some point, is essential. Not to include them would be to deny their capabilities and the excellent level of service they have given to their Nation.

The incompleteness and superficiality found in the administration's treatment of the registration of women is endemic to the entire draft registration proposal. The Department of Defense apparently has not made the determinations on the mobilization requirements in specific areas. Replacement estimates are gross figures based on various scenarios. What needs to be developed are specific plans for the mobilization scenarios, with approved personnel policies for assignments, tour lengths and other elements. Specific combat/noncombat personnel requirements should be established, and thought should be given to the implications of having a significant number of active duty personnel in the force with statutory combat restrictions.

Further, there needs to be a ruling on the procedures to be used in the event of a draft: After classification, should there be two lists of eligibles prepared, one for combat-qualified personnel and the other for those physically/mentally qualified for other than combat positions? If this were done, women and those men not qualified for combat positions would still have the opportunity to be called on in a time of national emergency. Many in the noncombat group have skills and abilities that could be valuable to the security of the Nation in a national emergency.

The issue of use of women after mobilization and development of complementary draft-eligible listings should properly be addressed before mobilization, but after the implementation of the basic mobilization systems. Not all men can serve in combat. This is not necessarily a reason why they should not be included on the draft-eligible listings for other than combat requirements, with separate draft calls for each category depending on the requirements on the Nation.

The issue has been looked at in terms of the peacetime environment in which the Defense Department, indeed the Nation, is currently operating. We have to look to the future, to the type of catastrophic national emergency under which Congress would authorize the President to induct young people to meet our manpower requirements in mobilization. How can we be certain that we can afford to ignore the capabilities of half our population in such an emergency? How can we be certain that the next war will be like the last one, or the one before that?

To exclude the involuntary service of women out-of-hand would be imprudent. At the very least, the Defense Department should be required to provide detailed plans and programs for the induction and use of women, along with noncombat-qualified males, in a national mobilization effort. Only then will Congress be able to determine if this valuable resource should be ignored in maintaining the security of the Nation.

Mrs. KASSEBAUM. Mr. President, I am appreciative of——

The PRESIDING OFFICER. Will the Senator from Kansas suspend momentarily? There will be order in the Senate.

The Senator may proceed.

Mrs. KASSEBAUM. Mr. President, I am appreciative of the support that I have had on this amendment in order to have a debate on this issue, because I do feel that it is an important one and I think a number of Senators do also.

Registering women as well as men is a matter of simple commonsense and equity. The number of women in the armed services has increased dramatically in recent years, and they now comprise over 8 percent of our military manpower. This number is expected to grow to 12 percent by 1985. By all accounts, women in the service are performing well and are making significant contributions to our defense capability. In the event of mobilization, women as well as men will be needed—just as they have been needed in past conflicts.

In mentioning the need for women in the service, I want to make it clear from the outset that I am not talking about placing women in combat positions. President Carter, Defense Secretary Brown, the Joint Chiefs of Staff, and the NATO Commander, General Rogers—all of whom have endorsed the inclusion of women under registration—are not talking about women in combat. In the past, women have served in key noncombat positions; and they have done so because they were qualified to do the job.

To place the combat issue is perspective, we should keep two things foremost in mind. One, the nature of the military today is such that—even with current restrictions against women in combat—there are few occupational specialities within the services from which women are excluded.* Second, efforts to link the

*Number of occupational specialities closed to women by service: Army: 22 of 345. Air Force: 4 of 230. Navy: 16 of 99. Marines: 4 of 38.

questions of registering women and placing them in combat involve an insupportable leap in logic. The recent graduation of the first women to enter the service academies calls to mind that an attempt was made during debate over admitting women to link the academy and combat issues. Congress correctly rejected the idea that these concepts are linked.

It is significant, I feel, that a Selective Service report issued this January included assumptions regarding the number of women who would be needed within the first 6 months of mobilization. This is an illustration of the extent to which women have become accepted as an important feature of our defense establishment. It certainly represents an important step forward in planning efforts as compared with those in the past. Numerous examples exist of past failures to acknowledge that women as well as men would be needed to meet defense requirements. In hearings before the House Armed Services Committee, Maj. Gen. Jeanne M. Holm offered a striking example of this type of planning failure in World War II in noting that:

> The Army could not make up its mind how many women they wanted or could use. First, they decided to take 25,000 but then discovered they could use 1.5 million but reluctantly realized that they could not get that many without a draft, so they settled for 150,000 within a year only to find that that was also unrealistic.

Given the growing role of women in the military, I do not feel we can continue to deny the contributions of women by excluding them from registration.

Perhaps even more important, is the fact that women should not be excluded from participating in a process which represents commitment to our Nation and its principles. Whether or not registration effectively enhances our military mobilization capability, this concept of commitment is crucial. Registration instills a sense of responsibility and awakens young people to the necessity for active involvement in the political process. This is true for both men and women. Failure to include women will lead only to divisiveness at a time when the development of a national unity is essential.

I feel strongly that the Senate must address this issue now. House Joint Resolution 521 provides us with the best opportunity for full floor consideration of the registration issue by this Congress. I recognize that we will need to act later to amend the authorizing legislation in order to assure that women will not be left out of the registration process, and I feel we can and should act quickly in doing so. In the meantime, we risk doing more harm than good by disregarding this crucial issue of equity at this time.

Again, I want to emphasize that equity is the key issue which my amendment addresses. The question before us is not "Should there be a peacetime draft?" The question is not even, "Should anyone—male or female—be registered?" The issue of registration is the one we will address when we have an up and down vote on the joint resolution itself, and that vote will reflect the feelings of this body as to the registration question.

What we are considering now is simply: "If we are to have a system of registration, should we or should we not apply it equitably to men and women?" I strongly believe that the establishment of a registration process which ignores this basic question of equity and which disregards the need to include young women as full participants in our society is ill-advised, divisive, and possibly counterproductive.

Mr. WARNER. Mr. President, I rise in opposition to the amendment of my distinguished colleague from Kansas. As a member of the Senate Armed Services Committee's Subcommittee on Manpower and Personnel and also as a lawyer, I have taken considerable interest in this issue. I have taken a special interest because I firmly support this Nation moving toward a goal of striking down inequities between men and women in all phases of life, save one: the military. And why do I take that position?

Mr. President, if we go back in history, this Nation has never intentionally sent women into combat situations. I do not foresee across the Nation any mood or any reason for a change in that time-tested, historical precedent.

Were my distinguished colleague successful in establishing by law equity as she so strongly suggests, equity as a principle, and thereby require both men and women to be subjected equally to any registration, my judgment as a lawyer and as a Senator is that that would be the first step toward the Federal court system providing for equity throughout the military career of a woman.

I think my colleague would agree that presently in the military, in accordance with the long-tested practice of the United States, there is discrimination by which, from the Commander in Chief on down to subordinate commanders, military commanders are permitted to make personnel assignments based on gender. Women are prohibited from performing certain functions in the military and are prohibited from certain assignments—most notably combat assignments.

Now, if the Federal court were to determine that Congress, speaking for the people, is reversing this time-tested principle and establishing as the first step in the military career, namely, draft registration equality, then the courts would be hard put at some later phase in the military career to reimpose inequality such that a commander's discretion to exclude women from combat would continue.

That is the reason that I rise in opposition to my colleague's amendment.

Again, in short, it is my deep concern that the Federal court system will determine that the Congress has expressed, in accordance with the Senator's very persuasive argument, that at long last equity should be established in a military career between men and women.

It starts with registration and, therefore, it cannot be reimposed at any point throughout a military career, and that will provide a basis for the Federal courts to strike down a long line of decisions whereby a Commander in Chief and subordinate commanders have precluded women from serving in combat positions.

Mr. President, I yield to the distinguished Senator from Kansas who wishes to reply to my question.

Mr. JAVITS addressed the Chair.

Mrs. KASSEBAUM. If the Senator from New York will allow me just a minute, I would like to respond briefly to the Senator.

The PRESIDING OFFICER. Would the Senator suspend momentarily?

The Senator from Virginia may yield for a question only.

Mr. WARNER. That is right. I am yielding to the Senator from Kansas for the purpose of a question.

Mrs. KASSEBAUM. Will the Senator yield for a question.

Mr. WARNER. Yes.

Mrs. KASSEBAUM. Because I think this raises a point that is really not germane to this argument.

We are not talking about combat. As a matter of fact, it has been determined the courts defer to Congress when and if we would have an issue before us of draft registration and then that would be, as has been determined in the past, excluded from women's participation.

I feel that, really, this is not the heart of this issue because I think commonsense and good judgment will prevail, if and when we would have that issue, in the fact that we would draft to a need and that could not even become an issue that the courts would decide.

Mr. WARNER. Yes. But that kind of a situation would be sure to bring a court suit where some young man would bring suit saying that he is being forced into combat unfairly while women are exempted to some degree. He will argue that he was registered and drafted on a coequal basis, and therefore he thinks it is inequitable to be forced into combat when women are not sent to combat because of discrimination, quite frankly.

So I say to the Senator, if the Congress speaks to this issue and makes a law which treats men and women equally for purposes of registration, there is the danger that the Federal courts will construe that as being the first step in a military career and thereby striking down the right of the Commander in Chief, as it now is exercised under court decision, to practice discrimination and exclude women.

Mrs. KASSEBAUM. I would like to point out to the Senator from Virginia that, indeed, it was the subcommittee of the Armed Services Committee that said the courts would defer to a decision of Congress at that time when we were debating a draft registration issue.

Mr. WARNER. But Congress cannot decide for purposes of registering for the benefit of draft, for the benefit of boot camp, to have equality and then all of a sudden arbitrarily stop equality, or equity as the Senator has said, at some point, and then only men go forward.

Mrs. KASSEBAUM. As I say, I do not believe this is the issue now because it is something that would be determined where there would be a need.

That, I think, would hold precedence if and when we would be discussing conscription.

Mr. WARNER. I yield to the Senator for the purposes of a question.

Mr. JAVITS. I need the floor on my own time, unless I can get unanimous consent to be yielded to and use my own time.

The PRESIDING OFFICER. I say to the Senator from New York that the Senator from Michigan was on his feet at an earlier stage before the Senator from New York. The Senator from Virginia at this moment still has the floor.

Mr. WARNER. Mr. President, I will momentarily yield the floor. First, however, I would like to read to my colleagues the report of the Subcommittee on Manpower and Personnel of the Senate Armed Services Committee on the rejection of legislation requiring the registration of women.

The report is as follows:

REPORT OF THE SUBCOMMITTEE ON MANPOWER AND PERSONNEL ON THE REJECTION OF LEGISLATION REQUIRING THE REGISTRATION OF YOUNG WOMEN UNDER THE MILITARY SELECTIVE SERVICE ACT

The Subcommittee rejected a proposal to require the registration of young women under the Military Selective Service Act.

Mindful of the Congress' constitutional duty under Article I, section 8, "to raise and support Armies," to "provide and maintain a Navy," and "to make Rules for the Government and Regulation of the land and naval Forces," the committee has carefully analyzed deficiencies in our mobilization capabilities. The Committee has expressed its serious concern over manpower problems that are so severe that the Military Services are not now capable of meeting our national security requirements in terms of manpower in the event of mobilization. Peacetime registration will solve some, but not all, of these problems.

In 1979 the Committee reported a bill (S. 109) mandating peacetime registration of males. President Carter, in his State of the Union Address in January 1980, recognized the need for registration to improve our defense posture. The issue of whether women should be registered became a dominant part of this discussion, confusing the real military issues. The Subcommittee on Manpower and Personnel held several additional hearings in 1980 on the registration plan presented by the President, on the question of including women in the plan, and on the military issues involved in registration and conscription. The Committee remains convinced that registration is vitally necessary and that women should not be included in any registration and induction system. This judgment is based upon the Committee's assessment of the military needs of the nation, and its comprehensive study of the registration issue. It is also based on the Committee's assessment of the societal impact of the registration and possible induction of women.

In the Committee's view, the starting point for any discussion of the appropriateness of registering women for the draft is the question of the proper role of women in combat. The principle that women should not intentionally and routinely engage in combat is fundamental, and enjoys wide support among our people. It is universally supported by military leaders who have testified before the Committee, and forms the linchpin for any analysis of this problem. History gives examples of women who fought alone and with men during past periods of strife. Women have defended themselves against attack and have been inadvertently drawn into combat activities in defense of their country. Although such examples exist, throughout history women have not regularly participated in combat and no society has ever relied on conscription of women primarily for combat roles. Current law and policy exclude women from being assigned to combat in our military forces, and the Committee reaffirms this policy. The policy precluding the use of women in combat is, in the Committee's view, the most important reason for not including women in a registration system.

Registering women for assignment to combat or assigning women to combat positions in peacetime then would leave the actual performance of sexually mixed units as an experiment to be conducted in war with unknown risk—a risk that the Committee finds militarily unwarranted and dangerous. Moreover, the Committee feels that any attempt to assign women to combat positions could affect the national resolve at the time of mobilization, a time of great strain on all aspects of the Nation's resources.

Women now volunteer for military service and are assigned to most military specialties. These volunteers now make an important contribution to our Armed Forces. The number of women in the military has increased significantly in the past few years and is expected to continue to increase. Only 6 percent of the enlisted skills in the Army are closed to women as a result of the exclusion of women from combat. But these include infantry specialists, armor specialists, combat engineers and positions in field artillery and air defense.

It is in these skills, and more specifically in the very large number of positions needed to be filled in infantry and armor skills, where mobilization manpower is so severely short. It is also these skills that are most difficult to recruit for during peacetime. The Personnel Chiefs of the Army and Marine Corps, for example, testified that it is in these combat skills where the All-Volunteer Force has failed to supply sufficient recruits, and where current strengths of combat units is often woefully inadequate. In peacetime, although only 6 percent of Army enlisted skills are closed to women, fully 42 percent of all billets filled by enlisted personnel in the Army are in specialties, skills or units not available to women. These incude noncombat positions in close support units that could come under enemy fire.

All the Military Services testified at length about their mobilization plans, and the place of women in those plans. Both the civilian and military leadership agreed that there was no military need to draft women. Because of the combat restrictions, the need would be primarily for men, and women volunteers would fill the requirements for women. The argument for registration and induction of women, therefore, is not based on military necessity, but on considerations of equity. The Army and the Marine Corps testified that because of present shortages in combat arms and the nature of the emergency situation envisaged, the primary need is for combat replacements from the induction system. Selective Service plans provide for drafting only men during the first 60 days, and only a small number of women would be included in the total drafted for the first 180 days.

In addition, there are other military reasons that preclude very large numbers of women serving. Military flexibility requires that a commander be able to move units or ships quickly. Units or ships not located at the front or not previously scheduled for the front nevertheless must be able to move into action if necessary. In peace and war, significant rotation of personnel is necessary. We should not divide the military into two groups—one in permanent combat and one in permanent support. Large numbers of noncombat positions must be available to which combat troops can return for duty before being redeployed.

It is also clear that an induction system that provided half men and half women to the training commands in the event of mobilization would be administratively unworkable and militarily disastrous. It has been suggested that all women be registered, but only a handful actually be inducted in an emergency. The Committee finds this a confused and ultimately unsatisfactory solution.

First, the President's proposal does not include any change in section 5(a)(1) of the Military Selective Service Act, which requires that the draft be conducted impartially among those eligible. Administration witnesses admitted that the current language of the law probably precludes induction of men and women on any but a random basis, which should produce roughly equal numbers of men and women. Second, it is conceivable that the courts, faced with a Congressional decision to register men and women equally because of equity considerations, will find insufficient justification for them inducting only a token number of women into the Services in an emergency. Indeed, it is hard to see how the equity which is the aim of advocates of an equal registration system is achieved by a system under which a vastly larger number of men than women would actually be called to duty. If the Congress were to mandate equal registration of men and women, therefore, we might well be faced with a situation in which the combat replacements needed in the first 60 days—say 100,000 men—would have to be accompanied by 100,000 women. Faced with this hypothetical, the military witnesses stated that such a situation would be intolerable. It would create monumental strains on the training system, would clog the personnel administration and support systems needlessly, and would impede our defense preparations at a time of great national need.

Other administrative problems such as housing and different treatment with regard to dependency, hardship and physical standards would also exist.

Finally, the Committee finds that there are important societal reasons for not changing our present male-only system of registration and induction. The question of who should be required to fight for the Nation and how best to accomplish that end is a social issue of the highest order, with sweeping implications for our society.

In addition to the military reasons, which the Committee finds compelling, witnesses representing a variety of groups testified before the Subcommittee that drafting women would place unprecedented strains on family life, whether in peacetime or in time of emergency. If such a draft occurred at a time of emergency, unpredictable reactions to the fact of female conscription would result. A decision which would result in a young mother being drafted and a young father remaining home with the family in a time of national emergency cannot be taken lightly, nor its broader implications ignored. The Committee is strongly of the view that such a result, which would occur if women were registered and inducted under the Administration plan, is unwise and unacceptable to a large majority of our people.

In concluding that a registration and induction system involving only male citizens is the best course to ensure the country's preparedness and its ultimate ability to protect itself, the Committee was mindful of arguments made by some critics of registration that the Constitution requires both men and women to be treated equally. The argument rests on an interpretation of the principle of equal protection that would mandate an equal sharing among men and women of the burden of registration and conscription. The Committee has carefully considered constitutional arguments raised in detailed statements from opponents of a male-only registration and induction system.

In the Committee's view, the arguments for treating men and women equally—so compelling in many areas of our national life—simply cannot overcome the judgment of our military leaders and of the Congress itself that a male-only system best serves our national security. The Supreme Court's most recent teachings in the field of equal protection cannot be read in isolation from its opinions giving great deference to the judgment of Congress and military commanders in dealing the management of military forces and the requirements of military discipline. The Court has made it unmistakably clear that even our most fundamental constitutional rights must in some circumstances be modified in the light of military needs, and that Congress's judgment as to what is necessary to preserve our national security is entitled to great deference.

The Committee took note of an opinion by the Justice Department analyzing the legal issues and concluding that male-only registration is constitutionally defensible. In addition, the Committee's own General Counsel, the Congressional Research Service and several independent legal scholars furnished the Committee with opinions supporting the constitutionality of male-only registration. These documents, along with the opposing views, are reprinted in the Committee's hearings on this matter.

Therefore, while taking seriously the constitutional arguments raised by opponents of a male-only system, the Committee concludes that there is no constitutional impediment to the exclusion of women from registration and induction, and based on the following specific findings rejects the proposal to register women. Further, for the reasons outlined above, the Committee concludes that peacetime registration of men is necessary.

SPECIFIC FINDINGS

(1) Article I, section 8 of the Constitution commits exclusively to the Congress the powers to raise and support armies, provide and maintain a Navy, and makes rules for government and regulation of the land and naval forces, and pursuant to these powers it lies within the discretion of the Congress to determine the occasions for expansion of our armed forces, and the means best suited to such expansion should it prove necessary.

(2) An ability to mobilize rapidly is essential to the preservation of our national security.

(3) A functioning registration system is a vital part of any mobilization plan.

(4) Women make an important contribution to our national defense, and are volunteering in increasing numbers for our armed services.

(5) Women should not be intentionally or routinely placed in combat positions in our military services.

(6) There is no established military need to include women in a selective service system.

(7) Present manpower deficiencies under the All-Volunteer Force are concentrated in the combat arms—infantry, armor, combat engineers, field artillery and air defense.

(8) If mobilization were to be ordered in a wartime scenario, the primary manpower need would be for combat replacements.

(9) The need to rotate personnel and the possibility that close support units could come under enemy fire also limits the use of women in non-combat jobs.

(10) If the law required women to be drafted in equal numbers with men, mobilization would be severely impaired because of strains on training facilities and administrative systems.

(11) Under the Administration's proposal there is no proposal for exemption of mothers of young children. The Administration has given insufficient attention to necessary changes in Selective Service rules, such as those governing the induction of young mothers, and to the strains on family life that would result from the registration and possible induction of women.

(12) A registration and induction system which excludes women is constitutional.

Mr. President, I ask unanimous consent to have printed in the RECORD the Yale University letter of May 2, 1980, addressed to Senator NUNN. That letter addresses the issue women and conscription and is signed by three distinguished professors of law at the Yale Law School.

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

YALE UNIVERSITY LAW SCHOOL,
*New Haven, Conn., May 2, 1980.*

Hon. SAM NUNN,
*Committee on Armed Services,*
*U.S. Senate, Washington, D.C.*

DEAR SENATOR NUNN: We are glad to respond to your request for our opinion on the constitutionality of conscription limited to men. This letter will not consider whether the United States should restore the draft at this time, or whether it is wise policy to draft men without drafting women. It will be confined to the question whether recent judicial rulings on equality between the sexes under the Constitution—or, indeed, the possible ratification of the Equal Rights Amendment—would prevent Congress from drafting men for the armed forces without also drafting women.

We conclude that it is and will continue to be possible for Congress to conscript men, or women, or both men and women, in the exercise of its constitutional discretion to raise and support the armed forces it deems necessary and proper to defend the interests of the nation. If Congress should decide that the conscription of men is an appropriate way to create the kind of armed forces the United States requires to deal with threats to its security, as Congress perceives those threats, no court could challenge its decision. Under the Constitution as it stands, and under the Equal Rights Amendment, if it should be ratified, Congressional decisions of this order are "political questions" entrusted by the Constitution to the judgment of Congress. In such instances, the sole restraints which protect the people against the abuse of authority, as Chief Justice Marshall remarked of a related Constitutional power, that of declaring war, are "the wisdom and the discretion of Congress, their identity with people, and the influence which their constituents possess at elections."

The ultimate test for law, Justice Holmes often pointed out, is that it makes sense—makes sense, he carefully insisted, in terms of what is regarded as just and convenient by a particular culture at a particular stage in its historical development. To understand law, Holmes wrote:

"Other tools are needed besides logic. It is something to show that the consistency of the system requires a particular result, but it is not all. The life of the law has not been logic: it has been experience. The felt necessities of the time, the prevalent moral and political theories, intuitions of public policy, avowed or unconscious, even the prejudices which judges share with their fellow-men, have had a good deal more to do than the syllogism in determining the rules by which men should be governed."

In the perspective of Holmes' standard, the question whether Congress can raise military forces by conscripting men of a certain age answers itself. Those who wonder whether conscripting men without conscripting women would violate modern constitutional rules about the equal dignity of men and women are simply pressing precedent beyond the boundaries of logic and good sense. Recent judicial decisions on the subject rightly demand punctilious equality between men and women in systems of education and social security, for example, and in various administrative arrangements of the military establishment where the situation of men and women is in fact the same. But the considerations of policy governing those cases cannot be applied mechanically to the altogether different problem of organizing, training, and using the armed forces in combat.

The duty and power of Congress "to raise and support" a military establishment are its ultimate responsibilities. In the end, the survival of the Republic depends upon the skill, leadership, and spirit of its armed forces. Now, as always, they are the foundation of the state. In the exercise of its constitutional authority, Congress must determine what kind of armed forces are needed to defend the vital interests of the United States, both by deterring war and, if deterrence fails, by winning it.

