SENATE—*Tuesday, June 23, 1981*

(Legislative day of Monday, June 1, 1981)

The Senate met at 9 a.m., on the expiration of the recess, and was called to order by the President pro tempore (Mr. THURMOND).

PRAYER

The Chaplain, the Reverend Richard C. Halverson, LL.D., D.D., offered the following prayer:

Let us pray.

God of creation, we praise Thee for Thy wisdom in giving the power of reproduction to opposites. Out of male-female union comes human life; out of positive and negative poles come light and power. We so easily disregard this principle in the realm of ideas. We reduce issues to either-or, assuming that when there is disagreement, one is right, the other wrong; and we forfeit the truth that may emerge from conflicting ideas.

We thank Thee for the creative dynamics of opposition, that when two disagree, both may be right, or both wrong. Help us to appreciate the possibility that there are three sides to a question: My side, the other's side, and the right side. In disagreement grant us the humility and patience to seek together the right.

God of light and wisdom and truth, help us to understand that diversity is the essence of unity. Different notes produce harmony; different colors produce a picture; different shapes produce symmetry. Give patience to Thy servants of the public that out of their struggle may come light and wisdom and truth. In the name of Him who is the light of the world and truth incarnate. Amen.

RECOGNITION OF THE ASSISTANT MAJORITY LEADER

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

THE JOURNAL

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

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

ORDER FOR ROUTINE MORNING BUSINESS

Mr. STEVENS. Mr. President, I ask unanimous consent that, following the time allocated to the two leaders under the standing order, as reduced, and the special orders entered for this morning, there be a period for the transaction of routine morning business not to extend beyond 10:30 a.m., in which Senators may speak for not more than 5 minutes each.

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

COMMENDATIONS FOR PARTICIPANTS IN FAA-AIR TRAFFIC CONTROLLERS NEGOTIATIONS

Mr. STEVENS. Mr. President, I wish to take this opportunity to commend those who participated in the negotiations between the Federal Aviation Administration and the Professional Air Traffic Controllers Organization over the weekend.

In particular, Secretary Drew Lewis, and Administrator Lynn Helms deserve great credit for their dedicated and diligent efforts in reaching a compromise which is both comprehensive and fair. Robert Poli, the PATCO leader deserves equal commendation for the final result. These men and their staffs spent over 40 hours negotiating last weekend including a 19-hour stint that ultimately resolved the issues. From all reports, each of them handled the discussions with skill and diplomacy.

Mr. President, I know that the last 72 hours were extremely hard on everyone involved. There was a lot at stake and a tremendous amount of pressure on those working toward a solution but each of them held up admirably. Not only did they put in a tremendous amount of time at the negotiating table, but they also found time to keep our offices and the public apprised of the progress.

They faced a tough problem, but I sincerely believe that the solution maintains the Federal Aviation Administration's commitment to safety while taking into consideration the uniqueness of the job done by the controllers and recognizing the controllers' dedication and hard work.

The agreement they reached is still subject to ratification by the members of the Professional Air Traffic Controllers and review by Congress. However, I am sure that the controllers will be pleased with the efforts of Robert Poli on their behalf. It appears that he is a tough negotiator.

It is also obvious from talking to many of my colleagues, that Congress and the public will see the resolution as both fair and equitable. Secretary Drew Lewis and Administrator Helms did an excellent job in keeping the negotiations going.

They were able to reach a solution which represents the public interest and protects our commitments to air safety.

Mr. President, these two men are a tremendous asset to this administration. President Reagan made a pledge to bring in the best people available. If the actions of these two public servants are any indication of the rest, I would say that the President has fulfilled his goal. This Nation owes them both and their staffs a tremendous debt.

● Mr. ANDREWS. Mr. President, I would like to join Senator STEVENS in commending the fine work that was done by Secretary of Transportation Drew Lewis, FAA Administrator J. Lynn Helms and PATCO president Robert Poli in negotiating the air traffic controllers' contract. After many tedious hours of discussion the negotiators came up with a reasonable, workable package which should benefit not only the air traffic controllers, but also the traveling public. All parties involved should be pleased with the work of their representatives.

The air traffic controllers have a special responsibility, performing extremely rigorous duties of a strenuous nature. This contract is definitely a step in the right direction for improving the working conditions of these employees.●

OUR OUTSTANDING U.S. POSTAL SERVICE

Mr. STEVENS. Mr. President, recently there were news accounts relating comments by the Postmaster General, William Bolger, regarding the possibility that he would have to request a postage increase for first-class stamps, from 18 to 23 cents. I hope such an increase is unnecessary and I strongly urge the Postmaster General to make every effort to avoid it, if at all possible.

I also hope that the Congress will take note of such a possibility and not impose restrictions on the operation of the Postal Service that would prevent productivity gains capable both of absorbing the pending budget cuts and of containing future postage increases. The cost of a first-class stamp is high—but despite the current 18-cent price tag, it brings to us the best postal service in the world today.

Striking evidence of the continuing quality of mail delivery came to my attention recently, when Jim and Dixie Rynearson, good friends of mine from Sitka, Alaska, relayed to me an experience with the U.S. Postal Service which ought to give pause to those hasty to criticize its operation.

The Rynearsons had requested, by phone, an important item essential for the operation of their business to be sent from St. Lawrence Island. St. Lawrence Island is 60 miles from the Russian shore and 1,200 miles northwest from Sitka.

The very next day, they received, in the mail, the item they had ordered from St. Lawrence Island. The postal staff had taken extra precaution to make sure that it made the correct flights. And, let me tell you, there are not very many flights in and out of St. Lawrence Island.

So, a letter coming from near the Russian border to the old Russian capital of the United States traversed some 1,200 miles in a day. That is pretty good service. Considering that they are paying 18 cents for letter mail, that is a very good buy.

In fact, it is the best postal buy in the world, save Canada. And, if it were not for the fact that the Federal Government of Canada derives approximately

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

AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

28 percent of its postal budget from general revenues, compared to a U.S. contribution of less than 1½ percent, the price of their stamp would be significantly higher than the United States.

Of the 14 leading free world nations, only Canada, the United States, and Italy have a postage rate less than the equivalent of 20 cents in U.S. currency. The U.S. letter rate is less than half the first-class rate of France, West Germany, Sweden, Austria, and the Netherlands, and almost half of what the British and Japanese pay for similar service.

Certainly, service is of concern to all of us. We often hear about a letter that took several days or a week to get to its destination. I am sure that there are even worse horror stories.

However, 95 percent of first-class mail, deposited before 5 p.m. and destined for local metropolitan area delivery, is delivered the next day.

By the way, this class of mail makes up more than 65 percent of all first-class mail. Mail destined for locations outside the metropolitan area, but within a 600-mile radius, meets the postal service standards of second day delivery 86 percent of the time, and 87 percent for 3-day delivery, which is 600 miles or beyond.

Of course, when dealing with almost 110 billion pieces of mail, even 5 percent of delayed metropolitan area mail will mean a lot of unhappy patrons and will generate many complaints.

There are many factors involved in the bargain we all purchase every day when we send mail. The largest factor, the most important factor, is the postal employees themselves, whether they be top management or down the line to the local postmaster, the carrier, mail handler, clerk, or mechanic—all segments of the postal work force have contributed greatly.

Employee productivity in the U.S. Postal Service is phenomenal when you compare it with private industry. Last year, employee productivity increased 5.5 percent. That was 2.5 percent higher than the U.S. Postal Service's goal. Since postal reorganization in 1970, there has been a 34-percent increase in productivity. In the same period of time, the average annual productivity in private industry was 1.3 percent, or 15 percent over a 10-year period.

In 1970, 741,000 postal employees delivered 85 billion pieces of mail. In 1980, 667,000 employees, or 74,000 fewer employees, handled 106.3 billion pieces of mail. No other postal employees in the world are as productive.

However, public service appropriations budget cuts of $344 million already targeted by the Senate will require the Postal Service to be even more productive. I was pleased to learn that Postmaster General William Bolger's reaction to the suggested cuts was that his department will bite the bullet and absorb the cuts, primarily through increased productivity.

We need more examples of leadership which digs in and attempts to live with the cuts and absorb them rather than telling the American public that an agency simply cannot face budget cuts.

We all know that cuts must be made—it is just a matter of how they are administered and how one goes about attempting to live with them while providing the service that the public expects. I commend Postmaster General Bolger for his forthright and cooperative attitude in that regard.

The mailing public has responded favorably to the operation of the Postal Service, its rates, service, and productivity. The Postal Service is not a static operation.

In fiscal year 1980, bulk mail volume jumped by 6.5 billion pieces, the largest single year increase in postal history. Included in this increase was a 2.4-percent rise in parcel post volume. This is the first increase in parcel post in 14 years.

The largest factor in the increase in mail volume was the growth of the U.S. Postal Service's presort program, which now accounts for more than 11 percent of all first-class mail. First-class presort means the mailer who utilizes this service can reduce postage by 2 cents per piece.