Like every other power under the Constitution, the war power is subject to a number of constitutional limitations, some enforced by the courts, and others by custom and by the political process.

Analysis of the question you have posed should begin with two related axioms the Supreme Court has invoked several times in discussing the constitutional character of the war power. The first is that "the war power is the power to wage war successfully", in the telling words of Chief Justice Hughes. The second is Justice Goldberg's comment that the Constitution "is not a suicide pact". These twin axioms color the interpretation of every aspect of the war power.

That being said, it is equally axiomatic that the war powers of Congress and of the President are to be read with and limited by the other provisions of the Constitution. The signers of this letter are firm advocates of the view that the war powers of Congress and of the President are subject to constitutional scrutiny by the courts in appropriate cases and by Congress and by public opinion in all cases.[1]

One class of constitutional limitations on the exercise of the war power is represented by Ex parte Milligan, 71 U.S. (4 Wall.) 2 (1866), and Reid v. Covert, 354 U.S. 1 (1957), two decisions of supreme importance in maintaining the balance between the civil and the military power. Those cases struck down as unconstitutional laws under which civilians were tried by military tribunals. There is little challenge nowadays to the proposition that civilians be tried in civil courts and not before courts-martial or military commissions when—in the opinion of the courts—it is possible for the courts to function.[2]

Gillette v. United States, 401 U.S. 437 (1971), represents another familiar and important constitutional problem with respect to the powers of Congress over the military system. In that case, the Supreme Court rejected the claim that it was unconstitutional for Congress to exempt from military service only those who by reason of religious training and belief are conscientiously opposed to participation in war in any form. One of the appellants in Gillette objected to participation in the Vietnam conflict because of his "humanist approach to religion", the other, a devout Catholic, because he thought the Vietnam war was an "unjust war" under Catholic doctrine. Neither appellant would refuse to serve in wars he con-

[1] See E. V. Rostow, *The Japanese American Cases—a Disaster*, 54 Yale Law Journal 489 (1945).

[2] It must be conceded that Korematsu v. United States, 323 U.S. 214 (1944), and Ex parte Quirin, 317 U.S. 1 (1942), qualify the force of this generalization.

sidered wars of national self-defense or otherwise "just" wars. Both appellants relied inter alia on the establishment clause of the First Amendment, objecting to the preference granted by statute to conscientious objectors whose views were based on religious belief.

However illogical it may be to distinguish between those who are conscientious objectors to war on the basis of religious belief and those who are pacifist by non-religious philosophical conviction, and between those who object to all war rather than to a particular war, the Supreme Court upheld these distinctions as well within the discretion entrusted to Congress by the Constitution. As earlier cases had indicated, exemption from the obligation of military service is a matter of grace so far as Congress and the Constitution are concerned—a "happy tradition", in the words of Chief Justice Hughes—and not a matter of constitutional right. Hamilton v. Regents of the University of California, 293 U.S. 245 (1934), United States v. Macintosh, 283 U.S. 605 (1931). And the overriding imperatives of military necessity, as declared by Congress, would have made any other rule for conscription hopelessly complex, and perhaps unworkable.

II

The Gillette case is in itself sufficient modern precedent to sustain the constitutionality of a conscription program confined to men. After all, discrimination based on religion is quite as dubious constitutionally as discrimination based on sex. We shall, however, also consider some of the recent cases on discrimination between men and women much discussed by opponents of the draft. We do not believe that the recent development of constitutional law represented by those cases weakens Congress' power to enact a draft which would conscript men without conscripting women. The Equal Rights Amendment, if ratified, would not alter this conclusion.

Much has been made of the announcement of new tests to be used in determining the constitutionality of gender based distinctions under the Fifth and Fourteenth Amendments. Discrimination by gender is a "suspect classification", it is said, and courts will no longer be satisfied by a showing that there is a "rational basis" for a Congressional decision to draft men without drafting women. Such a decision by Congress should be upheld only if the government meets a heavy burden of proof and satisfies the courts after "strict scrutiny" that "compelling" governmental interests justify the decision of Congress.

It is doubtful in our view whether these contrasting formulae have real rather than symbolic legal significance. But the issue is irrevelant to the problem addressed in this letter. A Congressional decision to conscript men but not women would be upheld under the most severe and suspicious version of the constitutional test. The issue is rooted in the nature of the problem of organizing military forces capable of victory under contemporary circumstances. The case for conscripting men only would overcome any burden of proof, however phrased.

In order to examine the question in terms of Holmes' thesis quoted at the beginning of this letter, we start with the proposition that American society today will not consider drafting women for combat service. Whether this conviction is a moral judgment or a prejudice, a "felt necessity" or an echo of earlier, chivalric beliefs about the proper role of women in life, the existence of the belief is a fact reflected in statutes no group in Congress would now change, and no court would declare unconstitutional.[3]

[3] An aberrant case to the contrary was quickly overruled. United States v. Reiser, 394 F. Supp. 1060 (D. Mont., 1975), reversed, 532 F. 2nd 673 (C.A. 9th, 1976).

Under the statutes women cannot be assigned to combat duty. It follows that when and if Congress decides to resume conscription, it will face a simple mathematical problem. In order to raise armed forces large enough to deter and if necessary defeat the formidable military establishment of potential enemies, a considerable call-up of men would be necessary. If the Constitution should be interpreted to require Congress to treat men and women alike in the draft, Congress would have to draft far more women than it needs to staff non-combat jobs in the military. As a result, the equal drafting of men and women would cause great and unnecessary disruption to no purpose that could not be served better by the enlistment of women in appropriate numbers for non-combat service.

Thus the essential problem faced by Congress in deciding whether to draft men but not women is altogether different from the policy considerations which led to the laws and regulations reviewed in cases like *Frontiero* v. *Richardson*, 411 U.S. 677 (1973). That case held unconstitutional a statute which provided that for the purpose of obtaining increased quarters allowances and medical and dental benefits, a serviceman may claim his wife as a dependent whether or not she is in fact dependent, whereas a servicewoman may not claim her husband as a dependent under these programs unless he is in fact dependent on her for more than half his support. The difference in treatment of men and women was unconstitutional, the court ruled, although a majority could not agree on a rationale for the judgment. Clearly, both on the record and beyond the record, there was no evidence of a governmental interest which might explain or justify the difference in treatment beyond shadowy reasons of habit. In this, *Frontiero* was like *Reed* v. *Reed*, 401 U.S. 71 (1971), which held unconstitutional an Idaho statute preferring men over women in the appointment of administrators of estates. No ground was advanced to persuade the Court that the statutory preference rested on any ground more cogent than the notion that "women's place is in the home."

*Owens* v. *Brown*, 455 F. Supp. 291 (D. Col., 1978), illustrates the way in which the issue presented to us for comment would (and should) be handled by the courts. *Owens* dealt with the constitutionality of a statute barring the assignment of female personnel in the Navy to duty on vessels other than hospital ships and transports. The statutory provision had been added to the bill without discussion in 1948, and had not been proposed by the Defense Department. The Court fully recognized the deference it owed to decisions derived from the discretion of the Congress and the President on complex matters of military judgment. But this case did not concern "the validity of a statute that precluded women from being considered for combat shipboard assignments. (455 F. Supp. at pp. 306–307). In such an event, the Court said, the defendant's line of reasoning would have force. The rationale behind the statute involved in *Owens'* was obscure; no persuasive governmental interests had been advanced in its support; the Court concluded that the statute was overboard and discriminatory in hampering the careers of women in the Navy as compared with men, without contributing significantly to efficiency, morale, or discipline.

Some military regulations which discriminate between men and women have been upheld.

Of these, the most important is *Schlesinger* v. *Ballard*, 419 U.S. 498 (1975). There the Supreme Court approved a statute providing different rules for men and women in the Navy with respect to mandatory discharge for failure to earn promotion. At that time, male line officers in the Navy were discharged if they were not promoted within nine years. Women officers were given thirteen years before discharge for failure of promotion. The Court upheld the difference in treatment as constitutional. The Court said:

"In both *Reed* and *Frontiero* the reason asserted to justify the challenged gender-based classifications was administrative convenience, and that alone. Here, on the contrary, the operation of the statutes in question results in a flow of promotions commensurate with the Navy's current needs and serves to motivate qualified commissioned officers to so conduct themselves that they may realistically look forward to higher levels of command. This Court has recognized that "it is the primary business of armies and navies to fight or be ready to fight wars should the occasion arise." *Toth* v. *Quarles*, 350 U.S. 11, 17. See also *Orloff* v. *Willoughby*, 345 U.S. 83, 94. The responsibility for determining how best our Armed Forces shall attend to that business rests with Congress, see U.S. Const., Art. I, § 8, cls. 12–14, and with the President. See U.S. Const., Art. II, §2, cl. 1. We cannot say that, in exercising its broad constitutional power here, Congress has violated the Due Process Clause of the Fifth Amendment."

Another typical instance of such a result is *Campbell* v. *Beaughler*, 519 F. (2d) 1307 (C.A. 9th, 1975). There the Ninth Circuit upheld a Marine Corps regulation prescribing different rules for men and women with regard to hair styles and wigs. The regulation was justified, the Court said, by the necessities of combat and combat training. Those necessities do not apply to women Marines, who do not train for combat.

So far as the issue considered in this letter is concerned—the drafting of men without drafting women—it is difficult to imagine any way in which the reasoning of the recent Supreme Court decisions would be altered by the ratification of the Equal Rights Amendment. Section 1 of the Amendment provides that "equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex." That provision could hardly be interpreted to invalidate the statutes which now forbid the assignment of female military personnel to combat. But, as we have seen, the conviction that women should not be compelled to engage in armed combat is the heart of the matter, so far as the pattern of draft legislation is concerned.

III

We can see no constitutional obstacle to the proposition that Congress may enact laws providing for the conscription of men for military service without conscripting women. The conflicting interests Congress must balance in making this fundamental judgment cannot be compared to those at issue in cases dealing with gender based discrimination in welfare systems, the administration of estates, establishing the age at which people may drink liquor in public, or the other controversies which have been litigated.

Yours sincerely,

JOSEPH W. BISHOP, Jr.
ROBERT H. BORK.
EUGENE V. ROSTOW.

The signers of this letter are Professors of Law at the Yale Law School.

Mr. WARNER. I yield the floor, Mr. President.

Mr. JAVITS. Mr. President, may I ask the Senator from Michigan a question?

Mr. LEVIN. I am happy to yield 5 minutes to the Senator from New York.

Mr. JAVITS. I thank the Senator.

Mr. President, I yield myself 5 minutes.

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

Mr. JAVITS. Mr. President, I am moved to respond to the point just made by Senator WARNER in this way, that I

think it would be very difficult to apply in the courts the doctrine he uses, because not everybody is assigned to combat if one is a man. One might be assigned to a typewriter, or an adding machine, or numerous other noncombat activities.

It seems to me that it is well within the power of the Commander in Chief to determine what will be one's duties once one is in the Armed Forces.

Women should not be in combat. They will not be in combat, and no court will make any Commander in Chief put them in combat any more than the court can make some Commander in Chief put a new recruit into combat.

But, be that as it may, Mr. President, I think that answers the question.

I would like to ask the author of the amendment a question.

There are women in this country who have a conscientious objection to registering at all, even under this law, under which my colleague would qualify them.

By the way, I support her fully and will support this amendment.

But I would like to get one legal question settled, as there is this conscientious objection on the part of some women. I am speaking of orthodox Jewish women. In many cases, they will be unable to accommodate their objection by checking the box originally—but no longer—in this bill, because they have to register to check the box.

So I ask my colleague this, under section 453 of title 50 of the United States Code, War and National Defense, the provision to which I refer relates to actual registration which the President has the power to impose.

Let us remember, all we are doing here is dealing with an appropriation.

That gives the President such power, that is, relating to registration, that calls for registration at such time or times, and place or places, and in such manner as shall be determined by proclamation of the President and by rules and regulations prescribed thereunder.

Therefore, is it the legislative intent of my colleague from Kansas that the President may decide that under rules and regulations which he has the power to make, once registration is affixed, this particular group of women, or whatever of them choose to avail themselves of it, may be excused from registration altogether; will the President continue to have that power under this amendment? Also, would the Senator support an appropriate amendment at a later time the resulting condition of which would be to accomplish making section 453 appropriate to the registration of women?

Mrs. KASSEBAUM. Mr. President, I respond to those questions of the Senator from New York by saying yes, certainly, I would regard that as the intent of the legislation, that the President continues to have the power he does now on this.

Mr. JAVITS. I thank my colleagues.

Mr. WARNER. Will the Senator yield for a question?

Mr. JAVITS. Yes.

Mr. WARNER. I refer to this provision which I am informed applies only to men. Perhaps this issue can be clarified by my distinguished colleague.

Mr. JAVITS. I think what I am trying to ascertain is this, once this amendment is passed, it would have to apply to women, as well, if it is passed.

Mr. WARNER. As drafted by the Senator from Kansas, I do not believe that it would change.

Mr. JAVITS. I thank my colleague.

If that is the view of the staff and if this amendment passes, I will take a good hard look at it and an appropriate amendment will be required at a later time making the same provision for women as for men in section 453.

Mr. WARNER. I expressed it as my view, although I have the benefit of counsel here.

Mr. JAVITS. Yes. That is very important, because it is a matter of first impression to me.

Mr. WARNER. As my distinguished colleague will note, because of his statement to that effect, does the Senator feel that the Federal courts would not turn aside the longstanding precedent of excluding women from combat? What is it that my colleague feels is now the basis on which the Commander in Chief excludes them from combat?

Mr. JAVITS. I think it is competence and fitness for combat. The Commander in Chief cannot be ordered by any court. That is his judgment.

Mr. WARNER. Right now, based upon my interpretation of the rulings of the Supreme Court of the United States, the Court has held that, under the Constitution of the United States, the power to establish the President and the Congress have the power to establish rules providing discrimination, such that only men go into combat. The Court's interpretation of the Constitution gives the President and Congress jointly that power, which literally has been the law of the land for over 200 years.

My concern is that if we take the first legislative initiative in our history to provide for equity between men and women at the first step in their military careers, the Federal court system will say "Equity at the beginning, equity throughout."

Mr. JAVITS. I am sorry—I do not go with the Senator on that. I believe that the power of the Commander in Chief would continue in that case for women as it would for men.

Mr. WARNER. At what point, then, in the military career, in the Senator's judgment, could the President reimpose discrimination?

Mr. JAVITS. He is a commander. It is not a discrimination. I have given the Senator an example. Does everybody go into combat who is a man?

Mr. WARNER. No, but right now——

The PRESIDING OFFICER. The Senator from New York has used 6 minutes of his time.

Mr. JAVITS. I yield myself 1 additional minute.

Mr. WARNER. At this time, the practice of discrimination is solely on the basis of sex, as to who can qualify to go into combat positions and who cannot. Some men cannot for example, measure up to the arduous requirements for combat and for that reason do not qualify. They, by virtue of failing to qualify, become ineligible to go into combat.

Mr. JAVITS. Is the Senator contending that a court can make a Commander in Chief designate certain men for combat and make the judgment that they do qualify for combat?

Mr. WARNER. I contend that the court could require the Commander in Chief to give each man equal opportunity to qualify for combat. The President exercises that discretion now, within the framework of rules controlling only men; but if we establish a legislative precedent treating women equally, the President would likely lose his discretion by Federal court rulings.

Mr. JAVITS. That is what Senator KASSEBAUM is contending for—that he should have the same power over women that he has over men. We are confident that they will not be sent into combat.

Mr. WARNER. On what basis?

Mr. JAVITS. On the basis of the wisdom of it and our particular views about it, and the general views of the country.

Mr. WARNER. I am certain that there are women who will go into training and who can qualify, by virtue of their skills and their determination, to fight alongside men in combat—and fight as well, if not better.

Mr. JAVITS. We are not arguing that issue. The issue is, will they be assigned? The issue is not what they want or like.

Mr. WARNER. On what basis can the Commander in Chief then say to a woman who is capable of training and volunteers to go into combat—on what basis can the Commander in Chief say, "No"?

Mr. JAVITS. From the point of view of the morale of the Armed Forces, he considers it inadvisable. That is his judgment.

Mr. WARNER. For the morale?

Mr. JAVITS. What I am saying to the Senator is that I do not see what is to compel the Commander in Chief to act.

Mr. WARNER. A Federal court ruling that Congress has determined that there shall be equity between men and women throughout their military careers, and that means from the beginning to the end.

Mr. JAVITS. I do not agree with the Senator in that at all. I do not believe that the Federal courts will take that authority over a judgment of the President.

Mr. WARNER. A judgment based on what fact?

Mr. JAVITS. If the Senator will do this on his own time——

Mr. WARNER. Mr. President, I do this on my own time. I will take the questions on my time.

Mr. JAVITS. Based upon the organization of the military forces of the country and what is best for them—that is all I am saying.

The Senator from Virginia is contending that that judgment can be made by a court; and I feel that when it comes to men and women, it will not be. That is a matter of my judgment, too. Vive la difference—that is the difference.

Mr. WARNER. I thank the Senator.

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

The PRESIDING OFFICER. The Senator from New York has the floor.

Mr. JAVITS. I yield the floor.

The PRESIDING OFFICER. The Senator from Michigan has been on his feet for some time. The Senator from Michigan is recognized.

Mr. LEVIN. Mr. President, I am a cosponsor of this amendment with the Senator from Kansas (Mrs. KASSEBAUM), and I should like to respond to the Senator from Virginia.

He said that if we provide for the registration of women, a Federal court is going to order that women go into combat. I do not know of any opinion which supports that.

This recommendation came from the President of the United States. Presumably, it is based upon the advice of the Attorney General of the United States. I do not know of any court opinion, I do not know of any legal opinion of a lawyer, private or public, which supports the position of the Senator from Virginia that if the Senate of the United States decides that it wants to register women, somehow or other that is going to require that women go into combat.

I remind the Senator from Virginia that the same arguments were made and Congress lifted the prohibition on women going to the military academies. The same argument was made: If you allow women in the military academies, let the women go to West Point and the Naval Academy, women are going to end up in combat.

The same arguments were heard on the floor of the Senate, and that has not been the result. The result has been that women have volunteered for the services, have served this country well, nobly, and admirably, and the commanders of women have said that they are on a par.

Nobody has suggested any more that because women are allowed into the academies and into the Armed Forces, there is some logical conclusion mandated that they must go into combat.

I ask the Senator from Virginia this question: Let us take a woman now in the Military Academy or in the armed services. She starts a case in the Federal court, saying, "I have been allowed into the Army; I have been allowed to take this first step; the academy has been opened to me. I now qualify for combat."

Does the Senator from Virginia think the court would uphold that case?

Mr. WARNER. In my judgment, the Federal court would uphold the right of the Commander in Chief to deny that woman the opportunity to volunteer for a combat position. The basis upon which the court would do it is a long line of decisions which have sustained the right of the Commander in Chief, not to let women go into combat because that is the pulbic policy of our Nation. Further there are statutes and regulations excluding women from combat.

The point I wish to raise with my distinguished colleague from Michigan as to the distinction between women serving today is that every woman in uniform today is there by virtue of the voluntary action her part of enlisting, and that is the way it has been throughout the history of our country. The proposed draft registration law would be the first turning point, where a woman is brought into military service by an involuntary act. That is the distinction.

Mr. LEVIN. I agree with the Senator from Virginia—that is a distinction. It is a distinction without a difference, for two reasons.

No. 1, the Senator from Virginia says that because the public policy of the country—these are his words—is that women should not go into combat, a Federal court would not grant that, under present circumstances.

I agree with the Senator on that point. But the sentiment of the country remains the same, that women not go into combat. It has been made clear in the legislative history of this amendment, by Senator KASSEBAUM and everybody else speaking for this amendment, that it is not intended that this lead to women in combat. There is a law prohibiting it. There is no effort to change that law. There are military regulations prohibiting it, and there is no effort to change those regulations.

I do not know of one opinion—and I ask the Senator from Virginia if he has a legal opinion—supporting his position. If he has such an opinion, I wish he would bring it forward, so that we could share it with the Attorney General of the United States and the Justice Department, and we can get their counter-opinion on it. Obviously, before the President of the United States offers this kind of proposal to Congress, he has checked it out with the Attorney General of the United States.

Mr. WARNER. I have submitted for the RECORD, as part of my colloquy, opinions on this point by distinguished legal scholars, upholding the right of an all-male draft registration law.

In response to my colleague's very interesting point, with which I disagree—nevertheless, in response to it—that a woman who has volunteered has a greater right to go into combat, I point out that at the time she volunteered, she had implied or actual knowledge of the fact that she would be denied the right to go into combat. She accepted the contract of enlistment, with either implied or actual knowledge that at some point in her military career, discrimination would be practiced in the form of denial of the opportunity either to be trained for or to serve in a combat position.

Mr. LEVIN. That is the way the registration system would work for women who registered, who also would know. At the time that registration system went into effect, the court would know the intention of Congress, very clearly stated, that there would be no combat roles for women.

Mr. WARNER. If my colleague will yield for one additional point, I think it is very unfair to a woman to place her involuntarily in a system which the Senator himself said has discriminatory practices, and they are forcing her involuntarily into that system where she will be confronted against her will with discriminatory practices, namely, she will not be permitted to have the same job opportunities as the man with whom she trains.

Mr. LEVIN. Mr. President, let me proceed by saying that we do not need a peacetime registration, a point which I made yesterday, which is not the issue at the moment, but as background I simply reiterate my belief that we do not need peacetime registration at all. I am convinced that while we need to improve our mobilization capability there are equally effective alternatives which are less costly in social and economic terms, but while I reject that conclusion that there is a need for registration, as I indicated in the Chamber yesterday, I am sympathetic to one of the positions which has been advanced by advocates of registration.

I think Senator BOREN, particularly, eloquently advocated this position yesterday. And that position suggests that members of our society have an obligation to be involved in the affairs of their country. They have an obligation to shape the policies of this Nation and they have an obligation to defend this Nation.

I certainly agree with that position which is offered by the proponents as the moral foundation for their call for registration, even though I do not share their conclusion.

But since I do believe in that obligation, if we extend it at all by way of registration, I think it should be extended to all members of our society, to men and to women. I wish to see all citizens who have something to contribute given the opportunity to make that contribution.

I start, then, from this basic premise that while I oppose registration because it is not needed and there are other alternatives, my opposition is rooted in practical rather than philosophic terms. I am not opposed in principle to requiring members of this society to serve their country or, as in the registration proposal before us, to indicate their possible eligibility to serve through the act of registration.

Indeed, I believe that act while not needed does remind people of what they owe to this country, but the extent that this reminder is a desirable goal, to that extent I would not want to see women excluded from being a part of it.

As I read the Constitution and the emerging law of this Nation, there is an overriding justification for registering women in terms of consistency with and fidelity to the concept of equity.

We have not, it is true, registered or drafted women in the past, but there are a lot of things we have not done in the past which we do now. Times change, Mr. President. We live in a society which recognizes that laws, customs, and mores evolve and grow.

Years ago we accepted the concept of separate but equal. It was the law of the land and it was the custom of our culture, but our law and our customs change. We recollect that the doctrine of separate but equal denied basic values of equality and equity.

Years ago women could not vote. We corrected that inequality. Years ago

women were not eligible for the military academies. We corrected that inequality as well. We just modified the law.

I think we are in a similar position in terms of the emerging struggle for other civil rights for women.

Most Members of this Chamber I believe have endorsed the Equal Rights Amendment to the Constitution. It represents a growing recognition of the role that women have and should be guaranteed. It just does not seem to me to be consistent or proper for us to talk of opportunity on the one hand and deny responsibility on the other.

But what opponents seem to suggest is that the principle of equity is overcome by more practical concerns about how registration of women would impact on our military capacity, and I wish to spend a few moments addressing that argument

Let me begin by saying that there is a clear military justification to register women. I have reached that conclusion because as a member of the Armed Services Committee I have had an opportunity to study the role women now play in our military forces, and I have been impressed by it, and let me spell out those conclusions that I have reached as a result of this study.

First, women in noncombat positions have made significant contributions to the military. No one disputes that point. Women are now restricted and should in the future be restricted to noncombat roles. Our society mores allow no other conclusion.

But within the context of this limitation, even the Manpower Subcommittee in their report rejecting registration for women indicated that "Women now volunteer for all military services and are assigned to most military specialties. These volunteers now make an important contribution to our Armed Forces."

The committee appears to commend the increasing number of women who volunteer for the services and expresses the hope that such trends will continue.

Clearly, then, women have made significant contributions in noncombat roles and they can be expected to continue to make the same sorts of contributions in the same noncombat roles in the event that mobilization is required.

Second, in the event of mobilization there will be a military role for an increased number of women. While the Manpower Subcommittee concluded there would be no need specifically for women in the event of mobilization, they did not deny that there would be a valid and valuable use for women after mobilization.

In fact, they received testimony from Richard Danzig, the principal Deputy Assistant Secretary of Defense for Manpower, which indicated that of the 650,000 people needed after the first 6 months of mobilization, at least 80,000 could usefully be women with no women going into combat roles.

They have also had the opportunity to study the Maxivac and the Rostker reports which indicate that the Armed Forces could absorb up to a 35-percent female base without in any way interfering with combat readiness.



So while there may not be a military need for women, there is a significant military justification for using them in a period of mobilization.

Mr. WARNER. Mr. President, will the Senator yield for a question?

Mr. LEVIN. I am happy to yield for a question.

Mr. WARNER. During the course of the testimony that our subcommittee took on this question of including women in registration, Chairman NUNN put to the President's witness the following question:

> If the lottery wheel, or whatever device determines which individual goes, falls on a young woman, say, of 21 or 20, whatever her age may be, who is married and just had a baby, does she get called up or does she remain home with the child?

The answer was she must go and the husband stays with the 6-month-old baby.

That is the way this particular law is written. There is no exclusion in the present law. How does my distinguished colleague propose to have equity and at the same time protect a young mother from surrendering child care and going off to boot camp leaving the baby with the husband?

Mr. LEVIN. I have a lot of confidence in this Congress and in our military that they can devise regulations to avoid that kind of absurdity.

I have a great deal of confidence that the military and this Congress can handle this problem, as well as other classification problems.

But let me remind my friend, in partial answer to this question, that under the terms of the very resolution he supports, this is not a draft bill, this is not a classification bill. This is nothing but a registration bill. We are not here to answer every question as to how everybody is going to be classified.

We heard this morning that conscientious objectors were not the issue here; that later on during classification debates we could take care of that problem.

We can take care of the problem the Senator from Virginia opens during the classification debates.

Mr. WARNER. But your amendment simply states, and I quote:

> On page 2, line 14, strike the period and insert a comma and the following language: "or shall be made available for implementing a system of registration which does not include women.".

Mr. LEVIN. It is perfectly clear and perfectly responsive to the question of the Senator. Women should be included. How they are classified once they are included is a separate question down the road, and whether or not they are even inducted is a separate question down the road. We went through this whole thing this morning on CO's.

Mr. WARNER. But I draw to my colleague's attention the fact that the law is on the books. It makes no provision at this time for excluding a young mother. Our Nation could be drawn into an emergency military situation tomorrow and this is the operable law. If the Senator were to prevail in his amendment, the amendment would then require women to go register and become eligible for a draft irrespective of their family situation.

Mr. LEVIN. There are two answers to that question that I will get to in a moment in my remarks, but let me briefly be responsive. First of all, we have had a commitment in statements from Senator STENNIS that there are going to be hearings on the classification system and on the Selective Service System.

The problem raised by my friend from Virginia can be adequately dealt with during those hearings.

Second, the Selective Service System is dormant. It is not now activated. The President will have to request us to activate it and, as part of any request, the President could exclude women if we are not ready with this kind of classification or, if we are ready, could allow women to be registered.

But there is, No. 1, a time to do this and, No. 2, there is a forum to do what the Senator from Virginia suggests; and, No. 3, before this Congress ever allowed the drafting of women upon request of the President I have enough confidence in us that we would do the right thing by pregnant mothers and all of the other women for whom the Senator has expressed concern, just as we would do the right thing about conscientious objectors and other classifications of people who should have some protection.

As I indicated, Mr. President, while there may not be a military need for women, there is a significant military justification for using them in a period of mobilization, and that justification is they do excellent work and that there are significant opportunities for them to make a real and meaningful contribution in noncombat roles.

Third, the Manpower Subcommittee itself seems to accept the fact that there will be a justification for an increased number of women in the postmobilization force structure. They said in their report that combat restrictions would result primarily in a pressing need for combat personnel, in other words, men, and a point I accept, and here I quote to you that "women volunteers would fill the requirements for women."

I want to repeat that: the Manpower Subcommittee said that "Women volunteers would fill the requirements for women." In short, the Manpower Subcommittee seems to acknowledge specifically a requirement for women, and raises no practical or theoretical objection to increasing the number of women in our Armed Forces after mobilization. They simply say they believe we can attract a sufficient number of female volunteers to meet our requirements.

In response, I would simply indicate that they have no empirical data that I know of to support that claim. In fact, testimony before the subcommittee suggested that there were not sufficient data available to draw any conclusions. Robert Pirie, Assistant Secretary of Defense for Manpower, in February of this year told the committee that "Perhaps sufficient women volunteers would come forward to meet this need, perhaps not.

Having our young women register in advance would put us in a position to call women if they do not volunteer in sufficient numbers."

Clearly the evidence that I am aware of suggests that there is a use for more women in a mobilization, and that we cannot be assured that sufficient numbers of women will be achieved through volunteers.

If more women can be used in the services, and if there is uncertainty about our ability to achieve that level through volunteers, then there is additional reason to register women and to remove the uncertainty. That, after all, is the thrust of the entire argument used by proponents of registration of men to justify their position.

Mr. President, while both equity and military utility justify registration of women there are still some who suggest that there are compelling disadvantages which ought to cause us to reject that policy. These alleged disadvantages do not inhere in the act of registration. Rather they arguably flow from the decision to turn to that registration base in a period of mobilization.

If we read the Manpower Subcommittee report we will find that the alleged disadvantages flow from the decision to draft people from the registered base rather than from creation of that registration base.

Some opponents of this amendment argue if we made a decision to draft under current law we could very well be required to draft an equal number of men and women. Such an action would significantly impair our need to meet vital combat needs. That concern might be an important consideration, if it were not easily correctable, as I have indicated in my prior colloquy with my friend from Virginia.

For those who advance this argument, they do so on the basis of existing law which requires, in essence, that a draft be conducted in an impartial manner. They fear the requirement of impartiality would result in an equal number of men and women being drafted, and they legitimately indicate that such numerical equality would not be consistent with, indeed might even interfere with, our most pressing military needs.

But this argument ignores the fundamental fact that before any man or any woman can be drafted, Congress must reauthorize the Military Selective Service Act, an act which now lies dormant.

There are two available occasions to correct any deficiency which would require us to draft an unneeded number of women: First, Chairman STENNIS indicated that he was interested in seeing the Armed Services Committee do a thorough analysis of the act, and I also believe that Senator NUNN and others who seek to reestablish the draft would not move in that direction if we registered women until they had done a thorough analysis of the act and suggested the appropriate modifications.

Since as far as I know, at least, we have no immediate plans to mobilize, we have the time we need to revise the Selective Service Act and accommodate, where necessary, our decision on registering women and make them eligible for the draft.

But, second, if we were confronted in the interim period with an immediate need to mobilize and a draft authorization were requested, and if the underlying law had not been modified to take into consideration the fact that women are registered, any congressional authority to draft people could simply include the proviso that the act shall not require that an equal number of men and women be called into service.

Based on the report of the Manpower Subcommittee, such a proviso would be constitutional since, as they say and as my friend and as the sponsor of this and the author of this amendment, the Senator from Kansas, has indicated, the courts would defer to Congress judgment regarding our military needs.

Finally, let me urge that opponents of this amendment remain consistent in their arguments. As I read the record they appear to have indicated that the bill we have before us is a call for registration, not a call for the draft. They have held that these issues are separate. Indeed, the bill itself reads that way. If that is, in fact, the case then how can we reject registration because only an unpredictable request to draft people would allegedly cause these problems? Either the issues are separate or they are not. If they are, then I suggest their arguments against registration of women are premature. If the issues are not separate, proponents of the bill should drop their argument that a call for registration is not a call for the draft.

Mr. President, let me summarize the arguments I have made. First, I believe that notions of simple equity in understanding the role of women in modern society and the desire to foster a sense of social consciousness require us to register women if we register men.

Second, if we ever have a draft, I believe that woman should be drafted in reasonable numbers for noncombat roles in order to help us meet our military requirements in a time of mobilization. The evidence clearly indicates that they can help us meet those requirements and that we cannot be assured that a sufficient number of females would volunteer in the absence of a draft. Third, within reasonable restraints related to retaining the noncombat restrictions now placed on women and modifying the existing requirement that a draft fall evenly on all members of the registration pool, there is no military disadvantage to registering women or drafting them.

Mr. President, I suspect that the arguments I have advanced here may rest too heavily on my own belief that women ought to be drafted, if there ever were a draft, in reasonable numbers to fill noncombat roles. For my colleagues who neither accept nor reject that notion—who want more time to study the issue—I would say that this amendment does not require us to draft women any more than it requires us to draft men. It simply enables us to effectively implement that decision if we choose to make it at a later time. It does not foreclose the option to reject the draft for women—in fact, it gives us more options than we will have if the amendment is defeated.

Mr. President, let me conclude by returning to what I consider the basic issue, the principle of equity. I believe that equality requires, as nearly as possible and as nearly as consistent with our values and mores, equal obligation and equal opportunity. That is all that this amendment offers women and that is all that it requires of them, and that is all that it says to all Americans. We can accomplish the goal of equity without any negative military consequences. And my sense of values leads me to conclude that, if that is the case, then we ought to vote for this amendment and we ought to vote for equity. To do other than that, Mr. President, is to turn our backs on the evolution of civil and constitutional rights which we have witnessed and been a part of in this last decade. To do other than that is to deny over one-half of this Nation the right and the duty and the obligation to help defend this Nation when the time comes to do so. To do other than that is to reject the requirements that our emerging sense of humanity has imposed upon us.

To do other than that is to ignore the personhood of half of our citizens and the contributions women have made in large and growing numbers in our armed services.

Mr. President, I am proud to be a cosponsor of this amendment and I congratulate Senator KASSEBAUM for offering it and for fighting so eloquently and, so far, successfully for its adoption.

I yield the floor.

Mr. SIMPSON addressed the Chair.

The PRESIDING OFFICER (Mr. DECONCINI). The Senator from Wyoming.

Mr. SIMPSON. Mr. President, I yield to myself a portion of my 1 hour's time on this particular legislation.

Mr. President, I have been most intrigued by the debate up to this point. It is a hot one. We have been talking about registration, but it sounds like we are talking about the draft. It is much like talking about land use planning and suddenly discussing the subject of zoning. There are two distinguishable issues but they are just as hot.

I commend my colleagues for their tenacity and perseverance, and especially my seatmate back here, Senator KASSEBAUM and my fine friend, Senator LEVIN. I wish to speak in support of their efforts and wish to note that I am honored to cosponsor their amendment.

Mr. President, I have been seriously concerned in recent years that the absence of a compulsory registration system has eroded the ability of our Armed Forces to meet our military manpower requirements in the event of a national emergency. Without some system of prior registration, I personally believe that it will require at least 3 months of time from a mobilization order before the present Selective Service System would be able to provide its first conscripts for the military services. I believe that such a delay in this Nation's mobilization capability is wholly unacceptable and that it directly affects our

ability to present a credible military deterrent against aggression or intimidation.

I believe, Mr. President, that this Nation can, with no harmful intrusion into the lives of our young adult citizens, institute a military registration procedure.

Such registration would enable our armed services to meet their mobilization needs—literally within days of initiating the necessary order to do so.

I am prepared to support compulsory registration, to include medical examinations and classification, in order to assure that we have this ready access to a pool of qualified individuals in the event the reinstitution of the draft becomes necessary. But we are not talking about the draft only registration.

Mr. President, I am also very concerned that this Nation's "All-Volunteer Force" cannot attract the necessary numbers of qualified individuals to maintain its defense responsibilities. We are truly selling ourselves short if we look upon military service as simply "just another job,"—available primarily to those in society who have the fewest employment opportunities or alternatives.

The armed services must expect of its personnel a commitment to accept a certain inconvenience and personal risk—to an extent which no other employer can reasonably ask of an employee within our society. Such a commitment should be the natural result of a sense of civic responsibility and it can be undermined, if we think of service in the military as being induced solely on the basis of "wage and fringe benefits."

The all-volunteer approach to defense, as well as the abuses found in the granting of exemptions and deferments characteristic of the Selective Service System during the Vietnam conflict, insulates a significant segment of our society from sharing in the burden or the obligation of military service. The defense of this Nation is the responsibility that should be shared as equitably as possible, with men and women participating, regardless of an individual's economic or social position in this society.

It would be interesting to note—and I would appreciate someone furnishing the information—how many sons of those who served in Congress between 1965 and 1975 were drafted into the Army to fight in Vietnam.

I would venture to say that few, if any, were so engaged during that 10-year period of time, or ever had any reasonable apprehension that they would ever be subject to the draft. Yet, by the thousands, young men throughout this land were inducted each month to fight and sometimes die in the war which few, if any, of them ever understood.

Personally, I have always been a bit strained to understand the political motivations of those in our Government who undertook to commit 500,000 U.S. troops in the Republic of Vietnam. I can understand that the North Vietnamese were fighting a protracted war of aggression against the South and I can even understand that our Nation may be called upon to assist an ally in a time of need.

But I shall not understand why the President and his advisers committed our youth to a struggle in behalf of a South Vietnamese nation unwilling itself to make the sacrifices necessary to match their adversary in the desire to prevail.

Well, we fought a war that we were politically unwilling to take the risks necessary to win, so very possibly we fought only to demonstrate our willingness to fight.

Some in this Chamber, Mr. President, might believe that the way to avoid such a mistake in the future is to deliberately weaken our Defense establishment to insure that we never again possess the capability of undertaking such a war. I must categorically state that I believe that such an argument or policy is totally vacuous and irrational. In these times of increasing tensions and dangers, we cannot afford the folly of unpreparedness. The time has long since passed—if it was ever really there—when we could retreat behind our two ocean frontiers and ignore the world about us. We must have a strong military and we must insure that the members of our armed services possess the necessary intelligence and level of technological skills necessary to fight and win if ever committed.

I was impressed by what my colleague ROGER JEPSEN said the other day. He said:

> There are several things worse than war, and they all come from defeat. Those things are bondage, torture, and slavery, and then you use your own imagery to fill in the blanks.

The only rational way to avoid the pitfalls of a Vietnam is to insure that the armed services represent a true cross section of our society, of all social and economic levels, and both sexes. The President who commits such a force must commit not just an insular element of a society, but the whole society itself, and he and this Congress must assume the political risks that such a commitment calls for.

Therefore, Mr. President, I am prepared to support the pending legislation in the hope that it will eventually lead to an equitable system of national service in which military service on active duty or in the Reserves would be available options, and that there would be other options which would include various public employment programs. That is very important to me in this kind of legislation. Such a system would emphasize voluntary participation, but if the strength of either the Active or Reserve Forces should fall below necessary authorization levels, then, and only then, would a draft based upon a universal lottery be conducted in order to make up the shortfall.

I cannot envision, Mr. President, any equitable system of national service that does not include young women as well as young men. I do not support the assignment of women to direct combat roles in our military. I have not heard anyone propose that. I do not believe that our society would tolerate it, and I know I could not bring myself to support their inclusion in the ranks of our infantry, our armor, and our artillery combat battalions. But women are citizens as we are, and they are fully capable of assuming the responsibilities that citizenship entails. I can see no logic in excluding them from the requirement for registration.

Mr. President, in concluding, I have two young sons aged 21 and 23 whom I love quite dearly. They would both be registered under the pending legislation and, therefore, subject to conscription in the event of national emergency. I also have a daughter who will reach her 18th birthday within the year. We have had some rather fascinating family discussions on this subject. We have carefully reviewed this searing issue. They are not martyrs nor are they dogooders. They just say, "Well, why not, pop? It looks like it should be done."

Under the provisions of the Kassebaum-Levin amendment my daughter would be treated no differently than my two fine sons. If we must, at some later time, have conscription, I would think it appropriate that she be included as she has requested. I cannot imagine that I would feel any less concern in having one of my sons face the uncertainties of military service than I would if my daughter were to do so.

In all of the shot and shell which will swirl around this issue of registration of women, there has been one piece of writing that seems to stand out for me, an article from the Washington Post of February 2, 1980, by Ellen Goodman, entitled "Drafting Daughters."

I ask unanimous consent that it be printed in the RECORD at this point.

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

DRAFTING DAUGHTERS

BOSTON.—My daughter is 11, and as we watch the evening news, she turns to me seriously and says, "I don't like the way the world is doing things." Neither do I.

My daughter is 11 years and eight months old, to be precise, and I do not want her to grow up and be drafted. Neither does she.

My daughter is almost 12, and thinks about unkindness and evil, about slaughtered seals and war. I don't want her to grow up and be brutalized by war—as soldier or civilian.

As I read those sentences over, they seem too mild. What I want to say is that I am horrified by the very idea that she could be sent to fight for fossil fuel or fossilized ideas. What I want to say is that I can imagine no justification for war other than self-defense, and I am scared stiff about who has the power to decide what is "defense."

But now, in the last days before President Carter decides whether we will register young people and whether half of those young people will be female, I wonder about something else. Would I feel different if my daughter were my son? Would I be more accepting, less anguished, at the notion of a son drafted, a son at war?

Would I beat the drums and pin the bars and stars on his uniform with pride? Would I look forward to his being toughened up, be proud of his heroism, and accept his risk as a simple fact of life?

I cannot believe it.

So, when I am asked now about registering women for the draft along with men, I have to nod yes reluctantly. I don't want anyone registered, anyone drafted, unless it is a genuine crisis. But if there is a draft, this time it can't touch just our sons, like some

civilized plague that leaves daughters alone to produce another generation of warriors.

I know that, realistically, we will have to register women along with men anyway because the courts will require it. Women may not have won equal rights yet, but they have "won" equal responsibilities. A male-only draft would surely be challenged and likely ruled unconstitutional.

But at a deeper level, we have to register women along with men because our society requires it. For generations, war has been part of the rage so many men have held against women.

War is in the hard-hat yelling at an equal-rights rally, "Where were you at Iwo Jima?" War is in the man infuriated at the notion of a woman's challenging veterans' preference. War is in the mind of the man who challenges his wife for having had a soft life.

War has often split couples and sexes apart, into lives built on separate realities. It has been part of the grudge of self-sacrifice, the painful gap of understanding and experience between men's and women's lives. It is the stuff of which alienation and novels are written.

But more awesomely, as a male activity, a rite of passage, a test of manhood, war has been gruesomely acceptable. Old men who were warriors have sent younger men to war as if it were their birthright. The women's role until recently was to wave banners and sing slogans, and be in need of protection from the enemy.

We all pretended that war was civilized. War had rules and battlegrounds. War did not touch the finer and nobler things, like women.

This was, of course, never true. The losers, the enemies, the victims, the widows of war were as brutalized as the soldiers. Under duress and in defense, women always fought.

But perhaps, stripped of its maleness and mystery, its audience and cheerleaders, war can be finally dis-illusioned. Without the last trappings of chivalry, it can be seen for what it is: the last deadly resort.

So if we must have draft registration, I would include young women as well as young men. I would include them because they can do the job. I would include them because all women must gain the status to stop as well as to start wars. I would include them because it has been too easy to send only men.

I would include them because I simply cannot believe that I would feel different if my daughter were my son.

Mr. SIMPSON. I know, Mr. President, that some of my colleagues support the pending amendment, not out of any conviction for what it will do, but in the hope that, if adopted, it will effectively kill the pending registration legislation. I want my colleagues to know that I support the Kassebaum-Levin amendment for what it really does, and if it should fail, I will still lend my full support to reinstituting compulsory registration and vote for passage of the pending legislation.

I commend my two colleagues once again for their sincere and very authentic expression on this amendment. It is quite typical of them both. I have come to greatly admire and respect them as persons.

Mr. President, rather than yield back the remainder of my time, I shall reserve it under the previous order of the majority leader.

Mr. GARN. Mr. President, I yield myself such time as necessary from my 1 hour.

First of all, Mr. President, let me explain my position very clearly on the issue of registration in general. When the time comes, I will vote against registration of men as well this proposal to register women.

The reason I will vote against the registration of men is because I think the proposal by the President is entirely cosmetic and superficial. As an answer to Afghanistan, I am sure the Soviet Union is just quaking in their boots at this daring, strong proposal to send our postcards and find out where our young people are, with no classification, with no physicals, with a very difficult time enforcing it. It really is a great stroke of genius on the part of the President.

But that is not the only reason I oppose it, because it is superficial and does not really accomplish anything as far as mobilization, as that it ignores the real manpower problem of the military.

Besides having served on the Manpower Subcommittee of the Armed Services Committee and now in Defense Appropriations, I served 4 years active duty as a Navy pilot and 20 years in the Air Force Reserve as a pilot. So I know something firsthand about the military. The real manpower problem is not new recruits. The real manpower problem is the incredible hemorrhage of skilled, trained, technicians, highly-skilled enlisted personnel who are skilled in computer technology, in radar, fire control, all sorts of very technical systems, who are getting out in droves; of pilots and navigators, officers who cannot afford to stay in any more. But we do not address that problem.

Even if we started a draft tomorrow, forgetting a cosmetic registration, it would do nothing about this hemorrhage of skilled personnel leaving.

Where would we have the bases to train them, as we close down more military installations to save money? Where would we have the equipment to train them, as we do not provide enough operation and maintenance funds, provide spare parts for our aircraft, when we have a military budget that will produce a net loss in the number of ships over the next 5 years, a net loss of tactical aircraft, when we continue to cut our defense budget in terms of real expenditures year after year, when we continue to have more than 100,000 military personnel on food stamps? And we wonder why they get out?