This increase in presort, whether it is first- or third-class mail, reflects the fact that in the last 4 years the Postal Service has made 13 regulation changes designed to increase customer participation in the presort mail program.

The pending ZIP+4 proposal is just another change in the regulation encouraging the expanded use of discount mail, and has tremendous potential for future cost savings.

On balance, the U.S.P.S. track record is outstanding. Despite great increases in volume, and the number of homes and businesses receiving mail, postal rates remain comparatively low, service reliable, and productivity high. No other Federal or private system provides 40,000 service outlets. Our U.S. post offices do. And, we all know that each post office provides innumerable postal and nonpostal services, many of them well beyond the call of duty.

For example, the postal service is a site for selective service registration, for the ordering of gold medallions sold by the Treasury Department and, in many States, including Alaska, for the distribution of food stamps.

In addition, post offices accept passport applications, sell duck stamps and supply alien registration cards. In many communities, the post office is the symbol of the Federal Government, in spite of the fact that the U.S.P.S. is technically a quasi-independent agency.

There is no question that there are mistakes, such as delayed letters, damaged packages and curt employees. We have all heard those complaints and I do not know that we will ever stop hearing them. But I think we ought to give credit where credit is due—we have without question the outstanding postal service in the world, regardless of how measured.

I do not hesitate to criticize the Postal Service where justified. I do not hesitate for a moment to pursue a constituent's complaint against the Postal Service when warranted.

But I also do not forget the outstanding service provided by postal employees and the tremendous operation that is the U.S. Postal Service.

Mr. President, I yield to the acting minority leader.

RECOGNITION OF THE ACTING MINORITY LEADER

The PRESIDENT pro tempore. The Senator from Wisconsin.

Mr. PROXMIRE. Mr. President, in behalf of the minority leader, I shall yield back 1 minute in just a minute.

THE RULE OF LAW

Mr. PROXMIRE. Mr. President, let us take a look at one of the fundamental principles on which our Government is based: the rule of law.

The Founding Fathers of this Nation worked to form a political system which would insure justice, avoid domestic and foreign violence, promote the people's welfare, and secure the blessings of liberty for future generations. At the same time, though, the leaders of this young Nation knew that they must limit the powers of the Government so that no one man, no one branch of Government, no one faction could ever gain undue power.

This is the dilemma of responsible government and we solved it by applying the fundamental principle of the rule of law. Our ideals of representative democracy, free speech and expression, and leadership by open election with universal suffrage were all put into action through law.

Laws make up the concrete foundation that supports the institutions of our country. Laws are the lifeblood of democracy, healing our wounds and solving our problems when the citizens agree to change them. Men can change the law—but we will never change the fact that no man in our Nation is above the law. Existing law, mutually agreed upon, rules over men and brings order to society.

Yes, the laws can be changed. But the rule of law over men is the constant principle that has made America the peaceful and prosperous country that it is today.

I believe in the rule of law. I believe that we must apply the same principle, whenever possible, to the community of nations. We can see the benefits that have come from our past efforts in this direction. Multilateral agreements such as the GATT have been giant steps forward toward global peace and cooperation.

Mr. President, I support the Genocide Convention because it confirms our belief that the rule of law can stop destruction. This convention can help to

deter and punish the destruction of entire groups of people—national, ethnic, racial, and religious groups. We must never relent in our efforts to make men and nations accountable for their actions to some higher authority. The Genocide Convention provides this authority. It provides a law to rule over anyone, anywhere, who attempts the murder of an entire specified group of human beings.

The world is not yet safe from madmen and murderers. I urge my colleagues to affirm their belief in the rule of law by voting to ratify the Genocide Convention. Let us join the international community in condemning the act of genocide and making it unlawful as well as immoral.

Mr. President, I yield back the remainder of the minority leader's time.

RECOGNITION OF SENATOR BOREN

The PRESIDENT pro tempore. Under the previous order, there will now be 1 hour under the control of the Senator from Oklahoma (Mr. BOREN).

Mr. PROXMIRE. Mr. President, I understand that the distinguished Senator from Oklahoma is on his way. He shall be here shortly. On his behalf, I yield such time as the Senator from Texas may require.

The PRESIDENT pro tempore. The Senator from Texas is recognized.

HIGH INTEREST RATES

SAVINGS INCENTIVES FOR HOUSING

Mr. BENTSEN. Mr. President, I rise to address the need to target tax incentives for savings at the housing industry, a subject that has far-reaching consequences for the economic well-being of our Nation. Let me put this need in perspective by focusing first on the issue of savings in general before turning to the plight of housing. I am convinced of the need to generate a sharp increase in savings and investment to restore a healthy rate of productivity growth to the American economy. This is a difficult subject for the Congress to address for several reasons: First, any action taken this year to improve our savings and productivity record will not pay off for years in the future. Also, the subjects of savings, investment and productivity do not tend to catch the public attention or enjoy the press appeal that other topical social issues have.

In past years, these factors would be two strikes against quick congressional action. But, the times have changed. Both in the Congress and at the White House, a new awareness exists of the perilous state of our economy and the weakness of its foundation. In part, this new awareness reflects the path-breaking work initiated under my chairmanship by the Joint Economic Committee in 1979. The JEC took a long, hard look at our economic foundation and the experience of our own and foreign economies in dealing with the new and persistent phenomenon of stagflation.

That look was an eye opener for us. It showed that the great, robust, and muscular American economy had feet of clay. It was an economy with some bright spots—like the computer and aircraft industries—but with many more weak, underfinanced, and increasingly uncompetitive sectors. It revealed in many ways, a society that was living off its principal rather than its interest. It was dissaving, not investing. It was spending today rather than saving for tomorrow.

It was a sobering review and one that called for major, remedial action to turn around our poor productivity performance and rebuild our Nation's foundation—its ability to continually enlarge the standard of living for all Americans. The steps to bring about that remedial action have become known as supply-side economics—the focus of economic and tax policy on steps designed to boost our Nation's productivity and production capability.

Let me review what the JEC discovered about our Nation's fundamental economic health:

POOR DOMESTIC PRODUCTIVITY RECORD

The most basic indicator of a society's ability to improve economic conditions is productivity growth. Without rising per-worker output, no society will experience rising living standards. At zero productivity growth, the only increase in one person's per capita income will occur at the expense of a decline in someone else's. It is a zero-sum game. Since the late 1960's, productivity in America has moved steadily downward, and finally reached zero in the late 1970's. I asked the Bureau of Labor Statistics earlier this year to prepare a table of U.S. productivity data and productivity indices from six other nations. I ask unanimous consent that the BLS table be printed at this point in my remarks, as table I.

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

TABLE I.—AVERAGE ANNUAL PERCENT CHANGE IN PRODUCTIVITY RELATIVE TO GROSS DOMESTIC PRODUCT [1]

Country	1950–67	1967–72	1973–79	1977–79	1950–79
Japan	7.4	9.2	3.4	4.6	6.9
Germany	5.0	4.8	3.1	2.9	4.8
Italy	5.3	5.0	1.7	2.9	4.8
France	4.7	4.5	2.9	3.0	4.3
Canada	2.5	2.8	.4	−.5	2.1
United Kingdom	2.2	3.0	1.1	1.8	2.3
United States	2.4	1.1	.3	−.1	1.7

[1] Measured by growth in real domestic product per employed person, using own country price weights.

Source: Bureau of Labor Statistics.

Mr. BENTSEN. Table I is revealing for two reasons, Mr. President. First, it starkly portrays the slide in our Nation's productivity growth—from an average annual level of 2.4 percent from 1950 to 1967, to only 0.3 percent from 1973 to 1979. In the past 3 years, this alarming trend continued with no letup. In fact, our Nation's productivity actually fell from 1977 through 1980. Recent data from the first quarter of 1981 are more encouraging. Unfortunately, these data largely reflect the beneficial impact on productivity of the miniboom we experienced in December through February, rather than a reversal of our disappointing long-term trend of declining productivity growth.

This table also reveals that most of our major international competitors have maintained healthy productivity growth despite our own collapse. These nations, from the United Kingdom to Japan, were able to weather the stresses and strains of OPEC, rising food prices, and the other ills we have experienced in the last decade far better than our own Nation.

The lesson is clear—and I know many of my colleagues here are in agreement with me on this point: We must pursue policies designed to boost productivity whenever and wherever possible. And one place to find these policies is overseas.

The JEC review made some interesting discoveries in comparing our domestic and foreign economic conditions.

POOR DOMESTIC SAVINGS AND INVESTMENT

Mr. President, the most striking finding was that the U.S. savings and investment rate was well below that of any foreign competitor. Economists have long realized the importance played by investment in raising labor productivity. But no one suspected that its influence was so sharp and important. The JEC found that a strong link exists between saving and productivity, and that the poor U.S. productivity record in good measure reflects our relatively poor savings and investment record in the past decade. The Department of Commerce summarized United States and foreign savings and investment data for me in February, covering the period 1970 through 1978. And, I ask unanimous consent for that data to be printed as table II in my remarks at this point.