And then our answer to the manpower problem is a cosmetic draft? That is why I am opposed to registration. I should have said "registration," not "draft," because even a draft would not solve that manpower problem.

I am afraid that if this passes, then we will gloss over and we will forget the real problem. Nothing will be done about it. The President can go to the carrier *Essex* and say, "We need $1 billion more for more pay," and then the next day tell the Congress that we are spending too much for defense. I do not know how he rationalizes those two positions, but that is what he said. He has had five defense budgets in 5 months.

I do not know which one he stands on, but the big plank of his answer to the Soviets is, "Let us register."

I suggest we have the cart before the horse and we ought to reverse it and do something about the Reserves. We should do something about this hemorrhage of manpower before we start with our 18-, 19- and 20-year-olds, talking about registration.

But to the immediate issue of the Kassebaum amendment, I say at the outset that some of the things I am going to say I certainly do not attribute the motivation to my distinguished colleague from Kansas in offering this amendment. I have discussed it with her. I know why she is introducing it.

I want to make that clear at the outset, that on a lot of my opposition to this amendment I do not attribute her motivation for offering it to these various reasons that I oppose it.

First of all, in answer to this message of equity we just heard from my distinguished colleague from Michigan, it seems to me we cannot have it both ways. We talk about this being equitable and then, to every problem brought up with the registration, or possible future draft of women, his simple solution was that he had enough trust in the Congress of the United States to make exceptions.

How can women have it both ways? Yes, we want equality with men. Yes, we want to be registered. Yes, we want to be drafted, if that comes in the defense of our country, but then please carve out all kinds of exceptions that discriminate once again.

So the argument of equity does not make a great deal of sense to me.

I certainly believe that women have a valuable role in the military if they want to volunteer.

I would not even object, and this may surprise some, to removing the combat restrictions to volunteers. If one wants to volunteer, let him.

But to talk about drafting them involuntarily violates all the principles I have grown up with.

Maybe I am old fashioned, and I am sure some people will accuse me of living in the 18th or 19th century, but I was brought up to believe that the basic fundamental unit of Government in this country was the family. This country was based on the family unit and a belief in God, and a belief in a religious heritage of whatever denomination, and that a family was composed of a mother and a father and children. But today, we have a family conference going on that will not define a family.

It is easy for me to define. I had a mother, a father, and some sisters. I have a wife and I have children. That is a family. But today we will argue about whether homosexual partners are a family. So we have a conference on families that will not define one.

What is it that we have come to in this country when we cannot define a family?

I see a whole series of developments undermining the most important unit of Government in this society, and that is a family, from abortion to pornography, to homosexual rights, to what we see on TV, the permissiveness.

Yes, I am old fashioned, I am traditional, and I am proud of it.

This is another part of the degrada-

tion of the family, taking women out of the home.

I am certainly not here to say that women should not have equal job opportunities, equal rights in pay. I agree with all of that. But on the basis of equity to say that we are involuntarily someday in the future possibly going to take them out of their homes, I cannot even conceive of that in the tradition of the American family and what it has meant to society.

The divorce rates are going up. Look at the conditions. What we can see on TV today is something we had to go behind a billboard to see when I was a kid. But boy, we can see it on TV now. This whole process, these bits and pieces, chipping away at the American family.

I am not about to be a part of that. I am not about to vote for one more strike against the American family and the traditionalism we have known in this country.

I happen to know something about children without a mother. It has only been 4 years since my wife was killed in an automobile accident and left me with four children to raise.

No matter how much we want to say we are equal in those child rearing areas, we are not. A father cannot replace a mother and that closeness. I tried. I tried. I did not do nearly as good a job of it.

So what my distinguished colleague from Virginia said a few moments ago about resolving those differences, do we take a woman away, leave a 6-month-old child with a father?

How ridiculous can we get when we cannot recognize anymore in the popular fad of the times, that we are going to try to have unisex and make everybody equal, that we cannot recognize that there are basic fundamental physical and biological differences between men and women?

We better believe I am emotional about this. I just do not think it fits.

How did we win World Wars I and II, the Spanish-American War, the War of 1812, without drafting or registering women?

How far do we carry this ridiculous game of equality, on the basis of equity?

I am the father of six. I have four sons and I have two daughters. I do not care to have any of them drafted. I hope none of them have to have the military service that I have had. I hope we never reach a point where we have to draft any young people anymore. But if we do, fine, my sons will go, whether I want them to, or not.

But to take my daughters away from their careers, whatever that may be, or their families and husbands, or their children, or even the contemplation or thought of that, I do not understand in the basic context of the way American society has grown.

If we want to continue to take one piece or another away from the American family, we will suffer the consequences. We are.

Again, I plead guilty to being old fashioned and traditional. No doubt about it, I am.

Sometimes I wish I was born and lived in the century I am often accused of living in in my votes on the Senate floor, when mothers were mothers and fathers were fathers, and children had respect for the family when they were together, and not dragged from the home.

I will not continue to take any more time.

If anybody has any doubts, and I hope they will not, I hope they have gathered from my statement that I am opposed to this amendment.

Mr. GOLDWATER. Will the Senator yield to me?

Mr. GARN. I do not have the right to.

Mr. GOLDWATER. So that I might use a few minutes——

Mr. GARN. I am happy to yield to the Senator from Arizona.

Mr. GOLDWATER. Mr. President, I want to agree with everything the Senator from Utah has said, particularly about the family. But probably more particularly about the way our potential enemy is outproducing us, outgunning us, making it almost impossible for combinations of men and women to even think of having any chance.

Do we realize that last year the Soviets gave away—gave away—more aircraft than we are going to buy this year for our Armed Forces? And we will buy less than 400.

We have that many run into mountains, dive in the ocean, and so forth, call it attrition.

I wanted to bring that up. But I did want to point out to my very good friend from Kansas about this whole matter of women being called up in the draft.

I am afraid that sometimes we associate a callup in the draft with combat. I think sometimes we associate the attendance at the Military Academy as an automatic open sesame to combat.

Now, this is not so. There is a law that we will have to repeal that prevents a woman from going to combat. There are regulations that prevent women from going to combat.

But here is a strange but. I remember—I think it was 2 years ago—at the first meeting of the Armed Services Committee when the Joint Chiefs were over, and General George Brown was still alive. He was chairman of the Joint Chiefs. I asked him if he would support legislation that I planned to introduce that would prohibit, again prohibit, women from ever going to combat.

He looked at me and said, "Senator, what is combat?"

Those of us who have been to war think of it as somebody getting shot, or shot at. He told me that in Vietnam he had given over 200 Purple Hearts to women.

Look at a Purple Heart holder sitting behind a desk. These women served as nurses; they served in ambulances. They were in combat, although technically they were not.

I am thinking today of a young girl who flies with my old National Guard outfit in Arizona as a copilot on a KC–135 tanker. These crews fly overseas almost constantly.

Let us say that the aircraft she was assigned to was given a mission of refueling a C–141 or a C–5, on its way to a combat zone, and the aircraft was attacked. If she were killed or wounded, she would have been in combat, although there was nothing in her orders—there is nothing in the orders any man ever has received in the military—stating specifically, "You are going to combat." It just says where you are going, and after you have been there a while, you figure out whether you are in combat or not.

I mention these things because I have heard on the floor today—and I have heard it debated time and again—about women in combat.

I am not going to support the amendment of the Senator from Kansas because I have a very deep, inborne, ingrained feeling about women ever engaging in combat. But women serving in the forces, yes.

I flew with women in World War II, and they were every bit as good in the aircraft as any man. I would not want to hear them bop, bop, bop with a gun.

The same would apply to women on Navy ships and women who might carry a pack and go too close to the front, in the Army.

As to women serving in the services, I have no argument. I do not think they should be drafted; it should be a voluntary thing. If a woman wants to enlist for any service, let her do it.

I do not even know yet whether I am going to vote for this measure. The more I hear, I am beginning to believe that debate probably means a little something. The debate of the Senator from Kansas has not swayed me. A little she says causes me to tumble a bit. But I want the Senator from Kansas to know my feelings.

I believe that before we are through with this whole subject, we will have to sit down with the military and figure out what they are talking about when they talk about sending a body to combat. That is all I have to say.

Mrs. KASSEBAUM. Mr. President, I should like to reply to my good friend the Senator from Arizona, whose wisdom I admire greatly and respect.

I do not wish to see women on the front line being shot at, either. As he has said, it does become a question of determining what is a combat area and what is a combat zone. But that is not what we are voting on today.

What we are voting on today is what gives us the best registration policy. If registration is worthwhile, if it serves the purpose, how do we design it so that it does serve the best function?

I have given a great deal of thought to it, because I have four children—three sons and a daughter—aged 18 to 23; so it has been a debate we have had within the family as well.

I have felt that if registration is to have a purpose, the best purpose it can have—because it does have minimal functions so far as military mobilization is concerned—it does have a purpose in having young people stop and think about what commitment they are prepared to make for their country.

I certainly regard myself as a traditionalist, too, and desire to do all we can

to strengthen family life. I do not wish to see my sons go, any more than I wish to see my daughter go.

What we are talking about today is not a question of gender so much as a question of what would be the best way to draft registration legislation. I believe it is to show a national determination. It should require that both young men and young women register. It should be universal. It should extend to ages 18 to 26, at least. It should be something we regard as a civic duty and part of the political process of this country.

Under that type of registration, I think it does serve a useful function, because it is an important part of an educational process to stop and think about what our commitment is to our Nation and the principles it embodies.

Mr. WARNER. Mr. President, will the Senator yield for a question?

Mrs. KASSEBAUM. I yield.

Mr. WARNER. Throughout my career and lifetime, particularly when I was in the Department of Defense, for many years, I fought hard to try to open job opportunities in the Department of the Navy for women; and we made great progress from 1969 through 1974. As a matter of fact, in that period of time, more job opportunities were open for women than at any other time in the history of the U.S. Navy, including the first experiment to run a ship almost entirely crewed by capable women.

I will continue to fight steadfastly to improve the job opportunities for women in the armed services of the United States. They have fulfilled their missions extremely well throughout our history.

However, what troubles me is that we are now turning the corner and involuntarily—through this proposed registration law and potentially a draft—involuntarily taking a woman into a system which now has built-in inequities and discrimination and making her survive against her wishes in that system.

Mrs. KASSEBAUM. In response to the question he has raised, I say to the Senator from Virginia that we are not talking about the draft. I do not regard this as a first step toward the draft. What we are talking about, as I said earlier, is what will be the best registration policy.

Mr. WARNER. Do I correctly understand the Senator to say that if it became necessary at a future time—and I am not suggesting now—that there are circumstances compelling this body to look at a draft. I would vote against it today, if we had the proposal for a draft before the Senate. But is the Senator suggesting that we have one law with equity between men and women for registration, and then, if we were compelled to go to a draft law, it would not have a comparable equity?

Mrs. KASSEBAUM. I am suggesting that at the time we are required to discuss conscription and vote on that legislation, we would shape it to the needs of the country and the armed services at that time.

Mr. WARNER. How would the provisions with respect to men and women differ between a registration and a possible draft? I think we are establishing very important legislative history, if the amendment of the distinguished Senator is accepted, a history that says that the first step in a military career is that men and women should be treated equally.

Mrs. KASSEBAUM. The point I am making—and it has been said many times today—is that wisdom and good judgment would prevail on what the needs are and how we meet those needs. In fact, it has been determined by the armed services that most of the needs for the areas that women fill now would be met voluntarily. So we only are going to draft either men or women to where there is that need.

Mr. WARNER. Then, why go to the expense and the inconvenience and the deprivation of privacy of women by compelling registration now, unless we know there is a need, and when there is not one?

Mrs. KASSEBAUM. We are talking about what is the best for registration. I believe it enhances compliance if both men and women feel this is an obligation.

It adds strength to what we are trying to do here with the national determination to show resolve, to show what we would be willing to do if we were faced with a crisis in our country and the need to turn to conscription.

So we are not even trying, nor should we be trying, to figure out how we would address conscription. That is my point. I feel that today the issue at hand is what gives us the best registration.

Mr. RANDOLPH. Mr. President, I ask the Senator from Kansas to yield.

The PRESIDING OFFICER. Does the Senator from Kansas yield the floor?

Mrs. KASSEBAUM. I am not going to yield on my time. I will be happy to let the Senator speak on his time.

Mr. RANDOLPH. I wish for her to remain ready to counsel with me in a colloquy. That is what I desire to do, on my time, of course.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. RANDOLPH. I say to the Senator from Kansas (Mrs. KASSEBAUM) that I shall support her amendment in which she is joined by the able Senator from Michigan (Mr. LEVIN) on the rollcall that will be coming sooner than later, but whenever it comes, I will support it.

I have taken the position that she espouses for many years. My decision is not shaped quickly. My position on this issue is known in West Virginia through addresses before many groups, and through the media. I feel that it is very, very important that the womanpower as well as the manpower of this country be assessed.

I believe that this fact is important. We are not deciding about a draft vote. We are discussing a registration of the womanpower of this country. There is a basic question embodied in the amendment.

It takes courage for the Senator from Kansas to speak as she has in reference to these matters, not that we do not respect the conscience of every Member in this Chamber, but we must not forget that she is the only lady in the Chamber of 100 Members. Yet she is asking us to do something that is reasonable and just. I hope some of us may have second thoughts and hopefully support her amendment as I will support it. In so saying I do hope that my colleagues feel that this is a problem which should not cause divisiveness between women and men. Women are full partners with men. In future years more, not less, women will serve in the Senate.

When we face the problem of possible use of the womanpower and manpower in a conflict which endangers our security, the Senator from Kansas says the matter of the draft will be before us. That is a separate matter. Is that not correct?

Mrs. KASSEBAUM. Absolutely.

Mr. RANDOLPH. Absolutely. It is a separate matter.

Sometimes we are inclined during this debate to think that there is no reason for us to be concerned with registration, frankly, of either men or women.

I am not critical of my colleagues, when I make this observation.

I remember on the 12th of August 1941, I was one of the Members of the House of Representatives who at that time had a difficult decision to make. I recall when the draft vote was taken on that tense evening. The vote was 203 to 202 for the extension of the draft. I remember certain speeches. I am not looking back and thinking harsh of those who said in essence that anyone who would vote for the draft was a warmonger. It was said, also, that no nation would think of going to war, against us, of attacking the United States of America; we had absolutely nothing to fear. The lady from Kansas will remember from a reading of history that rollcall came on August 12. Nothing would happen, they said. Yet on December 7 we were struck by air and sea at Pearl Harbor.

I am not attempting to wave a flag in any sense, but there is the realism of the situation. We live in a world of instability. I hope the amendment will be carefully considered by the membership as we vote, not for a draft but a vote addressing itself to the womanpower and the manpower available, if indeed a conflict would involve the United States. I pray every day and I do with my cherished friend from Oregon, MARK HATFIELD, that war will never come. But I do know that in August 1941 debaters in the House, said no nation was interested in attacking us. We were attacked just a few months later.

I am a worker for understanding and peace. In 1945 I introduced a bill to create a Department of Peace. With Senators HATFIELD and MATSUNAGA, and other Members I now sponsor an Academy of Peace.

It is my deep down feeling from a reading of the history, indeed somewhat of a student of that crucial period, that I say to my friend from Virginia, Senator WARNER, that the closeness of that 203-202 vote even possibly was a strong factor causing the Japanese in their thinking process to embrace a feeling that the United States of America was weak. They thought that was the time to strike; there was no feeling in America that any

possible calamity like the war could take place. My colleagues, they felt that that was the time to act. I have documentation for this belief.

I appreciate the lady from Kansas yielding to me. Perhaps it is not important for me to state how I shall vote. I shall vote with a clear realization of my responsibility, knowing that in West Virginia there will be constituents who will oppose my vote. I hope there are citizens in our hills who will support my action. But I do it in conviction and conscience. Womanpower and manpower registration is in nowise a draft. Does the Senator agree?

Mrs. KASSEBAUM. I certainly do, and I am very appreciative of the very thoughtful remarks on this issue of my colleague from West Virginia. He makes a strong case.

Mr. RANDOLPH. I thank the Senator.

The PRESIDING OFFICER. The Senator from Arkansas.

Mr. PRYOR. Mr. President, I rise in support of the amendment offered by the distinguished Senator from Kansas and the distinguished Senator from Michigan. The intent of this amendment is to require that any registration plan, if we have a registration plan, include women as well as men.

I have attempted during the course of this afternoon to listen to the various arguments which have been very, very eloquently presented by both sides on this momentous and, as my friend from Wyoming, Senator SIMPSON, has called it, searing issue that is before this country. I think that the distinguished Senator from Kansas, as the main proponent of this amendment, has offered extremely relevant and very articulate statements in support of it.

I could not help but be impressed and inspired by the most recent remarks offered by our friend from West Virginia, the distignuished Senator RANDOLP, who, if my memory serves me correctly, is one of the three Members of the present Senate who was a voting Member of Congress in August of 1941 when the Selective Service System was inaugurated. Also serving at that time were the Senators from the State of Washington, Senator MAGNUSON and Senator JACKSON.

I think that his statement today in support of this amendment is a statement of great wisdom and of great courage. It is a statement from a man who not only senses history but has been a part of making history for this country.

Mr. President, also he has discussed womanpower and manpower. It is very important to touch upon this for a moment because that is what this debate is about, not whether women will be included in a draft.

I look at this debate and this issue as stopping far short of the decision as to whether or not we are going to draft women or send them into combat.

What this debate is about today is identifying that power, finding that womanpower, finding that manpower—locating that source and knowing where it is in case we need it.

I support this amendment today for two reasons. I believe that it is going to serve a good purpose, and I do not believe that it will have a harmful effect. Let me explain both of these points briefly.

First, I believe that this amendment is designed to recognize the very significant role that women play in our society in general and the military in particular. Our approach to questions of civil rights has changed significantly in the past 30 years. We now acknowledge that a number of groups once excluded from the mainstream of the social and economic system do have and must have an equal role in building a just and a secure society. Women have certainly demonstrated that fact beyond dispute. In the military they now constitute approximately 8 percent of our active personnel. The first women to graduate from our service academies distinguished themselves in their academic studies and will certainly distinguish themselves in their ability to apply their knowledge and abilities in real world situations.

It seems to me a question of basic equity to say that women entitled to the benefits of full citizenship in this Nation should also have the full responsibilities of that citizenship. Including them in a registration system makes it very clear that women are considered full members of our society.

I think that statement is one that needs to be made and one that ought to be made. In the act of affirming our commitment to full participation of women in the duties and obligations of citizenship, I think we made an important statement and an important claim for the inclusive nature of democracy.

But, Mr. President, I do not think many Members really disagree with the powerful pull of the equity argument. I believe that their feeling is that the good this amendment does is outweighed by negative effects which they might associate with it. Let me identify some of these apprehensions and hopefully in a few moments try to dispel them.

First, some people fear that this amendment will require women to serve in combat. This is not true. This amendment provides that women will register—not that they will be drafted, and not that if they serve, they will serve in combat. I have spoken to the authors of the amendment and that is clearly their intention and clearly the way the legislative record of this amendment ought to be read.

Second, some people fear that this amendment will unjustifiably impede our ability to mobilize. They reason that a fair interpretation of the law may require us, should we need to mobilize, to take in men and women in equal numbers. And because women cannot serve under current law and regulations in combat, they fear that training centers will be filled with people who will not be able to meet our pressing combat needs. I understand that fear—but, again, it is simply not an accurate reading of either this amendment or the legislation we have before us. This amendment and this resolution do not address the question of the draft—it is a separate issue. The power to register does not confer the power to draft. We must make that point clear. We will not have that power until and unless the President of the United States comes to the Congress and asks us to revive the underlying military selective service law. And if that time ever comes—and we hope it does not—and particularly if it comes before the Congress has had an opportunity to study the entire issue and reform the law on its own—it would be possible for the Congress to give the President the authority he seeks but direct that it not apply to women.

Mr. WARNER. Mr. President, will the Senator yield at that point?

Mr. PRYOR. I would be happy to yield to the Senator from Virginia for a question.

Mr. WARNER. We continuously hear about the question of equity, equity for registration, but suddenly you get to the question that if we are forced to the draft we start up with equity; is that the point the Senator is making?

Mr. PRYOR. The point I am making is that the issue of registration and the issue of the draft are two separate issues.

Mr. WARNER. I agree with the Senator.

Mr. PRYOR. The issue we are talking about today, I say to my friend from Virginia, is the issue of identifying the actual location of the womanpower and the manpower in this country. We must identify where the people are and how they might—and I underline "might"—be called up in a time of emergency.

Mr. WARNER. I concur with the Senator in that. But we should only put the American taxpayers to the expense, an added expense, of registering women if there is some forseeable need for that information. Yet I continually hear when we approach the separate issue of the draft we can suddenly begin to abandon the equity argument and just draft in disproportionate numbers as the case indicates needs for the services.

Mr. PRYOR. The answer to my friend from Virginia's question is that those decisions will be worked out in this Chamber and in the other body in cooperation with the Chief Executive of this country if and when we have to revive the full-scale draft, and only, I assume, in case of an emergency.

Mr. WARNER. In that event would the Senator's position again be just as vehement on the question of equity in the draft?

Mr. PRYOR. The Senator from Arkansas, if he is a Member of this very illustrious body at that time, is going to look at the facts as they are presented at that particular moment which might include: First, are we under attack; second, are we under imminent siege or invasion; and third, what is our military posture as it relates to world affairs at that time? I cannot answer those questions at this time.

I can say this: If we reach that critical point in our history, the Senator from Arkansas, and, I only can assume, the Senator from Virginia will be very glad that this country at least has compiled

the names of those people who might be eligible to serve in one capacity or another.

Mr. WARNER. Well, we know statistically that somewhat slightly under 2 million men and women become 18 each year. Our current needs of the services are several hundred thousand persons. One of the principal reasons for the registration law is to induce the young people to volunteer for the All-Volunteer Force. But I am still unconvinced that we must go to the added expense to the American taxpayers to register women, to have their privacy invaded by disclosing where they are when there is no apparent or foreseeable need that those numbers would be required by our military. As a matter of fact, all historical data point in the opposite direction.

Yet the argument of equity—and I have made notes here—you want women to be considered "full members of our society." If that is the case when it comes time for the draft it would seem to me that the Senator would be compelled to say, "You are full members of society and now you are going to have to be drafted in equal numbers."

Mr. PRYOR. I think the Senator knows, and I hope I have made my point clear, that the Senator from Arkansas does not support a peacetime draft. I do support a peacetime registration in order that we can at least be prepared in case of an emergency. If we have registration, that system of registration, should be one that is equitable; and to achieve equity, it should give the female portion of our population an opportunity to serve in the armed services of this country by affording them the right, and certainly the responsibility, of registering.

I would like to conclude, Mr. President, by saying that a point I wish to stress this afternoon is that many of those who oppose this amendment perceive a harmful consequence flowing not from act of registration but rather from the act of conscription.

However, we are not considering the issue of conscription today, and I think they are making a mistake in their perception of the issue at hand. Because, once again, before anyone in this country is drafted, we will have had the opportunity to study this issue and decide if we want women to be drafted and, if so, in what capacity we want them to serve.