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

TABLE II.—INVESTMENT AND PERSONAL SAVINGS RATES IN THE UNITED STATES AND OTHER INDUSTRIALIZED COUNTRIES, 1970–78

[In percent]

Country	Investment rate [1]	Personal savings rate [2]
United States	17.5	6.6
Great Britain	18.8	12.3
Italy	20.4	[3] 21.3
Netherlands	22.4	14.7
Canada	22.7	8.8
West Germany	23.1	14.9
France	23.3	17.1
Japan	33.2	[3] 20.5

[1] Gross fixed private and nonmilitary government investment as a percent of gross national product.
[2] Savings as a percent of disposable personal income.
[3] 1970–77; 1978 data not available.

Source: U.S. Department of Commerce, International Economic Indicators, September and December 1979.

Mr. BENTSEN. Mr. President, the highlight—or low point—of this table is the discovery that our savings rate dur-

ing the 1970's was lower than any of our major international competitors. In fact, it was scarcely one-third that of Japan and Italy and barely one-half that of the United Kingdom and West Germany. As a direct result, of course, our investment rate, excluding military outlays, was also the lowest.

This low investment is directly responsible for our poor productivity performance. Coupled with the surge in labor force growth which occurred in the 1970's—as working women became a permanent fixture across our country—our lagging investment virtually guaranteed little or no growth in labor productivity. In fact, Department of Commerce data revealed that the average annual growth in labor supply exceeded net additions to our capital stock from 1974 to 1979. As a result, the U.S. capital: Employment ratio has actually fallen since 1974.

I wish, Mr. President, that I could say we have identified the problem and are well on the path to solving it. Half of that job is done, but only half. We are no further along the road to rebuilding productivity than we were in 1979 when the full scope of the problem was first identified. For example, business plans to boost real spending on new plant and equipment—after allowing for inflation—by only 1 percent in 1981. That low rate will not even offset the existing deterioration in the existing capital stock, much less permit a start toward replacing our aging stock with new plant and equipment. It is an alarming indicator, but certainly one we have seen frequently before.

WHAT CAN BE DONE TO INCREASE SAVINGS?

As Congress wrestles with the administration's tax proposal, I believe it should give priority attention to stimulating our low rate of savings, investment, and productivity. As my colleagues know, the administration is seriously concerned with doing just that. A substantial portion of the administration's tax reduction proposal before the Congress, in fact, is intended to spark investment by firms in new plant and equipment and to stimulate savings.

I believe the incentives for capital investment to be enacted this year by Congress will go a long way toward improving the willingness of firms to expand investment in plant and equipment. But, I am not convinced that the broad brush stimulus to individual savings contained in the administration's tax proposal is adequate. A more targeted savings approach is needed, as well, in light of our dismal current situation and to provide the funds which firms will need for investment. In addition, care must be taken to see that any savings incentives does more than merely shuffle funds from one form of savings to another. The only certain way to do that is to target any savings incentive in such a fashion as to spark major economic activity. In that way, net new savings will flow into the economy as employment and incomes rise in response to the targeted savings incentive. New savings will be created, rather than a mere movement of the same savings from one form to another.

With this in mind, I have become convinced that one of the most effective targeted savings incentive the Congress can enact now is to direct savings into the housing industry. Such a step would bolster that badly deflated sector and spark a major economic boom. In turn, that boom would guarantee that new savings are created.

THE CRISIS IN HOUSING

There is no one, Mr. President, who doubts the deep peril confronting our housing industry today:

Housing starts is the most widely acknowledged indicator of the economic health of housing. In 1979, over 2 million housing starts were made by domestic builders. Today, the annual rate of such starts is 1.15 million—an incredible 43 percent below the 1979 rate.

Unemployment in the construction industry is 16.3 percent, well over double the 7.6-percent rate for the entire Nation.

Over 1 million jobs in construction and housing have been lost since 1979.

The reasons for this housing depression are widely acknowledged, as well:

The supply of mortgage money has dried up as mortgage lenders, particularly savings and loan associations and mutual savings banks, have suffered historic and staggering deposit losses—$28 billion alone in 1980.

The cost of mortgage money has soared above 16 percent, pricing all but a handful of Americans out of the housing market entirely.

The fundamental result of this housing depression has been to deny employment and adequate housing to our citizens. The soaring mortgage rate has all but eliminated the opportunity for renters, for example, to buy a home and realize that key component of the American dream. The average price of a new home now exceeds $69,000. Only 5 percent of those families who now rent could afford the monthly payments on that average priced home. Even if they could put 20 percent down, principal and interest financing costs on a $55,000 mortgage would exceed $700 a month, with insurance and taxes still to be added. By comparison, that same mortgage could be financed for $300 less per month if mortgage rates—through some miracle—declined to 8 percent.

I believe, Mr. President, that there is no debate on the impact which a reduction in mortgage rates would have on housing demand. Well over 2 million households are formed each year in our Nation, and some 700,000 housing units are lost through fire and old age. An enormous demand for housing exists at lower mortgage rates. A reduction in mortgage rates would spark a major resurgence in housing demand and supply that would result in millions of new jobs and billions of additional income and savings flowing into our economy. In fact, according to a recent analysis by the Wharton Economics Forecasting firm for the JEC, a targeted tax incentive for housing would boost productivity and fight inflation as well as creating an economic boom.

A COMBINED HOUSING AND SAVINGS PROPOSAL

This is an opportunity that the Congress should not let pass. We confront a unique opportunity to rebuild two critically imperiled industries—housing and thrift institutions—while also generating new savings in the most effective possible fashion by creating an economic boom that generates new income and savings.

It is an opportunity that the administration is not willing to utilize. Just yesterday before the Senate Finance Committee, administration Treasury officials opposed tax provisions to target savings into the housing industry and to help thrift institutions. I believe that is a mistake. Ignoring the deep financial problems of the thrifts will not make them disappear. And their problems are major:

Their cost of capital now exceeds earnings, with the result that reserves are being eroded rapidly.

Over 260 savings and loans institutions are on the troubled institutions list, more than double the 1980 level.

The thrifts suffered a $6.6 billion deposit loss in April, alone.

Over administration objections, the Senate Finance Committee yesterday took a first, but tentative step toward helping the housing and thrift industries. The committee voted to include an all-savers certificate in the tax reduction bill now being drafted. It was a halting step, however I am convinced that a more effective provision—building on the all-saver certificate concept adopted by the Finance Committee yesterday—can and will be enacted by the full Senate.

The all-saver concept is designed to combine a housing and savings incentive in one package. That is a sound approach. It combines the case of a savings certificate with a favorable tax treatment of interest earned on the certificate. It is designed, as well, to lower the cost of funds to depository institutions—the key step in reducing the cost of mortgage funds to potential borrowers and sparking a boom in the housing industry.

The provision adopted yesterday, however, is too broadly targeted to provide a big kick to either savings or the housing sector. Based on experience over the past 2 years with 6-month money market certificates, almost 60 percent of all deposits generated by the new certificates will not go to the housing sector. That is a sobering appraisal. It means that barely one-third of the funds will eventually end up helping housing. I intend to propose an amendment to the tax bill later this summer, in fact, to remedy this shortcoming.

Mr. President, let me make one final comment: I introduced S. 701, the Home Mortgage Incentive Act, last spring. It has 35 cosponsors and is endorsed by a variety of housing groups, including the National Association of Realtors and the National Homebuilders Association. I believe that very broad support demon-

strates the deep concern of the entire Senate with the plight of housing and its intention to see that lower cost mortgage money is made available to that industry and to potential homeowners. I urge the administration to join with my colleagues in translating that intention into reality. The Finance Committee has cracked open the door. It is now up to the administration and the Senate to open the door completely by combining a tax incentive for saving with effective relief for homeowners and the housing industry.

Mr. President, I am delighted to see in the Chamber the Senator from Oklahoma, who has taken a major interest in dealing with the crisis in housing and the thrift institutions, and who has been in the forefront of the fight to encourage savings in this country. I am delighted to yield the floor to the Senator, who has put together this morning a dialog with a number of Senators who share deep concern with high interest and mortgage rates and the poor rate of savings in this country.

Mr. BOREN. Mr. President, I thank the Senator from Texas. I commend him again for the constructive contribution he has made toward finding a solution to this very serious problem.

Yesterday, in the Finance Committee, the distinguished Senator from Texas made a valiant effort to pass a proposal that would have made a very significant impact and would have helped turn around the slowdown in the construction industry, would have helped make housing affordable again to young couples in this country, and would have targeted a very significant portion of those funds which would be generated in terms of new savings to the thrift institutions, where the problem is most serious. I am sorry he did not prevail in that effort, but I commend him for making that effort.