Also, if the President requested a mobilization, the Congress at that time, in its own judgment, could restrict or not restrict the applicability of the selective service law with language which makes it clear that women shall not be drafted. It would be our decision and our responsibility to consider every alternative. As the Armed Services Committee report has indicated, the courts have been willing in the past to honor such expressions of congressional intent when justified, as this one might be, by military necessity.

Thus, Mr. President, I find in this amendment a reaffirmation of a basic principle of equity under the law—equal treatment and equal obligations for all citizens. And I contrast that with the fears expressed about the impact this would have on our Nation if we needed to mobilize—but I find those fears based in the erroneous belief that a mobilization decision would be tantamount to a decision to draft equal numbers of women and compel them to serve in combat. That is not what we are talking about today. I reject that premise, and I reject that analysis of this amendment.

As a result, I find this to be a most worthy amendment, and I am very proud today to support it.

Mr. LEAHY addressed the Chair.

The PRESIDING OFFICER (Mr. MITCHELL). The Senator from Vermont.

Mr. LEAHY. Mr. President, I yield myself such time as I may need.

Mr. President, I support the amendment of the distinguished Senator from Kansas (Mrs. KASSEBAUM) and the distinguished Senator from Michigan (Mr. LEVIN) and others.

I should state at the outset of my remarks that I do not support it because I am in favor of registration, peacetime draft, or conscription. In fact, I think that the major bill that we have before us today, the registration joint resolution, is simply a thinly disguised effort to kill the All-Volunteer Force, and if it is enacted that will be the eventual result.

It gives us a chance to hide the failures of providing adequate pay for the military, the failure to provide adequate funds for the readiness of our conventional forces, the failure to provide the requisite incentives for retention, if not recruitment. All of it adds up to first step and a concentrated effort to do away with the All-Volunteer Force.

But if we do that and if, indeed, we do have registration, in today's society, Mr. President, I certainly think that a bad system is then made totally illogical. If you exclude women from registration, nothing that we can do, in my estimation, is going to make the idea of registration sensible or palatable. If we are to retain any sense of logic, any sense of equality, any sense of reasoning, then it must apply to both men and women.

I have listened to a great deal of the debate here this afternoon, both in the Chamber and back in my office. I have not heard any argument for the exclusion of women in registration that makes sense in 1980. I have heard discussions of the history of the military for the past 200 years. I have heard statements about the history of our country and the fact that we have not had women in previous drafts or registrations.

I would also point out, however, that we have never had such a baseless justification for taking the first step to peacetime conscription as we see on the floor of the Senate here today.

We talk about a society which has vastly changed. During much of the time when there was no talk of registration or even a draft of women, women were not allowed, in most States, to own property, to vote, to be individuals in their own right, to bring suit, or to have that standing before the courts that men had. Are we suggesting that we should be returning to that kind of a situation? I think not.

Everything has changed. The idea of employment rights and responsibilities. Our laws are designed to provide the same rights and responsibilities in employment for both men and women. Our laws are designed to provide the same rights and responsibilities for the holding of property for both men and women. Our laws are designed to provide the same rights and responsibilities of voting for both men and women. Our laws are designed to provide the same rights and responsibilities in lawsuits for both men and women.

And in fact, if you go down through the list, in virtually every instance the laws, rights and responsibilities are the same. Now, having provided the same laws, rights and responsibilities for both men and women, should we leave a glaring exception in registration?

I cannot help but think, Mr. President, that many in the country who support the idea of registration with the idea that it would be the first step in the return to a draft and peacetime conscription would be horrified at the idea that it might include women. This shows that the basic inequality of the whole thing may be held up to public scrutiny. If, indeed, it included both men and women, perhaps more people in this country would raise the question of why we need a peacetime draft in the first place.

As I said earlier, Mr. President, prior to the cloture vote, our problem today is retention far more than recruitment. Our other problem today is readiness. And we do not get these through preregistration. We get these by making a military life one that appeals to people because of their patriotism, but also allows them to retain their own dignity: One that says that if you are a technician on a ship, required to utilize millions of dollars of radar equipment and responsible perhaps for the lives of hundreds of others, that we are not going to reward you in that position with a salary that has you placing a distant second to those on welfare. We cannot tell you that you will make it only if we make food stamps available on the side. No, Mr. President, what we must do is to set a decent pay schedule, make the best training schedule, and to make a military career a career of which a person can be proud.

We cannot do this by putting in a registration system in the first place, and, having said that, we definitely do not establish one that excludes half of the people in our country. It is bad enough that in the past, Mr. President, we have left loopholes in our registration and draft schemes—loopholes large enough to drive an M–60 tank through; loopholes that said if you are rich and well-connected enough to continue on in college as a student, you might escape the rigors of the draft; loopholes of the type Senator PROXMIRE discussed this morning available to those who could afford lawyers, but not available to anybody else. But here, Mr. President, in the joint resolution before us, we find ourselves creating as large a loophole as conceivable, that is, a loophole that automatically excludes half of our population.

Mr. President, I do not like registra-

tion. I do not like the idea of the peacetime draft or peacetime conscription. But if we are going to have it in today's society, Mr. President, in today's age, at a time when our legal rights and responsibilities are based on the equality of sexes, then we cannot have it without equality of the sexes.

I would hope that the Senate would reject the whole joint resolution, but if it does not, I would hope that it would make it an equal piece of legislation. It is not now. It would come closer with the amendment of the distinguished Senator from Kansas and the distinguished Senator from Michigan.

I should make it very clear, Mr. President, if we have a time of emergency where our military must be substantially improved by registration or by a draft, I will support them. I would support it eagerly. But that is not the case. The only ready force we have today is our All-Volunteer Force. The 100 hours of time being spent by this body could be far better spent in debating and passing legislation to improve the condition of our current force, our All-Volunteer Force. It would be far better spent in giving the money and the support necessary to make the All-Volunteer Force work and not taking a backdoor road to kill it.

Mr. President, having said that, I will reiterate just one more time if we are going to have registration, let us make it equal.

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

Mrs. KASSEBAUM addressed the Chair.

The PRESIDING OFFICER. The Senator from Kansas.

Mrs. KASSEBAUM. Mr. President, if there are no other Senators wishing to speak, 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. NUNN addressed the Chair.

The PRESIDING OFFICER. Does the Senator from Kansas yield the floor?

Mrs. KASSEBAUM. I am glad to yield the floor.

Mr. NUNN addressed the Chair.

The PRESIDING OFFICER. The Senator from Georgia.

Mr. NUNN. Mr. President, let me say a few things about the Kassebaum amendment. I think a great number of people are probably not clear as to exactly what this amendment does and does not do. The joint resolution we are amending is very simple. There is a proviso that reads as follows in the original joint resolution and the amendment by the committee as amended by the Nunn amendment:

*Provided*, That none of the funds made available by this joint resolution shall be available for instituting or taking action to draft any individual for military service or be used for production of any selective service form used for classification which does not permit a registrant to have the option of stating that such registrant is conscientiously opposed to participation in war in any form pursuant to section 6(j) of the Military Selective Service Act.

That is the way the amendment reads now.

The Kassebaum-Levin amendment would add after the word "Act" the following language:

or shall be made available for implementing a system of registration which does not include women.

Mr. President, there are many people who believe that this amendment authorizes the registration of women. This amendment does not authorize the registration of women. I am not trying to in any way characterize the descriptions that have been given of it because I was not on the floor when they were given. I will let the Senator from Kansas speak to that point.

I want to make it clear to my collegues that this amendment does not authorize the registration of women. What it does do is prohibit registration of men unless the Congress first votes another law for the authorization of the registration of women.

Mr. President, if this amendment passes and becomes law, instead of giving the President of the United States additional authority and money, we are really taking away the authority he has now. If this becomes law, unless the Congress authorizes the registration of women in specific legislation, the President of the United States would not be able to have registration of males even if a war was declared unless and until Congress authorized the registration of women.

This is the reason this measure should not be dealt with in an appropriation measure. It should be dealt with, in my view, in detail in an authorization bill. I know the Senator from Kansas and I know her view is to authorize the registration of women. But this amendment does not do that. It holds up the entire registration process and says that we will have no registration unless and until the Congress of the United States authorizes the registration of women.

We are in a position where the House of Representatives Armed Services Committee and the Senate Armed Services Committee both voted down the registration of women. That does not preclude the Senate or the House from making a different decision. We all know how the system works. But what we are faced with here is an amendment that would preclude any registration until such time as the Congress decided by a majority vote in both bodies that we would authorize the registration of women.

If the Congress does not decide this year to authorize the President to register women, and there is every indication that will be the case at least on the House side, then we are in the unique position of taking away the Presidential authority for registration, even in an emergency.

If we had an emergency, the President of the United States would not be able to utilize his existing authority to register males and to classify males, even if Congress got an emergency appropriation bill through for the money, because this amendment would preclude that such time as the Congress authorized the registration of women.

I am sure the answer will be that that is the intent of the authors, that they do not want any registration until such time as we register both males and females.

I do not believe that represents the viewpoint of a majority of this body. But we do not have people on the floor now. What we may very well have is people coming over thinking they are voting to authorize the registration of women, not thinking they are disrupting the whole process, and, therefore, voting for the Kassebaum-Levin amendment.

Mr. President, every Senator and all the staff members, and others listening to this debate, should recognize that this takes away the existing authority of the President to respond to emergencies because he could not—he could not—utilize his existing authority if this becomes law until such time as the Congress has authorized the registration of women.

I urge my colleagues not to vote for this amendment. I urge my colleagues to vote down this amendment at the present time.

The Senator from Kansas and the Senator from Michigan can bring up the authorization of women on the military authorization bill which will be here within 2 or 3 weeks on the floor. At that time, we can provide any provision that anyone wants about this. That bill will be in conference with the House Armed Services Committee, the appropriate body to consider that. I think we can have a meaningful debate on the subject, and it should be debated.

Our committee went into very great detail. We found that there was no military necessity cited by any witnesses for the registration of females.

The main point that those who favored the registration of females made was that they were in favor of this because of the equality issue, which is, of course, a legitimate view. But as far as military necessity, and that is what we are primarily, I hope, considering in the overall registration bill, there is no military necessity for this.

Our committee made several findings.

I understand my friend and colleague from Virginia has put the committee and subcommittee report into the RECORD, is that correct?

Mr. WARNER. The Senator is correct.

Mr. NUNN. We made several findings based on that testimony. I refer anyone to the RECORD on that.

Mr. President, I would like very briefly to read the specific findings:

SPECIFIC FINDINGS

(1) Article I, section 8 of the Constitution commits exclusively to the Congress the powers to raise and support armies, provide and maintain a Navy, and makes rules for government and regulation of the land and naval forces, and pursuant to these powers it lies within the discretion of the Congress to determine the occasions for expansion of our armed forces, and the means best suited to such expansion should it prove necessary.

(2) An ability to mobilize rapidly is esseniti to the preservation of our national security.

(3) A functioning registration system is a vital part of any mobilization plan.

(4) Women make an important contribution to our national defense, and are volunteering in increasing numbers for our armed services.

(5) Women should not be intentionally or routinely placed in combat positions in our military services.

(6) There is no established military need to include women in a selective service system.

(7) Present manpower deficiencies under the All-Volunteer Force are concentrated in the combat arms—infantry, armor, combat engineers, field artillery and air defense.

(8) If mobilization were to be ordered in a wartime scenario, the primary manpower need would be for combat replacements.

(9) The need to rotate personnel and the possibility that close support units could come under enemy fire also limits the use of women in non-combat jobs.

(10) If the law required women to be drafted in equal numbers with men, mobilization would be severely impaired because of strains on training facilities and administrative systems.

(11) Under the Administration's proposal there is no proposal for exemption of mothers of young children. The Administration has given insufficient attention to necessary changes in Selective Service rules, such as those governing the induction of young mothers, and to the strains on family life that would result from the registration and possible induction of women.

(12) A registration and induction system which excludes women is constitutional.

Mr. President, that ends the quote.

We are in a situation where this issue has not been addressed by the administration in detail. The President, of course, said he was in favor of registration of women.

When the administration witnesses testified, lo and behold, we found they had made no provision whatsoever, made no plans whatsoever, to exclude mothers of young children.

Maybe that is what the Senate wants. Maybe we want to treat the mothers of young children exactly the same as the fathers of young children.

But I do not believe the Senate is prepared to go on record in that respect today. I do not believe the Senate is prepared to say that we are going to, basically, tell the President of the United States to go ahead with his plan on registering women, at the same time withholding authorization because this is not an authorization for that, and hold up the registration of males.

I just do not believe the country, and maybe I am wrong, but I do not believe the country is prepared to see if we have a draft, and we must recognize that the law requires now, and this does not change that law, that there be an impartial draft, if there is a draft.

This means that if women are registered, as I read the law, that they would have to be drafted in equal numbers if there were a draft.

This means, Mr. President, that we are going to have, if that eventuality occurred, and I hope it will not, but if it occurred, we could have and would have thousands of women getting drafted.

In any event, if we went to a draft with young children at home, I suppose under many cases we could very well have the fathers not receiving draft notices under a lottery system, which is what we would have to go to under present law, and, therefore, we would be in a position of having fathers staying home, in many cases hundreds, perhaps even thousands of cases, fathers staying home while mothers are shipped off for military service under a draft.

I just do not believe my colleagues in the Senate, after thinking about that, are prepared to take that kind of bite in one big hunk today. I do not believe they are prepared to do that. But, unfortunately, at the present time, we do not have very many people on the floor. I hope there are people listening to this debate. I think people ought to recognize what this amendment really does.

This amendment precludes registration of males even in a wartime situation unless and until the Congress authorizes the registration of females.

So we would be in a very bad position if we would have an emergency come up. If the President decided to register males, even if Congress gave him the authorization overnight, unless we also gave him the right in that kind of emergency, to register females, then he would have no authority whatsoever to go forward with registration of males.

Imagine the situation where we have some emergency, some possible mobilization, and the President saying, "I need an emergency appropriation for the registration of males." The President saying, "The present law precludes me from registering males unless you authorize females, so I also need an authorization for female registration." And the President saying, "The present law says that I have to draft impartially, therefore, unless you change that law, I have to draft females and males equally," and then the draft, in any event, going out.

We are in an emergency, and all over this country having young mothers get draft notices, and perhaps their own husbands not getting draft notices under a lottery.

I do not believe this has been thought through, Mr. President, in this amendment. I know the authors are very sincere and that they feel deeply about the issue. I respect their views on this.

But if we pass this in this form on this night, there are going to be a lot of people, when they find what this really does and what the consequences are, that will finally decide that what they thought was support by their constituents and the American people will suddenly unwind, because there are a great number of people who have not thought it through or the consequences of this issue. They have not recognized that the present law requires impartiality in any draft, and that means we draft from the pool that exists, and when we put women in the pool we would be requiring they be drafted, in my opinion, under present law, in equal numbers.

If somebody wants to amend that law to provide the President has authority to draft in unequal numbers, that is a legitimate point. Perhaps we should do that.

If so, what unequal numbers are we going to permit the President to draft under?

The President says they need only about 80,000 females, that it would be something like——

Mr. WARNER. It would be less than one-fourth.

Mr. NUNN. Less than one-fourth. The President does not have that authority now. The President has not thought that through. His witnesses did not recognize that they have that authority when they testified.

If we want to give him that authority, we had better think it through. Are we going to establish in law that if you go to a draft, are you going to draft five males and one female? Has anybody thought that through so far as equal rights are concerned?

I think the Senate is getting far ahead of itself. It would have been much better if we had brought this up on an authorization bill, and my colleagues should recognize what they are voting on tonight. When they pick up an analysis in 2 or 3 days, in a magazine, written by one of the thoughtful members of the news media, and they give it more than superficial treatment, and they start thinking this through, thinking about the possible consequences, my colleagues are going to find that what they voted for and what they got are not recognizable, because it is entirely different, in terms of the consequences, from what people may think.

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

Mr. NUNN. I will be glad to yield for a question.

Will the Senator ask it on his time?

Mr. RANDOLPH. Yes, on my time.

Mr. NUNN. I yield the floor, and I will let the Senator be recognized on his time.

The PRESIDING OFFICER. The Senator from West Virginia is recognized.

Mr. RANDOLPH. Mr. President, I say to the very informed Senator who has been speaking—I use these words advisedly—the very knowledgeable Senator who has been speaking, that I would not want him to imply that those who vote for the Kassebaum amendment do so and are not informed.

The news commenator referred to, may be very thoughtful, but I am very thoughtful, too, as I cast this vote. I support the Kassebaum and Levin amendment.

Do not misunderstand me. I am not critical. When I vote for the amendment, I will know what I am voting for.

I ask the Senator from Kansas and the cosponsor of the amendment, the Senator from Michigan (Mr. LEVIN) if they will give me the opportunity to cosponsor their amendment.

Mrs. KASSEBAUM. Mr. President, I will be more than happy to do so. I ask unanimous consent that the name of the Senator from West Virginia (Mr. RANDOLPH) be added as a cosponsor of the amendment.

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

Mr. RANDOLPH. I thank the Senator.

Mr. WARNER. Mr. President, I compliment the Senator from Georgia for very clearly describing the legal effect

of the amendment of the Senator from Kansas.

I hope the Senator from Kansas will take this opportunity to respond to the Senator from Georgia and his interpretation of the legal effect.

We are about to vote; and as I sit here, I have alined myself with my colleague from Georgia. He has clearly explained what is my understanding of the operative effect of the amendment, and I am not certain that a number of my colleagues understand this technical point fully.

I yield at this point to the Senator from Kansas.

Mrs. KASSEBAUM. Mr. President, I will be happy to do so. I thought we had explained clearly exactly what would take place under this amendment.

I say to my distinguished colleague from Georgia, who has a keen knowledge of the defense needs of this country, that we would have to address this issue on the authorizing legislation which can be brought up at any time. But the point is that we are addressing a policy issue today which certainly has an effect on the authorizing legislation.

Regarding the particular amendment and the question the Senator raises, if we are faced with a crisis tomorrow and if this amendment is adopted, under which the President does not have the authority to register men unless women are included, all we would need to have, because this is an appropriation bill, is another appropriation bill that would give him the funds needed to register men.

Until we finally address this issue on the authorizing legislation, it would not be something that would be in the President's authority. Until then, he has the authority, all he would need is funding. What this does is speak entirely to the money issue that would not be in effect for men until it would include women.

Mr. NUNN. In response to the Senator from Kansas, I point out that one of the problems here is that there is not any money in this bill, and I do not believe there are any pending amendments to add money, that would provide money for the registration of women. This bill provides enough to register males, but the Senator's amendment would preclude the registration of males until you register females. This means that if this amendment is adopted, you cannot register males without registering females, because you do not have enough money to register both.

Basically, we are saying to the President, "Do the job, and we are not going to give you the money to do it." I do not know how that could be handled. The President would have to ask for another appropriation, and we would go back to this again.

Mrs. KASSEBAUM. I say to the Senator that what this measure does is to provide money for the registration of 4 million individuals, and this still will be a question of registering 4 million individuals. I believe that we are not going to register that many even before the end of fiscal year 1980 in any event. Therefore, there is money for 4 million individuals. Under this amendment, if it were adopted, it would be men and women. Then the determination would be made as to whether it would be only 19-year-olds or what would be the best way to address 4 million individuals, both men and women, because that is what was stated in the orginal legislation.

Mr. NUNN. I wish we had a pending amendment that would address that issue along with this, because the President asked for more money to begin with, because he wanted to register both males and females. But this appropriation measure provides only for the registration of males. So the President's whole plan would have to go back to the drawing board. He would then have to adjust for the number of people to be registered in each age group. I do know that we are mandating by this amendment, if we adopt it, the registration of females but not providing the money to do it, under his present plan.

Mrs. KASSEBAUM. It was my understanding that it was an amount of money for the registration of 4 million individuals; and it was assumed, of course, since the authorizing legislation is only for men, that it would be 4 million men but that obviously need not be the case.

Mr. NUNN. The President requested $20 million. The Appropriations Committee has cut that down to $13 million which is what we have before us now. The reason he requested $20 million is because he felt it would take $20 million to register males and females. So the Appropriations Committee has cut that down, but now we are going to do a sort of trick to the President. We are going to tell him, "We are not going to give you the money to do what you set out to do, but we are going to tell you to do it anyway, but we are not going to give you the authority to do it. You just cannot register males until you register females, but we are not going to give you money to register females."

If this passes, then others of my colleagues are going to have to figure out where we stand because the Senator from Georgia will not know.

Mr. LEVIN. Mr. President, first of all, I wish to comment on some of the remarks of our colleague from West Virginia, Senator RANDOLPH, who is living history in this Chamber. His comments both on the history back in the early 1940's and his comments on the importance of including women if we are going to have registration so we can make use of womenpower, proven womenpower as well as manpower, I think struck the mark head on.

Just as Senator KASSEBAUM welcomed his cosponsorship, I also am very much flattered by the fact that he sees fit to cosponsor this amendment. It means a great deal to the supporters of this amendment and to its future.

Relative to some of the points that have been made by the Senator from Georgia, in the first place the Senator has indicated that if this amendment is adopted the President is going to have to register both males and females if he is going to register males, and I would say that is exactly the point of the amendment. I do not think that the purpose that he has described or the effect he has described is any different than what was intended. It is intended that the President register both if he is going to register males. I think that intent has been carried out.

The Senator from Georgia then points out what happens in the event of a real emergency and if we have not corrected some of the problems in terms of equal numbers, in terms of impartiality and the underlying authorization. First of all I wish to say he is in a very critical position to correct that authorization bill, to amend it, to correct the underlying law so it does not have the effect that he fears. That underlying law will be in front of us within 30 days. We will be able to make those corrections that are necessary at that time. But that is no reason certainly on this appropriation bill not to do what is just and not to do what is equitable.

Second, the Senator from Georgia has pointed out what happens if there is an emergency and what happens if there is a war; the President could not register males under this amendment. The truth of the matter is that given our state of the law, if there were an emergency or if there were a war, the President could not even draft males, could not begin the draft without the consent of this Congress. In any event, if there is an emergency, the President must come to this Congress for authority. Even if we adopted male only registration and there were an emergency, the President could not draft in case of an emergency. He would have to come here for authority because the existing draft law is dormant. The authorization for the President to draft even males has run out. There is no reason why, if the President must come here for authority to draft even males, that we would not have the power at that time to do what is necessary in that emergency if we also require the registration of females at this time.

So the emergencies which have been described by the Senator from Georgia are not emergencies at all because, in any event, Congress must act in the event of an emergency to draft even males if we leave it that way.

The parade of horribles just does not work.

What are we going to do about women with children? The answer is that there is an authorizing committee that can correct the underlying law to make it sensible. The sponsors of this amendment have great confidence in the Senator from Georgia and others with him on his committee to correct the inadequacies of the underlying law.

Mr. President, this amendment really is a signal. This amendment is an important signal that this Senate wants equity in the area of registration. It is a signal to the authorizing committee. As Senator NUNN sits on that committee and chairs the subcommittee, it is a signal that we want equity in the area of registration, and we want equity as far as we can get it in the area of services.

The Senator from Virginia has said that the equity is not perfect because women cannot go into combat. Why would you want to take the first step if

women are not forced into combat and you cannot have perfect equity? The answer to that is you want as perfect equity as possible. Even though our current mores prohibit and understandably so women from serving in combat that is no reason why we should not utilize their service in noncombat jobs.

I think Senator KASSEBAUM's amendment is an extraordinarily important step both toward strengthening our military service and in the march for equality for women in this country.

Mr. CULVER. Vote!

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

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. PERCY. Mr. President, I intend to speak briefly on another occasion. Now I simply wish to indicate my support for the Kassebaum amendment.

I believe that about 8 percent of our Armed Forces today are women. That contrasts with 2 percent in 1973. The goal of the Defense Department is to achieve 12 percent by 1984. The trend is up.

We are not talking about instituting a draft now. We are just talking about registration to be prepared. If we are in an emergency I should think we should call upon all the resources this country has to offer. Obviously women compose half of our national human resources.

I can well remember when we debated the issue whether or not women could serve on the floor of the Senate as pages, and we took 6 months to debate that issue. The question was were they really competent to do that job? I think we have demonstrated and proven that women are equally competent as men and sometimes even have superior competence.

I do believe we are sending a signal. We ought to send a signal that in case of emergency all the human resources in this country will be utilized. I think women would be proud to serve their Nation in time of peril and in time of need.

We have preached all over the world that other countries rule out half their personpower if in their economic structure, their political structure, and their social structure they do not fully utilize all of their population in building their nation. In time of peril we need to call upon all of our resources, and women demonstrated year after year when I served with them in the Navy years ago their competence in defending their Nation in a time of need.

I respect very much the amendment and intend to vote for it.

Mr. HATFIELD. Mr. President, I wish to speak to the issue of the constitutionality of the Military Selective Service Act which applies to men only. It is my firm belief that the courts have a responsibility and, quite possibly, will invalidate a male-only draft registration as an unconstitutional sex-biased classification. It will violate the 5th and 14th amendments to the Constitution.

Preliminarily, I emphasize that it is current fifth amendment doctrine that establishes the constitutional infirmity of a males only draft registration requirement. The belief that women will be protected from registration or induction until the equal rights amendment is ratified is based on misconception of the current state of the law.

The exemption of women from prior draft registration requirements was seldom questioned. Where it was challenged on constitutional grounds, it was upheld with little analysis. However, today, as a result of two major developments since the end of the last draft, the outcome of a constitutional analysis of a draft registration limited to men will differ. First, in 1976, the Supreme Court established a heightened review standard for sex-based classifications against which such a statute would be measured. Second, the influx of women into the military during the 1970's provided substantial evidence that women are capable of high quality performance in most, if not all, military skills. This evidence strongly suggests that a males-only draft registration requirement would not meet the heightened review standard.

During the late 1960's and early 1970's, the courts that upheld compulsory military service for men alone applied what is called the "rational basis" model for equal protection review. That is, if the classification is rationally related to a legitimate governmental objective, it will survive judicial scrutiny. This model contrasts with that employed for classifications which either infringe on fundamental rights or are denominated suspect. Such classifications must be based upon compelling governmental objections and be necessary to their accomplishment. Historically, gender classifications were analyzed under the rational basis model and were virtually insured of passing constitutional muster.

The turning point came in 1976. That year in Craig against Boren, the Supreme Court articulated for the first time a heightened standard of review for sex-based classifications. It established that such classifications will fail unless the legislative objective to be served is important and the classification is closely and substantially related to the objective. Since Craig, the Court has repeatedly reaffirmed that gender-based legislative classifications must be tested by this new, stringent standard and has held many such classifications unconstitutional.

Significantly, the cases cited by a Department of Justice memorandum in support of its position that the Supreme Court would apply the equal protection guarantee to military matters with special circumspection were decided in 1971 and 1975, before the enunciation of this new, heightened review standard. And there has been no indication of judicial retreat from that standard in military cases.

In addition to establishing an elevated review standard for sex-based classifications, the Supreme Court has also made clear since the last draft that in scrutinizing such classifications it will be guided by two basic principles. First, gender classifications based on stereotypical notions about women will not be tolerated as a proxy for some other individual characteristic. Second, gender classifications which appear to favor women will not be protected from scrutiny.

Application of the legal principles I have outlined to compulsory draft registration limited to men demonstrates the constitutional infirmity of such a classification. Initially, it is clear that deference to congressional judgment in military matters will not preclude meaningful judicial review. Courts, including the Supreme Court, have repeatedly decided the reach of the equal protection guarantee of the fifth amendment in cases brought by women challenging gender discrimination by the military. And, although there is judicial support for the proposition that involuntary conscription may be necessary to satisfy a vital governmental objective in maintaining the national security, it does not follow that the imposition of this obligation on men alone is "closely and substantially" related to the accomplishment of that objective.

It bears emphasis that the heated debate over whether women should be assigned to combat units is not central to determining whether a males-only draft registration furthers the objective of maintaining the national security with a combat-ready military. Congress has already recognized this in an analogous context. In 1975, it enacted legislation permitting women's entrance into the military academies in spite of the Pentagon's principal objection that the academy issue and the combat question were inseparable. It repeatedly heard testimony from military officials to the effect that:

> The issue of whether women should become cadets at West Point is tied directly to the basic question of whether Americans are prepared to commit their daughters to combat.

It nonetheless resoundingly passed the amendment to permit women's entrance without legislating on the inflammatory combat issue. This year we graduated the first classes of women from our military academies. These women were among the highest ranged of the graduates. They performed admirably and are unquestionably well-qualified to be leaders of our military.

The preception reflected in the 1975 congressional judgment that the two issues are separate is altogether accurate. The percentage of individuals eligible for the draft who actually end up in combat positions is so small that whether or not women should be assigned to them is largely irrelevant to determining whether or not they should be excluded from a draft. In the last draft, less than 1 percent of those eligible were inducted and subsequently assigned to a combat unit. If women were added to the pool, the statistical chance of an individual being drafted and assigned to a combat unit—whether or not there was a female combat exclusion—would be negligible. See *United States* v. *Reiser*, 394 F. Supp. 1060, 1067 n. 11 (D. Mont. 1975). Even in the basic Army infantry division nearly two-thirds of the troops serve in a support capacity. For every person on the front line, there are large numbers of administrative, clerical, technical, logis-

tical, medical, and maintenance personnel performing support functions.

Even applying the military's own broader exclusionary classifications, many positions are "sex-interchangeable," The Army estimates 286,000 out of 567,000 jobs can be filled by either sex. The Air Force calculates 94 percent of enlisted jobs are interchangeable. While figures are not yet available, the number of Navy jobs open to women should have increased dramatically since judicial invalidation of the statute precluding females from serving on ships. Thus, whether or not women are assigned to combat, it is clear that they are qualified for a full range of noncombat positions.

The absence of a substantial relationship between exclusion of women from a draft registration requirement and national security is underscored by changes in military policy which reflect the military's recognition that women's enlistment actually furthers its goal of fielding an effective force. In 1972, the decision was made to increase the proportion of women in the military. At that time, women constituted only 1.9 percent of all military personnel. That percentage grew to nearly 6 percent in fiscal year 1977, is around 8 percent now and is programed to reach 12 percent by fiscal year 1984.

Moreover, the vast majority of occupational specialties have recently been opened to women in all branches of the military. Only 22 of a total of 345 military occupational specialties in the Army remain closed to women. Only 4 of the 230 specialties in the Air Force are closed to women and one of those is being tested to see if women can satisfactorily perform all aspects of the specialty. In the Navy, only 16 of 99 ratings are closed to women and this is expected to drop to 11. In the Marines, women are excluded from only 4 of the 38 occupational fields.

That women's exclusion from a draft registration requirement does not substantially further present-day military purposes finds further support in recent studies of the impact of women on military effectiveness. In 1978, the Department of Defense found that "women represent a major underutilized manpower source," Department of Defense, America's Volunteers 69 (1978). In a 1977 study it found that:

> In view of the reduction in the number of young men expected in the labor market in the 1980's and 1990's, it would seem prudent that the Army should pursue a more ambitious program to find ways to use more high quality women to meet their enlisted requirements. It would appear that more realistic constraints in their personnel programs would permit significantly larger increases by 1981. Office of Assistant Secretary of Defense, Background Study, Use of Women in the Military 46 (1977).

One study, conducted by the Army Research Institute in October 1977, concluded that unit performance in an intensive 72-hour field exercise was not impaired by female content of up to 35 percent, the maximum percent tested. Another, a May 1978 test, reveals that in a several weeks extended exercise, which included 3 weeks in field conditions, up to 10 percent women, again the maximum percent tested, did not hinder unit performance. In 1972, the Navy's experimental assignment of females to the U.S.S. *Sanctuary* revealed that women perform at "every shipboard function with equal ease, expertise, and dedication as men do." Indeed, in 1978, based on the *Sanctuary* experiment and impressive additional documentation, the statutory prohibition against women serving on board naval ships was held unconstitutional under the equal protection component of the fifth amendment.

In the face of the above experience and data, the conclusion of the Department of Defense that "women are demonstrating that they are capable of playing an even larger part in the national defense" was unavoidable. Although the outer parameters of women's participation may be unclear, their ability to perform a substantial role in the military has been well documented and widely recognized in this decade.

Once the combat issue is put in proper perspective and the evidence of women's recognized ability to perform military functions is assessed, it becomes apparent that an exclusion of women from a draft registration requirement would be the product of the archaic notion that women must remain "as the center of home and family." One court apparently recognized as much about the Congress which enacted the prior draft law. In upholding that law's exclusion of women, the court stated:

> In providing for involuntary service for men and voluntary service for women, Congress followed the teachings of history that if a nation is to survive, men must provide the first line of defense while women keep the home fires burning.

At one time judicially accepted, such romantically paternalistic underpinnings of sex-based classifications are intolerable under current equal protection doctrine. Overbroad generalizations concerning one sex or the other no longer can be used to substitute for a functional, gender-neutral means of distinguishing between the physically unfit and the able bodied. The paternalistic attitude inherent in exclusion of women from past draft registration requirements not only relieved women of the burden of military service, it also deprived them of one of the hallmarks of citizenship. Until women and men share both the rights and the obligations of citizenship, they will not be equal.

In sum, when the evidence of women's participation in the military since the last draft is measured against the new heightened review standard for sex-based classifications, it is clear that their exclusion from a draft registration requirement will not adequately "closely and substantially" relate to the maintenance of the national security. Consequently, should Congress reinstitute a compulsory draft registration requirement using sex as a proxy for an individual's capacity to discharge military duty, there can be no doubt that litigation would be brought and that the legislation would almost certainly be invalidated as violative of the equal protection component of the fifth amendment. I urge the adoption of Senator KASSEBAUM's amendment.

Mr. President, I ask unanimous consent that an article from the Washington Star entitled "Army Can Triple Use of Women in Support Roles, New Study Says" be printed in the RECORD.

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

ARMY CAN TRIPLE USE OF WOMEN IN SUPPORT ROLES, NEW STUDY SAYS

(By Robert Kaylor)

A year-long study indicates the Army can more than triple the number of women who support combat units and not lose effectiveness, military sources said yesterday.

The conclusion is contained in a soon-to-be-released report on the results of Project Max Wac, which studied the impact of using women—numbering between 5 and 35 percent of total strength—in five different types of support units during three-day field exercises.

Sources said the study showed that with 35 percent of total strength made up of women, the units were able to fulfill their missions.

In addition to military police and transportation units, the women were tested in signal, medical and maintenance outfits. There were a total of 55 tests of units of company size—about 150 to 200 total members each.

The normal number of women in such support units now does not go above 11 percent.

Sources said, however, that before drawing conclusions whether numbers of women soldiers can be boosted so sharply on a regular basis, the Army is awaiting the results of other studies.

Among them is one which compared the performance of women against men in similar jobs during a two-week field exercise in West Germany last fall to see whether fatigue and stress over a long period cut down effectiveness. A report on that study is expected next March.

About 6.5 percent of the Army's total active strength of approximately 785,000 now consists of women soldiers. The Army's goal is to raise that to 10 percent—a total of about 80,000 women—in the next five years or so.

Women are now barred from "combat" jobs—such as in infantry, artillery and tank battalions—and as a result also have been excluded from posts in the headquarters of battle formations such as divisions.

The Army is now considering changing its definition of "combat" to allow women to be assigned to divisional headquarters or to behind-the-lines jobs in artillery units. Some sources predicted female soldiers would go into such jobs within the next year.

Mr. HATFIELD. Mr. President, I do strongly support this amendment by the Senator from Kansas. I say that even though I really have a certain sense of ambivalence because I really think that this matter will be taken to the court eventually before it ever becomes implemented, the whole question in which we are involved here today; and therefore it seems to me that if this amendment is voted down we have another issue upon which we can challenge the constitutionality of this act if it becomes the law or becomes a policy, and probably that would add to our possibility of winning it in the court as opposed to our ability

to win it in the Senate or in Congress. But in spite of that sense of ambivalence on that legal question and the possibility of raising this in a court action later on I do want to indicate to the Senator from Kansas that I shall vote for this and I urge it be passed by the Senate tonight.

Mrs. KASSEBAUM. Mr. President, I have called for the yeas and nays.

I am very appreciative of those who have given us the opportunity to have this debate and I hope those who support me in giving me this debate as well as Senator LEVIN on this amendment will also support us in the law.

I do call now for the yeas and nays.

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

The yeas and nays were ordered.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. JEPSEN. Mr. President, I rise in opposition to this amendment.

All of the military services testified at length about the mobilization plans before the Armed Services Committee in their testimony about the place of women in those plans. Both the civilian and military leadership agreed that there is no military need to draft women. Because of the combat restrictions, the need will be primarily for men, and women volunteers would fill the requirements for women. The argument for registration and induction of women, therefore, is not based on military necessity but on considerations of equity.

We are concerned with the national security of this country. The Army and the Marine Corps testified that because of present shortages in combat arms and the nature of the emergency situation envisaged, the primary need is for combat replacements from the induction system. Selective Service plans provide for drafting only men during the first 60 days, and only a small number of women would be included in the total drafted for the first 180 days.

In addition, there are other military reasons that preclude very large numbers of women from serving. Military flexibility requires that a commander be able to move units or ships quickly. Units or ships not located at the front or not previously scheduled for the front nevertheless must be able to move into action if necessary. In peace and war, significant rotation of personnel is necessary. We should not divide the military into two groups—one in permanent combat and one in permanent support. Large numbers of noncombat positions must be available to which combat troops can return for duty before being redeployed.

It is also clear that an induction system that provided half men and half women to the training commands in the event of mobilization would be administratively unworkable and militarily disastrous. It has been suggested that all women be registered, but only a handful actually be inducted in an emergency.

Fellow Members of the Senate, you will find this to be a very confused and, ultimately, unsatisfactory solution. I believe we must be honest and face up to a situation we have existing, and that is increasingly worrying the people of this country, and that is the military deficiencies and, among them, our military manpower problem.

We have a readiness problem and a mobilization problem. But our problem is not the lack of accessibility for service for the female or the women population of this country. They have that opportunity now and they are serving and, in most cases, serving very well.

But to register, the proposed registration for, women subsequently in the event of mobilization when we consider a draft is not in the best interests of this Nation. It is contrary to military preparedness. In fact, it works in a negative way on that basis, as testified to by all military and civilian opponents who appeared before the Armed Services Committee.

Therefore, I urge rejection of this amendment. I thank the Chair.

Cries of Vote! Vote!

Mr. NUNN addressed the Chair.

The PRESIDING OFFICER. The Senator from Georgia.

Mr. NUNN. Mr. President, I just want to repeat, while we have Senators on the floor, what I said a few moments ago. I am not sure how many Senators recognize what it does and does not do.

This amendment precludes the registration of males until Congress authorizes the registration of females. This means that the amendment basically prevents registration. It takes away the authority of the President, which he already has under the law, until and unless Congress authorizes the registration of females.

This amendment does not authorize the registration of females. We are in the unusual position of having the President requesting $20 million to register males and females. The Appropriations Committee knocked out $7 million, and now, if this amendment passes, we are saying to the President, "We are giving you the authority—we are giving you the money to register males but we are telling you you cannot do it until you register females, but we are not giving you the money to register females or the authority to register females." So we are really sending about as big a bag of mixed signals to the White House, to the American people, as anything I can think of.

I will leave it to others to explain, if this amendment passes, what the Senate position is because the Senator from Georgia would be confused as to that Senate position because we do not have the money here, we do not have the authority here, and we are simply saying that you cannot register males until you register females. We are not giving the President the authority to register females nor are we giving him the money.

Mr. President, that completes my statement on this amendment. I hope my colleagues will vote against the amendment and we will have, as far as I am concerned, an up or down vote on the amendment.

SEVERAL SENATORS. Vote! Vote!

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Kansas. 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 Idaho (Mr. CHURCH), the Senator from Alaska (Mr. GRAVEL), the Senator from South Carolina (Mr. HOLLINGS), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Louisiana (Mr. LONG), the Senator from South Dakota (Mr. MCGOVERN), and the Senator from North Carolina (Mr. MORGAN) are necessarily absent.

I further announce that the Senator from Delaware (Mr. BIDEN) is absent on official business.

Mr. STEVENS. I announce that the Senator from Maryland (Mr. MATHIAS) is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators wishing to vote?

The result was announced—yeas 40, nays 51, as follows:

[Rollcall Vote No. 182 Leg.]

YEAS—40

| | | |
|---|---|---|
| Baker | Hayakawa | Proxmire |
| Baucus | Heinz | Pryor |
| Bellmon | Javits | Randolph |
| Bentsen | Kassebaum | Riegle |
| Bradley | Leahy | Sarbanes |
| Burdick | Levin | Simpson |
| Cannon | McClure | Stafford |
| Chafee | Metzenbaum | Stevens |
| Cohen | Mitchell | Stevenson |
| Cranston | Moynihan | Tsongas |
| Culver | Packwood | Weicker |
| Danforth | Pell | Williams |
| Eagleton | Percy | |
| Glenn | Pressler | |

NAYS—51

| | | |
|---|---|---|
| Armstrong | Goldwater | Nunn |
| Bayh | Hart | Ribicoff |
| Boren | Hatch | Roth |
| Boschwitz | Hatfield | Sasser |
| Bumpers | Heflin | Schmitt |
| Byrd, Harry F., Jr. | Helms | Schweiker |
| | Huddleston | Stennis |
| Byrd, Robert C. | Humphrey | Stewart |
| Chiles | Inouye | Stone |
| Cochran | Jackson | Talmadge |
| DeConcini | Jepsen | Thurmond |
| Dole | Johnston | Tower |
| Domenici | Laxalt | Wallop |
| Durenberger | Lugar | Warner |
| Durkin | Magnuson | Young |
| Exon | Matsunaga | Zorinsky |
| Ford | Melcher | |
| Garn | Nelson | |

NOT VOTING—9

| | | |
|---|---|---|
| Biden | Hollings | Mathias |
| Church | Kennedy | McGovern |
| Gravel | Long | Morgan |

So Mrs. KASSEBAUM's amendment (No. 1805) was rejected.

Mr. RANDOLPH. Mr. President, we cannot hear the vote.

The PRESIDING OFFICER. There were 40 yeas and 51 nays. The amendment was rejected.

Mr. ROBERT C. BYRD. Mr. President, for the information of the Senate, and so that Senators may inform their families—Mr. President, may we have order in the Chamber?

The PRESIDING OFFICER. The Senate will be in order.

Mr. ROBERT C. BYRD. Mr. President, for the information of Senators and so that they might inform their families, the Senate will be on this joint resolu-

tion until action is completed on the joint resolution, unless per chance, and I do not expect this, unless per chance there would be some willingness to enter into a time agreement at some point that would see us wind up action on this bill at a reasonable time. But unless there is such, the Senate will be on the joint resolution until action is completed on the joint resolution, which means if we have to go all night, all day tomorrow, all tomorrow night, all day the next day. That is the way it will have to be. I do not want it this way. I prefer that it not be this way. Cloture has been invoked, and it has been indicated that the rules will be utilized to the maximum extent possible to run out the 100 hours. I do not think the majority leadership has any alternative but to take the position I have just stated.

Mr. BAKER. Mr. President, I had no idea that this offer would be accepted, but there has been a conversation on this side of the aisle about the possibility of recessing tonight at some decent hour and then reconvening tomorrow at a fairly early hour, but attempting to get unanimous consent that the time we are in recess would count against the 100 hours provided for in the rules. I believe the Senator from Oregon would agree to that arrangement. He is on the floor and can speak for himself. That might be one way to accommodate the purposes of the majority leader to prosecute the debate on this measure and provide some degree of relief for all those here.

Mr. McCLURE. Will the Senator yield?

Mr. BAKER. I yield.

Mr. McCLURE. I thank the Senator for yielding.

Mr. President, I am not certain about the effort being made now to either blackmail those who are involved in this legislation to give up their rights under cloture or, in effect, reduce the 100 hours which this Senate has agreed upon to be used under cloture. I certainly am not going to suggest to the Senator from Oregon or anyone else that they not agree to this offer. But the Senate has debated at length the question of what ought to be done postcloture, and we decided after extended debate that there would be a limit of 100 hours, that that would be the upper limit.

Now, as I see it, an effort is under way to reduce the rights of individual Members under a postcloture condition to somewhat less than the rule permits.

If it is the desire of the Senate to change the postcloture rule, I will enter that debate with anyone else as to what might be done under a postcloture situation. But it does not seem wise to me to indicate that simply because we have now a cloture situation that Members of the Senate, each individual, every 100 Members—or perhaps I should say all the other 99 Members—have to be in the position of either giving up their rights under the rule or paying the price of inconvenience to themselves and rather unusual procedures on the floor of the Senate.

Mr. BAKER. Mr. President, I will not prolong this much longer except to say on the very important point raised by the Senator from Idaho, we had a colloquy earlier today and a ruling from the Chair that notwithstanding any time yielded back by an individual Senator, it would not reduce the 100 hours provided for under rule XXII. The suggestion I made just now was slightly different than that. The suggestion I made was the possibility that we recess at a fairly reasonable hour and convene again in the morning at a fairly early hour with the hope that those involved in the debate might agree the intervening time between now and in the morning would be charged as if debate had ensued.

Now, really, about all it amounts to is the conservation of energy and the night's sleep.

But I do not see that there has been any great rush to support that proposal. So I assume from the extensive silence I observe on the floor that nobody thinks well of that except me, and I will withdraw the suggestion.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. WARNER. Is it appropriate to make a motion?

The PRESIDING OFFICER. It depends on the Senator's motion.

Mr. WARNER. I move to table the committee amendment, as amended, and I ask for the yeas and nays.

The PRESIDING OFFICER. That motion is in order.

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.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that there may be 2 minutes to the side on the tabling motion.

The PRESIDING OFFICER. Is there objection?

Mr. BAKER. Mr. President, reserving the right to object, and I will not object, I am not sure what our status is.

The PRESIDING OFFICER. Is there objection?