I hope that before action on the tax package is complete, the Senator from Texas will succeed in the effort he is making, because it is an effort that is in the interest of our country and one that is sorely needed at this time.

Several others have joined us on the floor this morning to talk about the looming crisis caused by the short-term effects of high interest rates. At this time, I yield 10 minutes to the distinguished former chairman of the Committee on Banking, Housing, and Urban Affairs, the Senator from Wisconsin (Mr. PROXMIRE), for his comments.

Mr. PROXMIRE. Mr. President, I thank my good friend from Oklahoma, and I congratulate him on organizing this opportunity for us to speak out on high interest rates, with respect to the devastating effect they are having on industry and employment in this country and what we can do about it.

Also, I compliment the Senator from Texas. I endorse every word he has uttered this morning. He is right.

We have had a number of chairmen of the Joint Economic Committee since that committee was established some 30 years ago, including the distinguished Paul Douglas, who was probably the most eminent economist to serve in the Senate; but nobody has made more contribution to economic understanding and cooperation in the Senate than has Senator BENTSEN. For the first time in the history of that committee, both the Republican and Democratic members of the committee have agreed on policies for this country, under the leadership of the distinguished Senator from Texas. What he is doing this morning is carrying through on that excellent beginning and that excellent tradition.

Mr. BENTSEN. I thank the distinguished Senator from Wisconsin. As chairman of that committee, he built a very good base for what I was able to do.

Mr. PROXMIRE. I thank the Senator.

Mr. President, the Senator from Texas has already made the powerful case that high interest rates are having an appalling effect on housing, on the automobile industry, on the small businessman, and on the farmer throughout this country.

I should like to speak briefly, in the first place, about why we have to concentrate on this particular area. We know there are many reasons for the high interest rates, but some of them are extremely stubborn and hard to get at and will take years to overcome.

In the first place, there are huge Federal deficits and increased Federal borrowing which is a big element in causing high interest rates. The fact is the Federal Government borrows a trillion dollars a year. Because we have a trillion-dollar national debt with a maturity that averages less than a year, so that trillion has to be borrowed over again every year.

In the second place, that deficit has been increasing every year sharply. As we know, in 1980, we had an enormous increase in the national debt. Of every $100 of additional savings we achieved in our economy in 1980, $17 of that was absorbed by additional Federal borrowing because of the deficit.

That was only the beginning of it because the off-budget borrowing by the Federal Government represented another enormous amount. In total, the Federal Government increased their borrowing by some $124 billion; so $35 out of every $100 of new savings was borrowed by the Federal Government.

The result of that, of course, was that of all the new savings provided by individual citizens and corporations, and so forth, in this country, the individual borrower, the private borrower in the private sector was able to borrow only $65 of that $100.

In the event we balance the budget, in the event we have no net increase in off-budget borrowing, there would be a 50-percent increase in the funds available for the private sector borrower to borrow. There is no question that interest rates would be lower, much lower. My estimate is that the Federal Government itself would find interest rates so much lower that we could save $25 billion in service costs on the national debt, but that is only part of it.

The most important part, of course, is that in the private sector the home buyer instead of having to pay an average of 15 percent, a disgracefully high interest rate on his mortgage, could borrow at around 10 percent and in the private sector instead of having a prime rate of 20 percent it would be probably half that and maybe even less. All this would flow from a balanced budget and no increase in net off-budget borrowing.

So we certainly have to recognize that the Federal Government itself must reform these policies. Unfortunately, we are not going to do that this year and probably not next year. Some of us, but unfortunately far from a majority of us, would adopt these policies right now, this year, cold turkey.

I introduced amendments to balance the budget in 1979, 1980, and 1981. These all lost. So this fiscal situation will not improve for some time.

In the second place, we have restrictions that discourage savings, restrictions that are imposed by the Federal Government that prohibit, makes it a crime for a commercial bank or a savings and loan association to pay more than something like 5¾-percent interest to people who put their money in a savings account and save it.

We did change the law last year. We phased out that restriction, but we phased it out over a period of 6 years. That is not going to increase savings very fast. So if we are going to get action we have to take the kind of action the distinguished Senator from Oklahoma, the distinguished Senator from Missouri (Mr. DANFORTH) and others have advocated, and that is to provide a tax incentive for savers to save money.

There are a number of interesting and effective proposals that have been made. One has been made by the distinguished Dr. Thorow of Columbia University, a brilliant young economist, who proposes that we exempt from income taxation that portion of people's income that they save up to a certain point, maybe $5,000, maybe $10,000. As Dr. Thorow points out this would have an immediate and dramatic effect in increasing savings. What a reward. It would mean if you made $30,000 and saved $10,000 of that that $10,000 would not be taxed until you spent it, and that is the kind of incentive that we should provide.

However, we have to work with what we have and we have several very excellent proposals before us.

There is one, for example, by the distinguished Senator from Missouri which is cosponsored by a number of other Senators including this Senator. This is called a survival bill for thrift institution. It is not a direct housing bill. But it does help housing by keeping the thrifts that finance housing viable.

By allowing tax-free treatment up to $2,000 for couples on 1-year certificates paying 70 percent of the Treasury bill rate, this bill lowers thrift cost of funds substantially and basically increases the present tax-free treatment to savers from $400 which it is now to $2,000 for 1 year.

Now it is a particularly helpful bill because it targets that savings toward an industry which, as the Senator from Texas pointed out, needs it urgently, and that is the housing industry. At the same time it is broader than some other measures.

Commercial banks, most of which are not housing oriented, will be able to offer the certificates also, but money market funds will not be able to do so.

As the Senator from Texas pointed out, the commercial banks traditionally have been making housing loans but got out of them lately, and this would greatly help to get them back into it.

Because of their close identification as depository institutions, commercial banks would not be left out of a program such as this. The flow of funds out of insured institutions to money market funds will abate with this legislation.

There is no question in my mind that if we can enact a bill like the Danforth bill or another excellent bill the distinguished Senator from Oklahoma proposed, the Boren bill, it will help and help substantially and help now.

What we need, Mr. President, as I pointed out, is certainly a long-term policy of balancing this budget, however painful this may be, getting the Federal Government out of the credit market, however difficult it may be, and at the same time we need to act now. We need to act this year. We need to prevent a situation, that finds us with a pathetic 1.1 million housing starts this year, and consequently enormous unemployment in this industry. Many fine, able, efficient homebuilders are falling out of the industry and cannot be replaced. We need to stabilize that industry, and this kind of legislation would do it.

Mr. President, I thank my good friend from Oklahoma very much and congratulate him on his leadership on this matter.

As a former chairman of the Committee on Banking, Housing, and Urban Affairs, I can tell him that this is something that our committee will look at very closely and try to supplement in any way we can, and I can tell him also that on the basis of the hearings we had on the thrift industry, the savings and loans urgently need this kind of assistance. They are not going to fail. People do not have to worry about losing their money. But we are going to cripple the housing industry unless we give them the kind of assistance that the Senator from Oklahoma proposes.

The PRESIDING OFFICER (Mr. MATTINGLY). The Senator from Oklahoma.

Mr. BOREN. Mr. President, I thank my distinguished colleague from Wisconsin for his contribution to this discussion and his concern. He certainly is correct in pointing out the problems that we have that are caused by high Government spending, how it impacts the interest rate as the Government comes into the credit market, as he has already pointed out.

I just picked up the figures for this year. The Federal Government this year will pay $64.6 billion in interest, up 23 percent from the prior year. To put this into perspective, we are spending on interest on the national debt alone this year 56 percent of the amount of the total defense budget of this country; 56 percent of the amount of the total defense budget is being paid on interest. If interest rates on a 3¾ year U.S. Government security remain at their current level of 12.5 percent, it will be costing us approximately $120 billion a year to service the national debt of this country.

So it is a very serious problem that has caused Government to compete in the credit market forcing up interest rates for others, as Senator PROXMIRE has pointed out, and this, of course, has plunged the construction industry into a deep depression. It has caused the number of bankruptcies in the construction industry to reach an all-time high, the highest since the great depression.

Mr. President, we have been joined in the Chamber by the distinguished Senator from Tennessee (Mr. SASSER) who as our colleagues will remember has come to this Chamber again and again to talk about the problems caused by high interest rates, the threat that high interest rates pose to the economic health of this country.

No single Member of this body has done as much to alert all of the Members of Congress and the people of the country to the dangers posed by short term high interest rates, and at this time I yield such time as he needs to the Senator from Tennessee.

Mr. SASSER. Mr. President, I thank the Senator from Oklahoma for yielding to me, and I wish to take this opportunity to commend him for the leadership that he has shown this morning in putting together what I think is a very productive dialog, focusing hopefully the attention not only of this body but also the attention of the administration and the attention of the country on the damage that the erroneous high interest rate policy is wreaking on our economy.

I am pleased to join with my democratic colleagues to call the attention of the American public to what is happening to our economy as a result of what I consider to be highly erroneous high interest rate economic policies being pursued by the Federal Reserve Board, among others.

I have spoken out early and often on this subject, and I have been a constant critic of the high-interest rate policy. I did not believe that the policy of high interest rates would work when first adopted by the Federal Reserve Board in October 1979, and I still do not believe that high interest rates will lead us on the road to economic recovery. On the contrary, I submit that they ultimately will lead us down the road of economic ruin.

I have attempted to speak out against high interest rates in a number of ways. I held the first Senate Budget Committee hearing on the economic impact of high interest rates back in November of 1979. At that time I must say I felt like somewhat of a lonely voice in the wilderness. The economists were telling me that high interest rates were not inflationary, that the interest rates, at that time going up into the range of 14 percent, were necessary to cool off an overheated economy.

Well, Mr. President, it certainly cooled off an overheated economy and led us directly into the recession of 1980.

In April of 1980 I released a Congressional Research Service study which detailed the lack of agricultural representation on the Federal Reserve Board and on the Board's regional banks, which further highlighted my concern about the Board's need to be more diverse and have more practical views about the interest rate situation.

In late 1980 I offered a specific resolution, with a number of other Democratic colleagues, ordering an immediate congressional study of high interest rates.

I reintroduced that resolution on the very first day of the 97th Congress, along with the cosponsorship of several of my Democratic colleagues.

The Senate debated a modified form of this interest rate resolution on May 13 and, Mr. President, we rejected this resolution, unfortunately, by a vote of 57 to 37, on an almost straight party line vote.

Well, Mr. President, as one Senator I am not prepared to give up in this fight against high interest rates. The people of my State have urged me on in an effort to overturn the current policies of high interest rates and tight money, and I intend to continue in that fight until we reach the day when we abandon economic policies that are based on high interest rates and all the economic suffering that they entail.

Well, some have contended that high interest rates and tight money will hold down inflation. Unfortunately, the facts show otherwise. When high interest rate policies were fully unveiled by the Federal Reserve Board of October of 1979, the inflation rate was running at 12 percent. In the last 19 months since October of 1979 the annual inflation rate has run at 12 percent or more. In 12 of those months we have pursued high interest rate policies, and the prime rate has exceeded 20 percent on separate occasions during that time.

Mr. President, I ask unanimous consent that an accompanying table showing that tight money policy has done little to dampen down our inflationary fires be printed in the RECORD.

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

PRIME RATE AND CONSUMER PRICE INDEX RELATIONSHIPS, OCTOBER 1979 TO APRIL 1981

[In percent]

Date	Prime lending rate (average rate)	Consumer price index (annualized average rates of increase)
1979:		
October	14.25	12.0
November	15.38	12.0
December	15.38	14.4
1980:		
January	15.25	16.8
February	15.50	16.8
March	18.13	16.8
April	19.50	10.8
May	16.25	10.8
June	13.00	12.0
July	11.50	0
August	11.25	8.4
September	12.75	12.0
October	13.75	12.0
November	16.25	13.2
December	20.00	12.0
1981:		
January	20.75	8.4
February	19.50	12.0
March	18.25	7.2
April	17.75	4.8

Mr. SASSER. Well, what have high interest rates done to the economy? They have literally devastated the housing industry. They have crippled the automobile industry—10 percent of the automobile dealers in this country went bankrupt last year.

They have held down long-term-business investment and contributed to the record business failure rate in this country.

High interest rates have created a massive crisis of confidence in our savings and loan industry.

Let me spend just a few moments noting some of the gruesome statistics that attest to the economic damage of high-cost credit.

Average housing prices have risen to a record $84,000 due to a depressed housing industry.

Mortgage rates run at about 16 percent all around the Nation, and only about 2 to 4 percent of the American homebuying public can afford to buy a home.

The depression in the housing industry means that we produce slightly over 1 million units of housing a year, 1.2 million units of housing less than we need.

What this means is that we are going to have a pent-up housing demand in the years ahead that will sow the seeds of future housing inflation, and also deprive many of our younger Americans of fulfilling the dream of owning their own home.

Just this past month housing starts dropped by 14 percent. Housing inventories are reaching record levels, and as much as one-third of the Nation's homebuilding force may have left the field.

We are witnessing the dismantling of the housing industry in this country, piece by piece, without any great concern by the Federal Reserve Board or apparently by the Reagan administration.

Consider, if you will, the economic loss entailed by this policy. If we could bring interest rates down by 3 or 4 points, we could easily produce 600,000 additional housing units. The building of these houses would result in 860 million man-years of construction activity, and the economic activity produced by this homebuilding would shave some $7 billion off the budget deficit.

The carnage of high interest rates in other parts of the economy is equally disconcerning. The savings and loan industry which is intimately tied to the homebuilding industry is teetering on the verge of economic collapse as a result of high interest rates.

In the first quarter of 1980, these institutions recorded a loss of some $900 million. And Alan Greenspan, former chairman of the Council of Economic Advisers indicates that overall losses for this industry may total $5.5 billion in 1981 and reach some $7 billion in 1982. And these figures represent earnings losses; actual outflows reached a record high in April of this year: $4.6 billion. During all of 1980, outflows equaled $28 billion.

In short, everywhere we look, we find that high interest rates have caused economic distress in some very key sectors of our economy, we simply cannot permit that to continue.

HIGH INTEREST RATES AND ECONOMIC RECOVERY

Stubborn adherence to a tight money policy is also hurting our chances for economic recovery as well.

Both the Brookings Institution and the Congressional Budget Office have indicated that the current tight money policy of the Federal Reserve Board may only permit a nominal growth of gross national product (GNP) of about 10 percent in the years ahead.

But, consider the economic projections of the Reagan administration, they project a GNP growth rate of 11.1 percent this year, 12.8 percent in 1982, 12.4 percent in 1983, and 10.8 percent in 1984.

Thus, there is a conflict between the administration's fiscal policy and its monetary policy. And if the CBO and Brookings Institution are right in their projections, the current monetary policy will produce a gross national product shortfall of some $590 billion between now and 1984. And if inflation runs at a level of 10 percent, we will have no real growth in GNP at all.

I ask unanimous consent to have printed in the RECORD a table showing comparative 1981–84 GNP growth rate projections.

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

1981–84 GNP GROWTH RATES—ADMINISTRATION AND CONGRESSIONAL BUDGET OFFICE (CBO) ASSUMPTIONS COMPARED

[In billions of dollars]

Year	Administration GNP projection	CBO GNP projection [1]	Difference
1980	2,629	2,629	0
1981	2,920	2,892	−28
1982	3,293	3,181	−111
1983	3,700	3,499	−201
1984	4,098	3,849	−249
Cumulative difference, 1981–84			−589

[1] Assumes monetary targets of the Federal Reserve Board will permit an annual nominal GNP growth rate of 10 percent per year.

Mr. SASSER. Also if the administration's interest rate projections are off, Federal Government interest payments will be $45 billion more than the administration projects between now and 1983. Both these facts indicate how hard it will be for the administration to hold down budget deficits, if it continues to back current high interest rate policies.

Business recovery is especially hurt by high interest rates and tight credit. It used to be that there was about a two- or three-point spread between the rate of inflation and the prime rate. On the basis of such a relationship and due to the fact that prime rates were relatively stable in the past, American businessmen could make stable long-term investment decisions.

But what do we find now? The average prime rate has been below 14 percent in only 5 of the 19 months since our high interest rate policies have been in effect. And during that time we find that the spread between the prime rate and the rate of inflation as measured by the changes in the Consumer Price Index has ranged from 1 percent in October of 1980 to a whopping 12 percent in April of 1981.

There is no stable relationship between the prime rate and the rate of inflation. And the business community has reacted predictably. They have bid up interest rates since they never know from 1 day to the next what the prime rate will be.

That, Mr. President is no way to run this economy.

TURNING AWAY FROM HIGH INTEREST RATES

Mr. President, we can turn away from high interest rates in a number of ways.

We can have immediate passage of tax legislation that will provide for more savings incentives that will help put back much-needed capital into the housing industry and into our savings and loan institutions.

We can encourage policies that will move us to a balanced budget as soon as possible, thereby taking fiscal pressure off our financial markets and doing away with the fear that continued budget deficits will lead to high interest rates.

But, in the final analysis we must keep a constant spotlight on the economic damage that high interest rates are doing to our economy. I have done this with my interest rate resolution which we debated in the Senate on May 13. We are taking similar action by the floor statements we are making here today.

But in the final analysis, the Congress must point the way in taking appropriate legislative action and urging the Reagan administration and the Federal Reserve Board to turn away from a reliance on a high interest rate policy to cure our economic ills.

Such a policy simply will not work and the American people know it.