Mr. HATFIELD. Reserving the right to object——

The PRESIDING OFFICER. The Senator from Oregon.

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

The PRESIDING OFFICER. The clerk will call the roll.

Mr. ROBERT C. BYRD. Mr. President, I did not yield the floor. I made a unanimous-consent request. I do not lose the floor.

The PRESIDING OFFICER. The Chair apologizes.

Mr. HELMS. The Senator sat down.

Mr. HATFIELD. The Senator sat down.

Mr. ROBERT C. BYRD. I am sorry the Senator saw me sit down.

Mr. HATFIELD. Mr. President, I ask that the quorum call proceed.

Mr. ROBERT C. BYRD. The Senator is correct. I am sorry that I sat down.

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

Mr. ROBERT C. BYRD. Mr. President, may we have order in the Senate?

The PRESIDING OFFICER. The Senate will be in order.

There is pending a unanimous-consent request that there be 2 minutes for debate on each side in connection with the motion to table.

Mr. ROBERT C. BYRD. Mr. President, I withdraw the request.

The PRESIDING OFFICER. The request is withdrawn.

Mr. ROBERT C. BYRD. Now the motion before the Senate.

The PRESIDING OFFICER. The motion to table.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to proceed for not more than 2 minutes.

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

Mr. ROBERT C. BYRD. Mr. President, it is my understanding that there is a desire on the part of some Senators not to have the vote on the motion to table until 9 p.m.

I ask unanimous consent that the vote on Mr. WARNER's motion to table occur at 9 p.m.; that until 9 p.m., the Senate stand in recess, with the understanding that the time be charged against the overall 100 hours; that upon reconvening at 9 p.m., the Senate proceed immediately, without a quorum call, to vote on the motion to table.

The PRESIDING OFFICER. Is there objection?

Mr. HATFIELD. Mr. President, reserving the right to object, I ask the majority leader to yield for a question.

Mr. ROBERT C. BYRD. I yield.

Mr. HATFIELD. As the majority leader understands, this matter of moving to table committee amendment carries with it certain implications. Of course, we are in a situation in which surprises and catching the opposition off guard is a fair ball game.

But I wonder if, before we vote, say, at 9 o'clock, we can call for the return of the Senators who are now leaving the Senate—to attend to other matters—in some way to get some kind of a gentlemen's agreement or understanding that when we come back, at least 1 or 2 minutes can be given to either side to give some kind of explanation as to the impact and the implications of this motion.

To make the motion and then adjourn, so to speak, and go from the floor and off the Hill and come back and vote immediately on a motion has given no one an opportunity to really understand the full implications of the motion.

I would be happy to take the next hour to explain it on my own time, if anyone were here to listen. The majority on my side, the Republican side, will be leaving the Hill, and I will be speaking to an empty Chamber. I should like a "gentlemen's aggreement" that we are going to

be back in our seats so that we will understand that prior to the vote on this motion, we will have at least 1 minute or 2 minutes on each side, and we will know what the vote means.

Mr. BAKER. Mr. President, reserving the right to object, I say to my friend from Oregon that the request is being made largely to accommodate—I suppose entirely to accommodate—the convenience of Members on this side. I am making arrangements, together with the minority staff and the assistant Republican leader, to transport people to another engagement and for them to be back here at 9.

I assure the Senator from Oregon that we will do that and will do it efficiently.

His request for a limited amount of time to explain the situation after we return at 9 is entirely in order, and I hope the majority leader will consider modifying his request to accommodate the additional points.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to proceed for an additional minute.

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

Mr. ROBERT C. BYRD. Mr. President, does any Senator on my side of the aisle wish to utilize any of the time between now and 9 o'clock in speaking on the matter?

I see no indication.

Mr. HATFIELD. Mr. President, will the majority leader yield?

Mr. ROBERT C. BYRD. I yield.

Mr. HATFIELD. I do not want to delay this procedure, but I say to the majority leader and the minority leader that in 1 minute, at this point, when we have this kind of attendance, I could describe this matter as I see it, so far as protecting my rights is concerned, and to explain to Senators why I oppose this motion. I could do it in 1 minute and get this out of the way, so that when we come back at 9 p.m., we could go right to a vote.

The PRESIDING OFFICER. Is there objection?

Mr. BAKER. Mr. President, reserving the right to object——

Mr. MAGNUSON. Why 9 o'clock?

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that——

Mr. MAGNUSON. Why do we not vote on it now, and then we can go?

All right, I will not object.

Mr. BAKER. I thank the Senator from Washington.

RECESS UNTIL 9 P.M.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate stand in recess until 9 p.m. today, with the understanding that the time utilized during the recess will be charged against the 100 hours; that immediately upon reconvening at 9 p.m. today, there be a 10-minute time limit for debate on the motion to table, the time to be equally divided between Mr. HATFIELD and Mr. WARNER; that upon the expiration of the 10 minutes, without any further debate and without any quorum call—that there be no quorum call in order—the Senate proceed immediately to vote on the motion by Mr. WARNER to table the committee amendment.

The PRESIDING OFFICER. Is there objection?

Mr. WARNER. Mr. President, that is agreeable.

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

Mr. McCLURE. Mr. President, reserving the right to object——

The PRESIDING OFFICER. The Senator from Idaho.

Mr. McCLURE. Mr. President, I will not object, but I reserve the right to object for this reason:

The Senate has now decided that the 100 hours of debate under postcloture provisions will be 98½ hours.

I ask the Members of the Senate to ponder for just a moment where this procedure leads us with respect to the rights of each of us in a postcloture situation.

Mr. President, I do not object.

The PRESIDING OFFICER. Is there objection?

Mr. EXON. Mr. President, I object.

I certainly do not want to take away the rights on the other side. If Senators are interested in staying here, I will stay here and listen to anything that has to be said. As I understood the agreement, we are trying to accommodate the people on that side of the aisle.

If the Senator from Idaho wishes to stay here I will be glad to stay here to protect the rights on this side of the aisle, just in order to show that we wish to cooperate as much as we possibly can.

Mr. McCLURE. Mr. President, reserving the right to object, I thank the Senator from Nebraska for his offer. There will come a time, I say to the Senator from Nebraska, when he may be concerned about his rights under the postcloture rule, and that is all I am concerned about, whether or not there are 100 Members of this Senate who have equal rights or whether there is 1 Member and 99 others, 1 Member who has a different right than the other 99.

I am trying to protect the rights of the Senator from Idaho.

I thank the Senator for his offer.

Mr. ROBERT C. BYRD. Mr. President, we are trying to accommodate our friends on the minority side by my request.

If the Senator from Idaho wishes to object, that means we have to vote immediately on the motion to table.

There being no objection, the Senate, at 7:40 p.m., recessed until 9 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. LEAHY).

The VICE PRESIDENT. The question is on the motion to table, in which 10 minutes has been allotted for debate.

Who yields time? Who yields time? Who yields time?

Time will be charged equally against both sides.

Both sides have 3 minutes remaining.

Mr. HATFIELD addressed the Chair.

The VICE PRESIDENT. The Senator from Oregon.

Mr. HATFIELD. Mr. President, what is the parliamentary situation?

The VICE PRESIDENT. There are 3 minutes remaining on each side on the unanimous consent to debate the motion to table the committee amendment as amended.

Mr. HATFIELD. Mr. President, the motion that is now pending to table the committee amendment, as amended by the Nunn amendment, is very, very clearly a parliamentary effort to not only call this whole amendment down but, in effect, to preclude amendments from being offered that are now pending at the desk that deal with substantive issues, that deal with questions that have not been debated here, that will not be eligible for debate.

It seems to me that, again, it looks as though—at least it seems to me—that this is an effort to turn down the possibility of receiving facts or information. It has every earmark of people who have their minds made up, who do not want to be confused by the facts.

I feel that, this being the significant issue that it is in which it is dealing with the lives of 19-year-olds and 20-year-olds and, beginning next year, 18-year-olds, we ought to air all of the issues related to this policy. I hope that the Senate will give us an opportunity to raise these amendments that have been pending at the desk, that have been clearly established as legitimate amendments up to this point. I feel, therefore, that we are being denied the opportunity to present information to this body on aspects of this matter which are very important, not only to the lives of these young people directly affected, but to the whole American system.

Mr. WARNER addressed the Chair.

The VICE PRESIDENT. The Senator from Virginia.

Mr. WARNER. Mr. President, out of senatorial courtesy, I advised my colleague, the distinguished Senator from Oregon, that that is precisely the nature of my motion and the consequences are as he has accurately outlined them.

I feel that my colleagues have had the opportunity to hear a full range of debate on all the basic issues raised by the amendment.

Mr. President, I yield the floor to my colleague from the majority, Mr. NUNN.

Mr. NUNN. Mr. President, I know time is short and the hour is late, but it is going to get later.

The committee amendment was that conscientious objectors be considered on classification. I think all of us favor that. In fact, that is already part of the current law.

The value of tabling this committee amendment, as amended by my amendment, is that it will eliminate procedural problems with the House, it will make a conference less likely, unless we have other amendments. It is also opposed vigorously by the Department of Defense. So I urge my colleagues to support the motion of the Senator from Virginia to table the committee amendment, as amended.

The VICE PRESIDENT. Who yields time?

Mr. WARNER addressed the Chair.

The VICE PRESIDENT. The Senator from Virginia.

Mr. WARNER. Mr. President, to accommodate the Senate, I will yield back the remainder of my time.

The VICE PRESIDENT. Is all time yielded back?

Mr. WARNER. Mr. President, I yield to the Senator from Minnesota (Mr. BOSCHWITZ).

Mr. BOSCHWITZ. Mr. President, may I ask the distinguished Senator from Oregon (Mr. HATFIELD) once again—I was a little bit late and did not hear the Senator's explanation. I wonder if the Senator could proffer it again.

Mr. HATFIELD. Mr. President, I merely indicated to the Senate that this calls down all the pending amendments that deal with substantive issues. We will not be able to have consideration of them, even for an appealing of the ruling of the Chair. Therefore it seems to me that it is unfair to do that at this time.

It also calls down the amendment that this Senate voted, that was offered by the Senator from Georgia (Mr. NUNN) on the matter dealing with conscientious objectors. The committee amendment dealt with it in a certain way, the Senator from Georgia amended it, and the Senate, in good faith, supported the Senator from Georgia. Now the Senator from Georgia is supporting the idea of calling down the whole thing in order to stop us from calling up other amendments, because they have been worded in conformity to the committee amendment.

The VICE PRESIDENT. Who yields time?

Mr. BAKER addressed the Chair.

The VICE PRESIDENT. The Senator from Tennessee.

Mr. BAKER. Mr. President, might I inquire: What is the parliamentary situation at this time?

The VICE PRESIDENT. In a minute and 20 seconds, we will vote on the motion to table.

Mr. BAKER. Mr. President, I thank the Chair.

I have previously stated on the floor that it is my intention to vote for this bill. It is my intention to support registration. I think it is a prudent and wise step to take at this time.

I have attempted, in the course of the last several hours and last few days, to protect the rights of those who disagree with that point of view and to assure that they had an opportunity to make their case. I believe that, under these circumstances, the purposes of all Senators have been well served.

Mr. President, I take this opportunity to express my appreciation to the majority leader for arranging the time, the brief time this evening, so that other matters could be attended to.

I intend to vote in favor of the motion to table.

The VICE PRESIDENT. All time has expired.

The question is on agreeing to the motion to table the committee amendment as amended. 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 Idaho (Mr. CHURCH), the Senator from Alaska (Mr. GRAVEL), the Senator from South Carolina (Mr. HOLLINGS), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Louisiana (Mr. LONG), the Senator from New Hampshire (Mr. DURKIN), the Senator from South Dakota (Mr. MCGOVERN), the Senator from North Carolina (Mr. MORGAN), and the Senator from Georgia (Mr. TALMADGE) are necessarily absent.

I further announce that the Senator from Delaware (Mr. BIDEN) is absent on official business.

Mr. STEVENS. I announce that the Senator from Arizona (Mr. GOLDWATER), the Senator from Maryland (Mr. MATHIAS), and the Senator from North Dakota (Mr. YOUNG) are necessarily absent.

Mr. WARNER. Mr. President, regular order.

The VICE PRESIDENT. Are there any Senators wishing to vote?

The result was announced—yeas 63, nays 24, as follows:

[Rollcall Vote No. 183 Leg.]

YEAS—63

| | | |
|---|---|---|
| Baker | Glenn | Pressler |
| Baucus | Hart | Pryor |
| Bayh | Hatch | Randolph |
| Bentsen | Hayakawa | Ribicoff |
| Boren | Heflin | Roth |
| Bradley | Helms | Sasser |
| Bumpers | Huddleston | Schmitt |
| Burdick | Inouye | Simpson |
| Byrd, Harry F., Jr. | Jackson | Stafford |
| | Jepsen | Stennis |
| Byrd, Robert C. | Johnston | Stevenson |
| Cannon | Laxalt | Stewart |
| Chiles | Levin | Stone |
| Cochran | Lugar | Thurmond |
| Cranston | Matsunaga | Tower |
| DeConcini | Metzenbaum | Tsongas |
| Domenici | Mitchell | Wallop |
| Durenberger | Moynihan | Warner |
| Eagleton | Nelson | Williams |
| Exon | Nunn | Zorinsky |
| Ford | Pell | |
| Garn | Percy | |

NAYS—24

| | | |
|---|---|---|
| Armstrong | Hatfield | Melcher |
| Bellmon | Heinz | Packwood |
| Boschwitz | Humphrey | Proxmire |
| Chafee | Javits | Riegle |
| Cohen | Kassebaum | Sarbanes |
| Culver | Leahy | Schweiker |
| Danforth | Magnuson | Stevens |
| Dole | McClure | Weicker |

NOT VOTING—13

| | | |
|---|---|---|
| Biden | Hollings | Morgan |
| Church | Kennedy | Talmadge |
| Durkin | Long | Young |
| Goldwater | Mathias | |
| Gravel | McGovern | |

So the motion to lay on the table the committee amendment, as amended, was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the motion to table was agreed to.

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

Mr. HATFIELD. 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.

The VICE PRESIDENT. The clerk will call the roll.

Mr. ARMSTRONG. Mr. President, will the Chair state the question?

The VICE PRESIDENT. The question is on agreeing to the motion to lay on the table the motion to reconsider.

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 Oklahoma (Mr. BOREN), the Senator from Idaho (Mr. CHURCH), the Senator from New Hampshire (Mr. DURKIN), the Senator from Alaska (Mr. GRAVEL), the Senator from South Carolina (Mr. HOLLINGS), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Louisiana (Mr. LONG), the Senator from South Dakota (Mr. MCGOVERN), the Senator from North Carolina (Mr. MORGAN), and the Senator from Georgia (Mr. TALMADGE) are necessarily absent.

I further announce that the Senator from Delaware (Mr. BIDEN) is absent on official business.

Mr. STEVENS. I announce that the Senator from Arizona (Mr. GOLDWATER), the Senator from Maryland (Mr. MATHIAS), and the Senator from North Dakota (Mr. YOUNG) are necessarily absent.

Mr. WARNER. Mr. President, regular order.

The VICE PRESIDENT. Have all Senators voted?

The result was announced—yeas 67, nays 19, as follows:

[Rollcall Vote No. 184 Leg.]

YEAS—67

| | | |
|---|---|---|
| Baker | Hart | Pressler |
| Baucus | Hatch | Proxmire |
| Bayh | Hayakawa | Pryor |
| Bentsen | Heflin | Randolph |
| Bradley | Helms | Ribicoff |
| Bumpers | Huddleston | Roth |
| Burdick | Inouye | Sasser |
| Byrd, Harry F., Jr. | Jackson | Schmitt |
| | Jepsen | Simpson |
| Byrd, Robert C. | Johnston | Stafford |
| Cannon | Kassebaum | Stennis |
| Chafee | Laxalt | Stevenson |
| Chiles | Levin | Stewart |
| Cochran | Lugar | Stone |
| Cranston | Magnuson | Thurmond |
| DeConcini | Matsunaga | Tower |
| Domenici | Metzenbaum | Tsongas |
| Durenberger | Mitchell | Wallop |
| Eagleton | Moynihan | Warner |
| Exon | Nelson | Weicker |
| Ford | Nunn | Williams |
| Garn | Pell | Zorinsky |
| Glenn | Percy | |

NAYS—19

| | | |
|---|---|---|
| Armstrong | Hatfield | Packwood |
| Bellmon | Heinz | Riegle |
| Boschwitz | Humphrey | Sarbanes |
| Cohen | Javits | Schweiker |
| Culver | Leahy | Stevens |
| Danforth | McClure | |
| Dole | Melcher | |

NOT VOTING—14

| | | |
|---|---|---|
| Biden | Gravel | McGovern |
| Boren | Hollings | Morgan |
| Church | Kennedy | Talmadge |
| Durkin | Long | Young |
| Goldwater | Mathias | |

So the motion to lay on the table the motion to reconsider vote No. 183 was agreed to.

The VICE PRESIDENT. The Senator from Georgia is recognized.

AMENDMENT NO. 1823

(Purpose: to reduce appropriations relating to the storage of registration forms)

Mr. NUNN. Mr. President, I call up amendment No. 1823 and ask for its immediate consideration.

The VICE PRESIDENT. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Georgia (Mr. NUNN) proposes amendment numbered 1823:

On page 2, line 5, strike out "$13,295,000" and insert in lieu thereof "$13,285,000".

Mr. NUNN. Mr. President, this is an amendment to reduce by $10,000 the appropriations relating to the storage of registration forms, and at the appropriate time I certainly hope we can get a vote on it and hopefully tonight, but I think we should have plenty of time to discuss it.

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

The VICE PRESIDENT. The clerk will call the role.

The legislative clerk called the roll and the following Senators answered to their names:

[Quorum No. 6 Leg.]

| | | |
|---|---|---|
| Armstrong | Glenn | Packwood |
| Baker | Hart | Pell |
| Baucus | Hatch | Percy |
| Bayh | Hatfield | Pressler |
| Bellmon | Hayakawa | Proxmire |
| Bentsen | Heflin | Pryor |
| Boschwitz | Heinz | Randolph |
| Bradley | Helms | Ribicoff |
| Bumpers | Huddleston | Riegle |
| Burdick | Humphrey | Roth |
| Byrd, Harry F., Jr. | Inouye | Sarbanes |
| | Jackson | Sasser |
| Byrd, Robert C. | Javits | Schmitt |
| Cannon | Jepsen | Schweiker |
| Chafee | Johnston | Simpson |
| Chiles | Kassebaum | Stafford |
| Cochran | Laxalt | Stennis |
| Cohen | Leahy | Stevens |
| Cranston | Levin | Stevenson |
| Culver | Lugar | Stewart |
| Danforth | Magnuson | Stone |
| DeConcini | Matsunaga | Thurmond |
| Dole | McClure | Tower |
| Domenici | Melcher | Tsongas |
| Durenberger | Metzenbaum | Wallop |
| Eagleton | Mitchell | Warner |
| Exon | Moynihan | Weicker |
| Ford | Nelson | Williams |
| Garn | Nunn | Zorinsky |

The PRESIDING OFFICER (Mr. LEAHY). A quorum is present.

Mr. HATFIELD addressed the Chair.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. HATFIELD. Mr. President, I move to recess until 9:30 a.m. 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. The clerk will call the roll.

Mr. ROBERT C. BYRD. Mr. President, that motion is not in order calling for a recess until 9:30 because we have an order to come in at 10.

The PRESIDING OFFICER. The majority leader is correct. There is an order entered that when the Senate completes its business today it stand in recess until 10 a.m. tomorrow.

Mr. HATFIELD. Mr. President, I move to recess pursuant to the previous order, 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. The question is on agreeing to the motion of the Senator from Oregon. The clerk will call the roll.

The legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Oklahoma (Mr. BOREN), the Senator from Idaho (Mr. CHURCH), the Senator from New Hampshire (Mr. DURKIN), the Senator from Alaska (Mr. GRAVEL), the Senator from South Carolina (Mr. HOLLINGS), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Louisiana (Mr. LONG), the Senator from South Dakota (Mr. McGOVERN), the Senator from North Carolina (Mr. MORGAN), and the Senator from Georgia (Mr. TALMADGE) are necessarily absent.

I further announce that the Senator from Delaware (Mr. BIDEN) is absent on official business.

Mr. STEVENS. I announce that the Senator from Arizona (Mr. GOLDWATER), the Senator from Maryland (Mr. MATHIAS), and the Senator from North Dakota (Mr. YOUNG) are necessarily absent.

The PRESIDING OFFICER. Is there any Senator in the Chamber who has not voted who wishes to vote?

The result was announced—yeas 26, nays 60, as follows:

[Rollcall Vote No. 185 Leg.]

YEAS—26

| | | |
|---|---|---|
| Armstrong | Helms | Roth |
| Bellmon | Humphrey | Schmitt |
| Boschwitz | Javits | Schweiker |
| Cohen | Kassebaum | Simpson |
| Danforth | Laxalt | Stafford |
| Durenberger | Lugar | Stevens |
| Garn | McClure | Wallop |
| Hatch | Packwood | Weicker |
| Heinz | Pressler | |

NAYS—60

| | | |
|---|---|---|
| Baker | Ford | Pell |
| Baucus | Glenn | Percy |
| Bayh | Hart | Proxmire |
| Bentsen | Hatfield | Pryor |
| Bradley | Hayakawa | Randolph |
| Bumpers | Heflin | Ribicoff |
| Burdick | Huddleston | Riegle |
| Byrd, Harry F., Jr. | Inouye | Sarbanes |
| | Jackson | Sasser |
| Byrd, Robert C. | Jepsen | Stennis |
| Cannon | Johnston | Stevenson |
| Chafee | Leahy | Stewart |
| Chiles | Levin | Stone |
| Cochran | Magnuson | Thurmond |
| Cranston | Matsunaga | Tower |
| Culver | Melcher | Tsongas |
| DeConcini | Metzenbaum | Warner |
| Dole | Mitchell | Williams |
| Domenici | Moynihan | Zorinsky |
| Eagleton | Nelson | |
| Exon | Nunn | |

NOT VOTING—14

| | | |
|---|---|---|
| Biden | Gravel | McGovern |
| Boren | Hollings | Morgan |
| Church | Kennedy | Talmadge |
| Durkin | Long | Young |
| Goldwater | Mathias | |

So Mr. HATFIELD's motion to recess was rejected.

Mr. HATFIELD. Mr. President, I move to reconsider the vote by which the motion was rejected.