Mr. BOREN. Mr. President, I again thank the Senator from Tennessee not only for his remarks this morning but also for the constant vigilance he has shown about the danger to our economy and economic health of this country posed by high interest rates.

He has truly been a leader in calling the attention of the country to this problem. I want to thank him again for joining us this morning.

At this time I want to yield to another Senator who has raised his voice many times and who has offered constructive suggestions to help bring down the interest rates in critical areas in this country, the Senator from Montana (Mr. MELCHER), and I yield to him at this time as much time as he requires.

Mr. MELCHER. I thank my friend from Oklahoma. I want to compliment him on arranging for this forum on the Senate floor to discuss this most important issue.

Mr. President, I am concerned that high interest rates are the single greatest economic problem this country faces today, and I hope that our discussion serves to focus the attention on this problem that it truly deserves.

High interest rates cause economic damage:

They increase unemployment, reduce Government revenue, and increase the cost of Federal programs, and State and local projects, including public schools.

Interest payments on the Federal debt, the fastest rising item in the Federal budget, contribute to the deficit and divert funds needed for other vital programs.

Exorbitant interest rates have created a depression in the housing industry. In housing, high interest rates contribute to a triple dose of inflationary pressure—through a housing shortage that drives up prices and rents; through higher purchase prices reflecting the added cost of interest on the construction loans; and through higher monthly payments and rents for the life of the mortgage. That means young families are deprived of the opportunity to buy a home for themselves.

High interest rates have caused chaos in the livestock feeding industry—particularly cattle.

Needed investment in modernization of American industry is shortchanged as businesses are confronted by 20-plus percent interest rates. Productivity improvements are postponed, perpetuating higher unit costs and impairing the ability of American industry to compete.

High interest rates contribute to higher food prices and the sharp increase in farm bankruptcies.

Most of the discussion so far has related to the current plight of the housing industry. This is no accident. Housing and related industries like forest products are being ravaged by the Federal Reserve Board's policy of creating artificially high interest rates.

I just returned, late last night, from western Montana, the heart of my State's forest products industry. While I was there, I had the opportunity to talk directly to Montana's loggers and others in the forest products industry. The truth is that the forest products industry is on thin ice economically. If high interest rates continue for 2 more months, the forest products industry will be gradually closing down operations because lumber is not selling.

Forest products were not the only sector of the economy that I saw in trouble. Agriculture is also being hit hard. The combination of poor prices and high interest rates is causing tremendous losses for farmers and ranchers. For example, in the cattle industry, 20,000 ranchers and feedlot operators went out of business last year alone.

I believe that President Reagan must become concerned about the high interest rate policies of the Federal Reserve Board. Chairman Volcker's policies threaten the very heart of President Reagan's plan for economic recovery. Everything we have done so far in Congress to implement the President's economic recovery program, and everything we may do in the future, will be nullified unless interest rates are brought down—and brought down right now.

When interviewed about interest rates recently, Secretary of the Treasury Regan said that they were likely to stay in the 20-percent and above range for many months. He went on to say that such high rates were a medicine and that, while the medicine may not taste good, he was sure that it would improve the health of the patient. And the patient he is talking about is the economic body of this country, the collection of all industries, all businesses, all citizens, big and small.

As a former practicing veterinarian, let me assure my colleagues and assure the Secretary of the Treasury that it is not so simple as to just say, "Well, it is tough medicine to swallow." If you prescribe the wrong medicine or too much of it, or administer it in the wrong manner, the patient may well die rather than be cured.

I believe that is just what is happening to many segments of our economy as a result of the medicine of high interest rates.

Let me applaud the efforts that Senator BOREN, the Democratic leader, and other of my colleagues are making to get the word out about the damage high interest rates are causing.

I am convinced that this is the only way to get action on this problem. That is also why I am launching a series of public forums, starting this Thursday, to document the impact of high interest rates on various sectors of the economy. I am being joined in this effort by Senators BOREN, PRYOR, SASSER, and ZORINSKY.

The first of these public forums will focus on the impact high interest rates are having on agriculture. We will receive testimony from all of the major farm organizations, rural banking interests, the Farm Credit Administration and the Department of Agriculture. Hopefully, we can shed some new light on just what interest rates are doing to the agricultural economy.

I also plan to hold public forums throughout the summer on what interest rates are doing to other sectors of the economy, such as housing, automobiles, and the steel, copper, and other metals industries.

There is much more that could and needs to be told in this story of high interest rates.

I will conclude by pointing out that the Washington Post editorial last Sunday repeats what many of us have been saying for the past 3 years. The editorial said that relying on high interest rate policies to control inflation will result in a dismaying amount of economic wreckage along the way to that goal.

I believe there are better ways to reach the goal we all seek of controlling inflation, and I believe we must put an end to high interest rate policies within the next 60 days.

The PRESIDING OFFICER. Who yields time?

Mr. JACKSON. Mr. President, I yield to the distinguished Senator from Nebraska, Mr. Exon.

Mr. EXON. Mr. President, I thank my colleague for yielding.

Mr. President, today we have two extremely important items before us on the floor of the U.S. Senate.

One item is the reconciliation bill, which will help hold down Government spending over the next few years. Passage of the reconciliation bill will lower the profile of the Federal Government in our economy, and we hope it will result in lower Federal deficits, lower inflation, and lower interest rates.

The second item before us is interest rates themselves. It is appropriate that we talk about interest rates and Government spending simultaneously, since the two matters are obviously related. But it is entirely possible that high interest rates will do so much damage to our economy that it may never fully recover to enjoy the benefits of fiscal restraint in spending.

We are living in dangerous times economically. The prime interest rate has reached three unprecedented peaks in the last 15 months. The first peak was reached at 20 percent in early April of 1980, after which it fell to 11 percent in July. Thereafter, interest rates rose again until December when the prime rate reached 21.5 percent, after which it declined to 17 percent this past April. Since the middle of April, we have seen several increases in the prime rate, and it is uncertain where we are headed from this moment forward. The optimism of the past 2 weeks was broken a few days ago with the fluctuations in the Federal funds rate and only yesterday large banks went back up to 20 percent in the prime.

Mr. President, I ask unanimous consent that timely articles from the New York Times of June 10, 1981, and from the Washington Post of this morning be printed in the RECORD immediately following my remarks.

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

(See exhibit 1.)

Mr. EXON. Even the most casual observer must notice a very dangerous pattern in these interest rate fluctuations: The peaks in the prime rate are coming more frequently, and even the bottoms of the interest rate troughs are progressively higher. Indeed, it is most difficult to think of a 17-percent prime interest rate as a valley instead of as a mountain.

Further, the Federal Reserve Board does not have a good record in controlling monetary growth during 1980 and 1981. The variations in the money supply compared to the Federal Reserve targets have contributed to the general financial instability.

Yet, the prevailing national mood seems to be optimistic. The administration assures us that inflation and interest rates will go down. Little mention is made of the fact that the administration itself has significantly adjusted its optimistic schedule for these predicted reductions. Adding to our optimism, some sectors of our economy can pass along high interest rates as just another cost of doing business, and unprecedented and unforeseen buying demand on the part of the public has sustained parts of the economy and even produced surprising real economic growth. Too little

notice has been taken of those sectors of our economy which cannot pass along the costs of high interest rates. Although some businesses are able to accommodate themselves to each new interest rate peak, many farmers and small businessmen throughout the country are on the verge of ruin.

Other industries, such as the housing industry and savings and loan associations, are in trouble because they are structured on the premise that short-term interest rates will be lower than long-term interest rates. Our country's current attitude, that we can live with high interest rates in the short term, but that they will surely subside in the future, is a condition in which these industries simply cannot survive.

So it is appropriate that we interrupt our proceedings on the reconciliation bill, Mr. President, in order to focus attention on high interest rates and the damage they are doing to untold businesses and lives throughout our country. We must take heed of the danger signs that are so apparent, but which seem to escape our attention. With each new peak in interest rates, we conclude the worst is over and that we have some new magic policy which will right our economic ship of state for future smooth sailing on an everlasting even keel. Whether it is suggestions of credit controls, lower money supply targets, or the administration's current fiscal strategy, we are blinded to the dangers of the future by each new promise of the present.

The initiatives of the Finance Committee of yesterday are encouraging. I am concerned that the administration seems to be taking a less than leadership role in this crisis. However well-intended, their actions have convinced none but themselves that whistling in the dark in self-assurance is the answer.

Mr. President, today we could well be near a turning point in the economic history of our Nation. I believe it is time for us to admit that many segments of our economy are already in a state of crisis, and our country could be dangerously close to the edge of hyperinflation and a crisis of confidence in our financial institutions. I am, therefore, pleased to join with my colleagues in alerting the Senate and the country to both the reality of the damage already done by high interest rates and to the even greater danger that could lie ahead.

I am not as sure as some who maintain that a little faith will heal it all. The administration had best begin addressing the confiscatory interest rates as a major crisis now and should be today giving priority consideration as to what the White House might do in assisting the Congress in this effort.

EXHIBIT 1

[From the New York Times, June 10, 1981]

SAVINGS UNITS: PRESSURE GROWS

(By Leonard Silk)

The nation's savings and loan associations and other thrift institutions are facing a serious threat to their survival. Unless interest rates come down sharply—and stay down—in the coming year, hundreds of thrift institutions will either have to be rescued by the Federal Government or allowed to go under.

Insured thrift institutions lost an estimated $900 million during this year's first quarter, as a result of the necessity of paying very high interest rates to attract or hold money on deposit, while receiving the bulk of their income from long-term mortgage loans made at far lower rates.

Nevertheless, money has been pouring out of the thrift institutions into other higher-paying assets, such as money market funds. During April, the savings and loans lost a record $4.6 billion in net deposits, which came on top of outflows of $2.1 billion in March. While savings bank deposits and their certificates of deposit are insured up to $100,000, some depositors were apparently nervous about getting paid off promptly in case of failure, and some holders of uninsured deposits or "jumbo" C.D.'s of more than $100,000 may have moved their funds in quest not just of higher yields but of greater security.

More serious losses lie ahead for the thrift industry unless interest rates come down a lot more than they have so far. Alan Greenspan, chairman of the Council of Economic Advisers under former President Gerald R. Ford and an adviser to President Reagan, believes that the thrift industry is facing the worst losses in its history.

In a fresh analysis, Mr. Greenspan's economic consultant firm, Townsend-Greenspan Inc., concludes that even if interest rates recede to their April 1981 levels, about one percentage point below where they are now, total pretax losses of the savings institutions would keep rising, from $900 million in the first quarter to $1.9 billion in this year's final quarter, with prospective losses totaling $5.5 billion in 1981 and $7 billion in 1982.

That sounds bad enough, and would mean failure for scores of institutions. But if money market rates climb still higher in the coming year, the losses of the thrift units, Mr. Greenspan warns, "would escalate to truly horrendous proportions."

Nine out of 10 savings and loans, he says, are currently in the red on income account, though only a few have run out of book equity. However, that number is likely to increase rapidly in the months immediately ahead.

If thrift institutions had to liquidate their existing assets at current market values, only a few would have any equity left. The Federal Savings and Loan Insurance Corporation estimates the book value of the savings and loans' total assets at $600 billion, of which five-sixths consists of mortgages. Townsend-Greenspan estimates that their $500 billion mortgage portfolio, if sold at market, would produce a book loss of $100 billion.

Adjusting savings and loan balance sheets to current values would reduce the thrift industry's net worth from a current book level of $31 billion to a market deficit of approximately $70 billion.

On the extreme assumption that the industry had to liquidate its mortgage portfolio at current values, it would thus be $70 billion short of covering its liabilities. Of that amount, some $20 billion in liabilities is not insured by the Federal Savings and Loan Insurance Corporation. Whatever the legalities, it seems virtually certain that the United States Treasury would make good on the insurance of deposits up to $100,000. That now means the Treasury's contingent liability is approximately $50 billion—plus another $5 billion to cover losses at mutual savings banks.

The best hope for avoiding such a drain on the Treasury would be a decline in interest rates, which would remedy the thrift institutions' imbalance between asset and liability maturities and income flows. A 3.5 percentage point decline from the current level of rates would, according to the Greenspan estimate, wipe out the current deficit and put the thrift industry overall back on a break-even status.

If the Administration pursues a fiscal policy that is excessively stimulative and keeps pressure on the Federal Reserve to control inflation basically by tightening the money supply, interest rates are likely to stay high and volatile, exacerbating the dangers to the savings and loans and mutual savings banks. The Administration would then, in all likelihood, be driven to employ one or another rescue device, such as the issuance of "letters of credit" for obtaining loans from the Treasury, or Federal warehousing of lower-yielding mortgages, to shore up the thrift industry.

The Reagan Administration is not eager to face up to the very real dangers confronting the savings industry; it is loath to undertake a huge rescue operation, and instead is looking for gimmicks and escape devices. These would require the ingenuity of a financial Harry Houdini, and none may exist. If interest rates stay high or move higher, a Federal bailout of enormous size may be needed to provide time for the restructuring of the thrift industry, and to hold down the damages to depositors.

The fundamental cure—lower inflation and lower interest rates—is the preferred solution, but it needs to come reasonably soon.

[From the Washington Post, June 23, 1981]

TWO BANKS RAISE PRIME RATE BACK TO 20 PERCENT

(By James L. Rowe, Jr.)

NEW YORK, June 22.—Amid a blizzard of official predictions that interest rates soon will decline, two large banks raised their prime lending rate back to 20 percent, joining most other major lending institutions, which never lowered the rate.

Citibank, New York's largest, and Chemical Bank, also of New York, raised the key business lending rate because of a sharp jump last week in the so-called federal funds rate, the interest banks charge each other for overnight loans of excess reserves and a rate that largely can be controlled by the Federal Reserve, the nation's central bank.

Even as Citibank and Chemical Bank were raising their prime lending rates, Vice President George Bush, Treasury Secretary Donald Regan and Federal Reserve Vice Chairman Frederick Schultz predicted that the near-record interest rates will decline.

Regan said that the Federal Reserve is in the process of getting the growth of the money supply "under control," and that more stable money growth will result in lower rates. He would not say how extensive the decline would be, however, in an appearance before an American Stock Exchange conference in Washington.

Bush, however, at the same conference, said high interest rates will "come down rapidly" as soon as the public recognizes that President Reagan is "determined to grab control of the budget and of the deficit."

As if to vindicate the official predictions, short-term interest rates in the so-called open market—where banks and businesses alike raise funds—declined today.

The federal funds rate, which rose as high as 21 percent last week and started today in the 19¾ percent range, dropped back to about 18¼ percent late this afternoon, according to Thomas Kane of the Bank of New York. The decline was helped by the Federal Reserve itself, which at 11:45 a.m. injected funds into the banking system. To

inject funds into the system, increasing the ability of banks to make loans, the central bank buys government securities. When it wants to restrict the amount of lendable funds, the Fed sells securities.

Other short-term rates fell, too. The rate on one-month certificates of deposit declined from about 18:50 percent Friday to 18.15 percent today, according to K n, and the rates on six-month certificates fell from around 16.45 percent to 16.10 percent. Certificates of deposit are a major source of funds for big banks.

"Citibank and Chemical were a little premature with their prime-rate cuts," said an official of a major bank that did not cut its prime rate. Chemical last week cut its key business lending rate to 19 percent, then edged back to 20 percent in two steps.

The prime rate is the interest charge on which banks base most of their lending to businesses. Big, credit-worthy companies that need funds for a short time often pay less than the prime rate, while smaller or less credit-worthy companies often pay more.

Leif Olsen, chief economist at Citibank, said sharp increases in interest rates last Wednesday and Thursday impelled the nation's second biggest bank to return to the 20 percent level.

Interest rates have been raised and lowered for the last year, principally because of the Federal Reserve's concentration on controlling the growth of the money supply (essentially checking accounts and cash) rather than interest rates.

The Fed's Schultz, who also spoke at the Amex conference, said interest rates should become less volatile as economic policies of the Fed and the Reagan administration begin to reduce inflation.

Mr. BOREN. Mr. President, I thank my colleague from Nebraska. I only hope the administration and the country will heed the remarks he has presented this morning.

Mr. President, I yield such time as he might require to the distinguished Senator from the State of Washington, Senator JACKSON, who, for many, many months, has been discussing with all who would listen to him the problems caused by high interest rates and the critical threat to areas of our economy.

Mr. JACKSON. Mr. President, I thank my good friend from Oklahoma for his generous remarks.

INTEREST RATES AND THE TAX BILL: HELP FOR THRIFTS AND HOUSING

The United States is suffering from the worst inflation in history.

As a result, interest rates are at unprecedented high levels.

Main Street America—business, farmers, thrift institutions, the housing and automobile industries—cannot cope much longer. Indeed, for millions of Americans it is not a matter of coping any longer. They are out of business or out of work.

I believe the American people find it absolutely outrageous that the administration is offering the most massive tax cut measure in our history and it does not contain a single provision addressing the most fundamental economic problem in this country today.

And that is the problem of high interest rates.

What does the administration's tax bill do to address these urgent issues? Nothing.

There are no incentives to save, there are no provisions to bring down interest rates, and there is no help to the ailing housing industry.

Mr. President, the thousands of thrift institutions in this Nation—the savings and loans, mutual savings banks, and credit unions—where individuals save for their future and loans are made for houses and consumer goods, are on the ropes.

They are experiencing unprecedented losses:

Through April of this year, savings institutions lost $1 billion. One estimate indicates 90 percent of all S. & L.'s are now losing money.