Mr. ROBERT C. BYRD. I move to lay that motion on the table.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk called the roll and the following Senators answered to their names:

[Quorum No. 7 Leg.]

| | | |
|---|---|---|
| Armstrong | Boschwitz | Byrd, Robert C. |
| Baker | Bradley | Cannon |
| Baucus | Bumpers | Chafee |
| Bayh | Burdick | Chiles |
| Bellmon | Byrd, Harry F., Jr. | Cochran |
| Bentsen | | Cohen |
| Cranston | Javits | Randolph |
| Culver | Jepsen | Ribicoff |
| Danforth | Johnston | Riegle |
| DeConcini | Kassebaum | Roth |
| Dole | Laxalt | Sarbanes |
| Domenici | Leahy | Sasser |
| Durenberger | Levin | Schmitt |
| Eagleton | Lugar | Schweiker |
| Exon | Magnuson | Simpson |
| Ford | Matsunaga | Stafford |
| Garn | McClure | Stevens |
| Glenn | Melcher | Stevenson |
| Hart | Metzenbaum | Stewart |
| Hatch | Mitchell | Stone |
| Hatfield | Moynihan | Thurmond |
| Hayakawa | Nelson | Tsongas |
| Heflin | Nunn | Wallop |
| Heinz | Packwood | Warner |
| Helms | Pell | Weicker |
| Huddleston | Percy | Williams |
| Humphrey | Pressler | Zorinsky |
| Inouye | Proxmire | |
| Jackson | Pryor | |

The PRESIDING OFFICER. A quorum is present.

The pending question is on the motion of the Senator from West Virginia (Mr. ROBERT C. BYRD) to table the motion of the Senator from Oregon (Mr. HATFIELD) to reconsider the vote by which the Senator from Oregon's motion to recess was not agreed to.

Mr. HATFIELD. Mr. President, I ask for the yeas and nays.

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

The question is on agreeing to the motion to table. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Oklahoma (Mr. BOREN), the Senator from Idaho (Mr. CHURCH), the Senator from New Hampshire (Mr. DURKIN), the Senator from Alaska (Mr. GRAVEL), the Senator from South Carolina (Mr. HOLLINGS), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Louisiana (Mr. LONG), the Senator from South Dakota (Mr. McGOVERN), the Senator from North Carolina (Mr. MORGAN), the Senator from Mississippi (Mr. STENNIS), and the Senator from Georgia (Mr. TALMADGE) are necessarily absent.

I further announce that the Senator from Delaware (Mr. BIDEN) is absent on official business.

Mr. STEVENS. I announce that the Senator from Arizona (Mr. GOLDWATER), the Senator from Maryland (Mr. MATHIAS), the Senator from Texas (Mr. TOWER), and the Senator from North Dakota (Mr. YOUNG) are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber wishing to vote who have not voted?

The result was announced—yeas 65, nays 19, as follows:

[Rollcall Vote No. 186 Leg.]

YEAS—65

| | | |
|---|---|---|
| Baucus | Cranston | Hayakawa |
| Bayh | Culver | Heflin |
| Bentsen | DeConcini | Helms |
| Bradley | Dole | Huddleston |
| Bumpers | Domenici | Inouye |
| Burdick | Durenberger | Jackson |
| Byrd, Harry F., Jr. | Eagleton | Johnston |
| | Exon | Kassebaum |
| Byrd, Robert C. | Ford | Leahy |
| Cannon | Garn | Levin |
| Chafee | Glenn | Magnuson |
| Chiles | Hart | Matsunaga |
| Cochran | Hatch | Melcher |

| | | |
|---|---|---|
| Metzenbaum | Ribicoff | Stewart |
| Mitchell | Riegle | Stone |
| Moynihan | Roth | Thurmond |
| Nelson | Sarbanes | Tsongas |
| Nunn | Sasser | Wallop |
| Pell | Schmitt | Warner |
| Proxmire | Schweiker | Weicker |
| Pryor | Stafford | Williams |
| Randolph | Stevenson | Zorinsky |

NAYS—19

| | | |
|---|---|---|
| Armstrong | Heinz | Packwood |
| Baker | Humphrey | Percy |
| Bellmon | Javits | Pressler |
| Boschwitz | Jepsen | Simpson |
| Cohen | Laxalt | Stevens |
| Danforth | Lugar | |
| Hatfield | McClure | |

NOT VOTING—16

| | | |
|---|---|---|
| Biden | Hollings | Stennis |
| Boren | Kennedy | Talmadge |
| Church | Long | Tower |
| Durkin | Mathias | Young |
| Goldwater | McGovern | |
| Gravel | Morgan | |

So the motion to lay on the table the motion to reconsider was agreed to.

Mr. HATFIELD. Mr. President, I move to postpone the joint resolution indefinitely.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk called the roll and the following Senators answered to their names:

[Quorum No. 8 Leg.]

| | | |
|---|---|---|
| Armstrong | Garn | Nunn |
| Baker | Glenn | Packwood |
| Baucus | Hart | Pell |
| Bayh | Hatch | Percy |
| Bellmon | Hatfield | Pressler |
| Bentsen | Hayakawa | Proxmire |
| Boren | Heflin | Pryor |
| Boschwitz | Heinz | Randolph |
| Bradley | Helms | Ribicoff |
| Bumpers | Huddleston | Riegle |
| Burdick | Humphrey | Roth |
| Byrd, Harry F., Jr. | Inouye | Sarbanes |
| | Jackson | Sasser |
| Byrd, Robert C. | Javits | Schmitt |
| Cannon | Jepsen | Schweiker |
| Chafee | Johnston | Simpson |
| Chiles | Kassebaum | Stafford |
| Cochran | Laxalt | Stevens |
| Cohen | Leahy | Stevenson |
| Cranston | Levin | Stewart |
| Culver | Lugar | Stone |
| Danforth | Magnuson | Thurmond |
| DeConcini | Matsunaga | Tower |
| Dole | McClure | Tsongas |
| Domenici | Melcher | Wallop |
| Durenberger | Metzenbaum | Warner |
| Eagleton | Mitchell | Weicker |
| Exon | Moynihan | Williams |
| Ford | Nelson | Zorinsky |

The PRESIDING OFFICER. A quorum is present.

Mr. HATFIELD. Mr. President, what is the pending business?

The PRESIDING OFFICER. The Senate will be in order.

The pending business is a motion by the Senator from Oregon to indefinitely postpone the bill.

Mr. HATFIELD. 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. HATFIELD. Mr. President, I move to table the motion, and I ask for the yeas and nays.

The PRESIDING OFFICER. I am sorry, the Chair did not hear the Senator.

Mr. HATFIELD. I move to table the motion to postpone indefinitely.

The PRESIDING OFFICER. Is the Senator asking for the yeas and nays on that?

Mr. HATFIELD. I ask for the yeas and nays on the tabling motion.

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

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Oregon to lay on the table the motion to indefinitely postpone the bill. 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 Delaware (Mr. BIDEN), the Senator from Idaho (Mr. CHURCH), the Senator from New Hampshire (Mr. DURKIN), the Senator from Alaska (Mr. GRAVEL), the Senator from South Carolina (Mr. HOLLINGS), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Louisiana (Mr. LONG), the Senator from South Dakota (Mr. MCGOVERN), the Senator from North Carolina (Mr. MORGAN), the Senator from Mississippi (Mr. STENNIS), and the Senator from Georgia (Mr. TALMADGE) are necessarily absent.

Mr. STEVENS. I announce that the Senator from Arizona (Mr. GOLDWATER), the Senator from Maryland (Mr. MATHIAS), and the Senator from North Dakota (Mr. YOUNG) are necessarily absent.

The PRESIDING OFFICER. Is there any Senator in the Chamber who has not voted who wishes to vote?

The result was announced—yeas 78, nays 8, as follows:

[Rollcall Vote No. 187 Leg.]

YEAS—78

| | | |
|---|---|---|
| Baker | Hart | Pell |
| Baucus | Hatch | Percy |
| Bayh | Hatfield | Pressler |
| Bentsen | Hayakawa | Pryor |
| Boren | Heflin | Randolph |
| Boschwitz | Heinz | Ribicoff |
| Bradley | Helms | Riegle |
| Bumpers | Huddleston | Roth |
| Burdick | Humphrey | Sarbanes |
| Byrd, Harry F., Jr. | Inouye | Sasser |
| | Jackson | Schmitt |
| Byrd, Robert C. | Javits | Schweiker |
| Cannon | Jepsen | Simpson |
| Chafee | Johnston | Stafford |
| Chiles | Kassebaum | Stevens |
| Cochran | Laxalt | Stevenson |
| Cohen | Levin | Stewart |
| Cranston | Lugar | Stone |
| Culver | Magnuson | Thurmond |
| DeConcini | Matsunaga | Tower |
| Domenici | Melcher | Tsongas |
| Durenberger | Metzenbaum | Warner |
| Eagleton | Mitchell | Weicker |
| Exon | Moynihan | Williams |
| Ford | Nelson | Zorinsky |
| Garn | Nunn | |
| Glenn | Packwood | |

NAYS—8

| | | |
|---|---|---|
| Armstrong | Dole | Proxmire |
| Bellmon | Leahy | Wallop |
| Danforth | McClure | |

NOT VOTING—14

| | | |
|---|---|---|
| Biden | Hollings | Morgan |
| Church | Kennedy | Stennis |
| Durkin | Long | Talmadge |
| Goldwater | Mathias | Young |
| Gravel | McGovern | |

So the motion to lay on the table the motion to indefinitely postpone was agreed to.

Mr. HATFIELD. Mr. President, I move to reconsider the vote by which this action was tabled, and, Mr. President, I suggest the absence of a quorum.

Mr. ROBERT C. BYRD. Mr. President, I make the point of order that the motion to reconsider is dilatory. The vote in favor of the previous motion was 78 votes. The motion is plainly dilatory and I make that point of order.

The PRESIDING OFFICER. The Senate will be in order. Just a moment.

Let the Chair see the tally sheet.

Under the precedents of the Senate, the Chair would have to hold that the motion is dilatory.

Mr. HATFIELD. Is what? Will the Chair repeat the ruling, please?

The PRESIDING OFFICER. Under the precedents of the Senate, in light of the last vote, the Chair would have to hold that the motion is dilatory.

Mr. HATFIELD. I appeal the ruling of the Chair.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The minority leader was seeking recognition.

Mr. BAKER. Mr. President, I seek recognition on my own time. Mr. President, I know of no precedents of the Senate heretofore, and I would inquire of the Chair, is there any previous precedent that would support a ruling by the Chair that a motion is dilatory under the provisions of rule XXII simply because, as I understood the Chair to rule, the vote was lopsided, one way or the other? I know of no such precedent. I have participated previously in ruling out of order amendments that were clearly dilatory under rule XXII and on their face. But I believe this is clearly a different situation. I know of no precedent. I inquire of the Chair if there is such a precedent.

The PRESIDING OFFICER. Will the distinguished minority leader suspend for a moment?

Would the Senator from Oregon restate what his motion was prior to the ruling of the Chair?

Mr. HATFIELD. The Senator from Oregon made a motion to reconsider the vote by which the matter had been tabled. The Senator from Oregon voted on the prevailing side.

The PRESIDING OFFICER. The Chair reverses itself. The motion is in order.

Mr. HATFIELD. Mr. President, I suggest the absence of a quorum. I have already moved to reconsider and now I suggest the absence of a quorum.

The PRESIDING OFFICER. The Chair is aware of 50 Senators in the Chamber, in excess of 50 Senators in the Chamber. The Chair will ask the Parliamentarian if it is necessary to have a quorum call under the circumstances.

Mr. BAKER addressed the Chair.

The PRESIDING OFFICER. Under the precedent 2½ years ago, the Chair had ruled that there was a quorum and observed a quorum right after we had had a rollcall.

The Chair after reversing itself on the other matter, is aware of a quorum.

Mr. HATFIELD. Mr. President, I appeal the ruling of the Chair.

Mr. BAKER. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator from Tennessee will state his inquiry.

Mr. BAKER. Mr. President, I recall that precedent because I participated in establishing it, and I recall as well that the precedent that permits the Chair, I believe, to observe the presence of a quorum follows on after a vote without any intervening motion or business. That is not the situation here, Mr. President. I think this precedent does not apply.

I would also point out, Mr. President, that under the precedents at that time we had been involved in the Abourezk/Metzenbaum filibuster, post cloture filibuster, for days. It was an entirely different thing. We have been involved here for a matter of hours in post cloture.

I respectfully suggest that to invoke this precedent at this time is to substantially increase the scope of that precedent and is improper.

The PRESIDING OFFICER. So the Chair can thoroughly understand the minority leader, the minority leader is saying that if the Chair sees 51 Senators after a vote that is different than if the Chair sees 51 Senators 60 seconds after a vote?

Mr. BAKER. Of course not. What I am saying is, No. 1, no point of order has been made. I suppose that may happen, but none has been made so far. No. 2, that we have an entirely different factual situation, that it does not follow on the pattern that was established in that precedent. It was a rather severe precedent and it should be followed, in my judgment, only in the most careful circumstances. This is not an analogous situation and it should not be invoked in this case to deprive the Senator from Oregon of his rights.

The PRESIDING OFFICER. The Chair was willing, as the astute minority leader knows, to reverse itself on what has been a subjective call of the Chair on dilatory matters, even though the Chair was convinced it had adequate precedents to sustain its earlier rulings on subjective matters. The Chair, however, speaking both as Presiding Officer and in his capacity as Senator from Vermont, would find it would view intolerable the inability of the Chair's own logic to look out here and see substantially in excess of 51 Senators and declare we need a rollcall for a quorum. Possibly some subsequent Presiding Officer may feel differently than the present Chair.

Mr. BAKER. I thank the Chair. I would remind the Chair that the call for a quorum and the ascertainment of a quorum is not a prerogative of the Chair but it is a constitutional right. I would suggest that the Chair's ruling should not apply in this case.

The PRESIDING OFFICER. Under the precedent which the Chair cited before which the minority leader is aware of and participated in, there was no mention of intervening business by the Chair. If the minority leader would like, I will be glad to read the transcript of that matter.

Mr. BAKER. Mr. President, I will read that. I will yield now to the Senator from Oregon so he can make his motion.

Mr. HATFIELD. Mr. President, I appeal the ruling of the Chair, 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.

Mr. ARMSTRONG. Will the Chair state the question so Senators may be guided? If we wish to sustain the Chair, how do we vote?

The PRESIDING OFFICER. The question is, Shall the decision of the Chair that the call for a quorum under the present circumstances, the Chair having ascertained a quorum being present, was dilatory, and should that ruling stand as the judgment of the Senate? A yea vote would agree with the Chair.

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

The legislative clerk proceeded to call the roll.

The PRESIDING OFFICER (Mr. BOREN). The clerk will suspend. Will Senators please clear the well? The Senate will be in order.

The clerk may proceed.

The legislative clerk resumed and concluded the call of the roll.

Mr. CRANSTON. I announce that the Senator from Idaho (Mr. CHURCH), the Senator from New Hampshire (Mr. DURKIN), the Senator from Alaska (Mr. GRAVEL), the Senator from South Carolina (Mr. HOLLINGS), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Louisiana (Mr. LONG), the Senator from South Dakota (Mr. MCGOVERN), the Senator from North Carolina (Mr. MORGAN), the Senator from Mississippi (Mr. STENNIS), and the Senator from Georgia (Mr. TALMADGE) are necessarily absent.

I further announce that the Senator from Delaware (Mr. BIDEN) is absent on official business.

Mr. STEVENS. I announce that the the Senator from Maryland (Mr. MATHIAS) and the Senator from North Dakota (Mr. YOUNG) are necessarily absent.

The PRESIDING OFFICER. Are there other Senators present desiring to vote?

The result was announced—yeas 52, nays 34, as follows:

[Rollcall Vote No. 188 Leg.]

YEAS—52

| | | |
|---|---|---|
| Baucus | Ford | Nunn |
| Bayh | Glenn | Pell |
| Bentsen | Hart | Proxmire |
| Boren | Hayakawa | Pryor |
| Bradley | Heflin | Randolph |
| Bumpers | Huddleston | Ribicoff |
| Burdick | Inouye | Riegle |
| Byrd, Harry F., Jr. | Jackson | Sarbanes |
| | Johnston | Sasser |
| Byrd, Robert C. | Leahy | Stafford |
| Cannon | Levin | Stevenson |
| Chafee | Magnuson | Stewart |
| Chiles | Matsunaga | Stone |
| Cranston | Melcher | Tsongas |
| Culver | Metzenbaum | Weicker |
| DeConcini | Mitchell | Williams |
| Eagleton | Moynihan | Zorinsky |
| Exon | Nelson | |

NAYS—34

| | | |
|---|---|---|
| Armstrong | Hatfield | Pressler |
| Baker | Heinz | Roth |
| Bellmon | Helms | Schmitt |
| Boschwitz | Humphrey | Schweiker |
| Cochran | Javits | Simpson |
| Cohen | Jepsen | Stevens |
| Danforth | Kassebaum | Thurmond |
| Dole | Laxalt | Tower |
| Domenici | Lugar | Wallop |
| Durenberger | McClure | Warner |
| Garn | Packwood | |
| Hatch | Percy | |

NOT VOTING—14

| | | |
|---|---|---|
| Biden | Hollings | Morgan |
| Church | Kennedy | Stennis |
| Durkin | Long | Talmadge |
| Goldwater | Mathias | Young |
| Gravel | McGovern | |

The PRESIDING OFFICER. On this vote, the yeas are 52; the nays are 34. The ruling of the Chair stands as the judgment of the Senate that the call for the quorum was dilatory.

Mr. HATFIELD. Mr. President, I ask for the yeas and nays on my motion to reconsider.

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

The yeas and nays were ordered.

The question is on the motion to reconsider the vote by which the motion to lay on the table the motion to postpone indefinitely the consideration of the bill was agreed to. The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Idaho (Mr. CHURCH), the Senator from New Hampshire (Mr. DURKIN), the Senator from Alaska (Mr. GRAVEL), the Senator from South Carolina (Mr. HOLLINGS), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Louisiana (Mr. LONG), the Senator from South Dakota (Mr. MCGOVERN), the Senator from North Carolina (Mr. MORGAN), the Senator from Mississippi (Mr. STENNIS), and the Senator from Georgia (Mr. TALMADGE) are necessarily absent.

I further announce that the Senator from Delaware (Mr. BIDEN) is absent on official business.

Mr. STEVENS. I announce that the Senator from Maine (Mr. COHEN), the Senator from Arizona (Mr. GOLDWATER), the Senator from Maryland (Mr. MATHIAS), and the Senator from North Dakota (Mr. YOUNG) are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 14, nays 71, as follows:

[Rollcall Vote No. 189 Leg.]

YEAS—14

| | | |
|---|---|---|
| Armstrong | Hatfield | Lugar |
| Bellmon | Heinz | McClure |
| Boschwitz | Humphrey | Packwood |
| Danforth | Javits | Stevens |
| Hatch | Laxalt | |

NAYS—71

| | | |
|---|---|---|
| Baker | Byrd, Robert C. | Durenberger |
| Baucus | Cannon | Eagleton |
| Bayh | Chafee | Exon |
| Bentsen | Chiles | Ford |
| Boren | Cochran | Garn |
| Bradley | Cranston | Glenn |
| Bumpers | Culver | Hart |
| Burdick | DeConcini | Hayakawa |
| Byrd, Harry F., Jr. | Dole | Heflin |
| | Domenici | Helms |

| | | |
|---|---|---|
| Huddleston | Nelson | Schweiker |
| Inouye | Nunn | Simpson |
| Jackson | Pell | Stafford |
| Jepsen | Percy | Stevenson |
| Johnston | Pressler | Stewart |
| Kassebaum | Proxmire | Stone |
| Leahy | Pryor | Thurmond |
| Levin | Randolph | Tower |
| Magnuson | Ribicoff | Tsongas |
| Matsunaga | Riegle | Wallop |
| Melcher | Roth | Warner |
| Metzenbaum | Sarbanes | Weicker |
| Mitchell | Sasser | Williams |
| Moynihan | Schmitt | Zorinsky |

NOT VOTING—15

| | | |
|---|---|---|
| Biden | Gravel | McGovern |
| Church | Hollings | Morgan |
| Cohen | Kennedy | Stennis |
| Durkin | Long | Talmadge |
| Goldwater | Mathias | Young |

So the motion to reconsider the vote by which the Senate agreed to the motion to lay on the table the motion of the Senator from Oregon to indefinitely postpone the joint resolution was rejected.

AMENDMENT NO. 1823

Mr. HATFIELD. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. HATFIELD. Mr. President, what is the pending issue or question or business before the Senate?

The PRESIDING OFFICER. The pending question is amendment No. 1823, offered by the Senator from Georgia (Mr. NUNN).

Mr. HATFIELD. 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. The question is on agreeing to the motion to lay on the table the amendment offered by the Senator from Georgia. 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 Idaho (Mr. CHURCH), the Senator from Alaska (Mr. GRAVEL), the Senator from South Carolina (Mr. HOLLINGS), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Louisiana (Mr. LONG), the Senator from South Dakota (Mr. MCGOVERN), the Senator from North Carolina (Mr. MORGAN), the Senator from Mississippi (Mr. STENNIS), and the Senator from Georgia (Mr. TALMADGE) are necessarily absent.

I further announce that the Senator from Delaware (Mr. BIDEN) is absent on official business.

Mr. STEVENS. I announce that the Senator from Maine (Mr. COHEN), the Senator from Arizona (Mr. GOLDWATER), the Senator from New York (Mr. JAVITS), the Senator from Kansas (Mrs. KASSEBAUM), the Senator from Maryland (Mr. MATHIAS), and the Senator from North Dakota (Mr. YOUNG) are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 15, nays, 69, as follows:

[Rollcall Vote No. 190 Leg.]

YEAS—15

| | | |
|---|---|---|
| Armstrong | Laxalt | Riegle |
| Bellmon | Leahy | Sarbanes |
| Culver | McClure | Stevens |
| Danforth | Packwood | Wallop |
| Heinz | Proxmire | Weicker |

NAYS—69

| | | |
|---|---|---|
| Baker | Ford | Nunn |
| Baucus | Garn | Pell |
| Bayh | Glenn | Percy |
| Bentsen | Hart | Pressler |
| Boren | Hatch | Pryor |
| Boschwitz | Hatfield | Randolph |
| Bradley | Hayakawa | Ribicoff |
| Bumpers | Heflin | Roth |
| Burdick | Helms | Sasser |
| Byrd, Harry F., Jr. | Huddleston | Schmitt |
| | Humphrey | Schweiker |
| Byrd, Robert C. | Inouye | Simpson |
| Cannon | Jackson | Stafford |
| Chafee | Jepsen | Stevenson |
| Chiles | Johnston | Stewart |
| Cochran | Levin | Stone |
| Cranston | Lugar | Thurmond |
| DeConcini | Magnuson | Tower |
| Dole | Matsunaga | Tsongas |
| Domenici | Melcher | Warner |
| Durenberger | Metzenbaum | Williams |
| Durkin | Mitchell | Zorinsky |
| Eagleton | Moynihan | |
| Exon | Nelson | |

NOT VOTING—16

| | | |
|---|---|---|
| Biden | Javits | Morgan |
| Church | Kassebaum | Stennis |
| Cohen | Kennedy | Talmadge |
| Goldwater | Long | Young |
| Gravel | Mathias | |
| Hollings | McGovern | |

So the motion to lay on the table Mr. Nunn's amendment (No. 1823) was rejected.

[The foregoing are the Senate proceedings which occurred up until 12 o'clock midnight, June 10, 1980. The proceedings which occurred thereafter will be printed in the RECORD of June 11, 1980.]