More than 260 S. & L.'s are under special watch by regulatory agencies because of their uncertain financial situation. One-third of the 4,500 savings and loans will be merged or out of business within 5 years, according to the estimate of one industry analyst.

In Washington State, which is typical of the problem nationwide, thrift institutions watched as $328 million in deposits was moved to better investments in just the first 4 months of this year.

The problem, simply stated, is that two-thirds of all home loans on the books of thrift institutions carry interest rates of 10 percent or less while they are having to pay 15 percent and more for new money.

Savings and loans are the only institution in America dedicated exclusively to home mortgages. Can it be any wonder why it is the housing industry is gasping for breath when the savings and loans have no pulse whatsoever?

It is very possible that if high interest rates continue, a large number of those institutions will fail. That would bring with it a great strain on the resources—to the tune of billions of dollars—of the Federal insurance corporations which support them.

Closely related to thrift institutions is the housing industry which is on its knees. Every study indicates we need at least 2 million new housing units each year to keep pace with demand and yet, last year, just 1.3 million units were built. Last month housing starts fell another 14 percent to an annual adjusted rate of only 1.1 million units.

The number of people out of work because of this slowdown exceeds 1 million and the lost economic activity last year alone topped $4.5 billion.

Mr. President, with today's high interest rates, the only people who can afford to buy decent housing are the ones already well-housed.

First-time home buyers—young families, minorities, and households headed by women—need an income in excess of $29,000 to buy a $50,000 home. I do not know where you find family housing priced at $50,000—but that is the figure they use.

The fact is that the average income in this country today is $21,000—far below what is necessary to buy even modest housing with today's inflation and interest rates.

The number of families waiting to buy housing is growing like a bubble waiting to burst.

It is a disgrace that we have millions of Americans in need and otherwise able to buy housing—and at the same time thousands of builders sidelined, though willing and able to build them houses.

And as housing goes, and to only a slightly smaller degree, as the auto industry goes, so goes the country.

The health of the housing industry affects not only construction workers—16.3 percent of whom were unemployed last month—but industry after industry and business after business.

Because housing is down we have seen the closing of major forest products plants and appliance factories in many parts of the country. The furniture business, textiles, hardware, glass, small lumber yards, tiling, synthetics, plumbing, and dozens of related industries rise or fall as the housing industry prospers or declines.

In my home State of Washington, I see vivid examples everywhere. Vacancy rates in many areas are well below 10 percent, yet apartment construction is off 31 percent from 1980, itself a bad year. Construction of single family housing in my State is down 14 percent from the disastrous year of 1980.

This is not a pretty picture, but it is one we can and must deal with.

There are several things that are important to do:

First, and foremost, we must work to get inflation under control. The Federal Reserve Board cannot do this alone.

The Federal Government is using fully half of the credit available today. Interest payments on the Federal deficit will exceed $100 billion this year.

We must reduce the deficit and the Federal Government's claims on credit so interest rates will fall, housing and related industries will recover, and confidence in our ability to manage the economy will be restored.

Second, we need to increase the savings rate so that there are sufficient funds for investment in new and expanded businesses and in housing.

Third, we need to take action to make sure that our thrift institutions remain solvent and vigorous, both to provide funds for housing and consumer needs but also to preserve this country's system of a large number of diffused and competing financial institutions.

This year Congress has made a gigantic effort to cut spending. This will help. But because of the size and nature of the proposed tax cuts, the budget will be hopelessly out of balance through fiscal year 1983.

The assumptions are so optimistic that the projected surplus for fiscal year 1984, when a $1 billion surplus was estimated, has no credulity. In the absence of major changes the Reagan administration can say "goodby" to a balanced budget during its term.

There are constructive things we can do:

First, a number of House Ways and Means Committee members are proposing that the 3-year, 30-percent tax cut proposal be scaled back.

This would help reduce the Federal deficit during the next 18 months and make the tax cut in the third year contingent upon meeting the optimistic inflation rate, interest rate, and growth rate projections on which the administration budget figures are based.

The point is that we would have to earn the third-year tax cut. In that year, the tax cut would be triggered to go into effect if, in fact, the economic projections were generally fulfilled.

If the supply-side economics work—as the administration so confidently—I believe overconfidently expects—then we would go forward with the third-year tax cut.

This approach makes good sense and I commend it to the Senate.

Second, it is essential that we include in the tax bill incentives to save, incentives which are targeted to increase the availability of mortgage money.

This is a glaring deficiency in the administration's tax proposal. There are no direct incentives to save. Instead they rely on the general proposition that a big tax cut skewed to the upper ends of the income scale will result in an increase in savings and investment.

Mr. President, with inflation raging, and the cost of food, clothing, housing, fuel, and utilities increasing each month, can anyone honestly believe the average American family is going to take the extra $5 or $10 a week, which they might expect from a general tax cut, and place it in a savings account earning interest several points below the rate of inflation?

That is what the supply-siders believe. Doonesbury's creator, Garry Trudeau, characterized it best when, with tongue-in-cheek, he did a cartoon strip showing what the tax cut would mean to an average family: a weekly trip to the local McDonald's.

Maybe he was being a bit optimistic of the benefits.

A number of sound proposals to provide savings incentives are being advanced in both the House and Senate. Any of them would provide help and attract investors back to the thrift institutions. The deposits would be put to work providing financing for housing, automobiles and consumer goods.

Among the proposals are:

Senator BOREN's bill to permit 3- and 5-year savings certificates with interest tax free. Savings and loans would have to earmark the deposits for new housing mortgages.

Senator BENTSEN's bill providing an exclusion from gross income for interest earned on savings deposits which are used by financial institutions for residential mortgage lending purposes. Another would allow special 1-year Treasury bill rate. Interest, up to $1,000 per individual or $2,000 for a couple filing jointly, would be tax exempt.

Another proposal would permit IRA-type accounts for families to save for a downpayment on their first home and to save money for the education of their children.

Senator MOYNIHAN is suggesting that the FDIC and the FSLIC take over old mortgages from thrift institutions for 3 years to give the industry time to recover.

Still other proposals would direct credit to the most urgent areas, such as housing and automobiles, by requiring large downpayments or other discouragements to lower priority purchases or investments.

The list goes on and on. There are more than 100 bills pending in the Congress to provide tax incentives for savings and investments. Their objective is basically the same: to increase the savings incentive, to put people back to work, to make credit affordable, and to build homes.

The tax bill must include some savings and investment incentives. To date, the only measure acceptable to the administration has been a simple extension of the existing exemption of $200 interest/dividend earnings for a single taxpayer and $400 for married taxpayers filing jointly.

The administration's status quo position fails to address the urgent and immediate needs of the thrift institutions, the home builders and buyers, the small saver, and related industries.

Surely, it is within the wisdom of both the House and Senate tax-writing committees—and the administration—to find ways to both spur savings and to help the thrift institutions without resorting to massive bailouts or a fundamental change in our diverse and competitive financial institutions.

The alternatives are very costly—financially and socially. They are also undesirable.

It could lead to the merger of thrift institutions over State lines, as some have proposed. We could end up, as in most other industrial nations, with only a handful of big banks—out of touch with local needs.

It could mean the concentration of financial power into the hands of those who would likely be unsympathetic to the plight of farmers, small businessmen and women, local industry, and Main Street in general.

I think we can do better.

Mr. President, an incentive for savings is long overdue. The need is great. The time to act is now, the vehicle is the proposed tax bill.

Mr. BOREN. Mr. President, I thank the Senator from Washington for his remarks this morning. He is certainly correct in saying that the administration has held back. Even the modest action of the Finance Committee of yesterday in providing for a 1-year program for tax-exempt savings certificates, only a 1-year program, in no way targeted to help housing in one of the most critically affected areas of the country, even that modest program brought an expression of opposition from the administration.

I think all of us have the right to ask how long are we going to let this go on, and how many more billions will have to be withdrawn from the thrift institutions—$28 billion last year, with over 250 on the troubled list. How long will that have to go on before we have action? Only 3 percent of the people of the country are able to qualify to buy new homes.

The housing industry, as the Senator has pointed out, is in desperate condition because of the high interest rate policy. How long will we have to wait?

It behooves all of us in the Congress—the White House is lagging behind—all of us in the Congress from both parties to take the lead and to bring the administration to realize the critical nature of the situation which we face.

I thank him for his remarks this morning and his contribution to our effort.

Mr. JACKSON. Mr. President, I thank the distinguished Senator from Oklahoma once again for his leadership, his drive and his determination to get a truly bipartisan effort going here when the tax bill is on the floor. I salute him.

(Mr. HATCH assumed the chair.)

Mr. BOREN. Mr. President, at this time I yield to the junior Senator from Illinois, Senator DIXON, who, since he came to this body the beginning of this year, has fully recognized the problems facing the people of the country in high interest rates. He came fresh from a recent election, being very close to the people during that period of time. He has brought his experience with him to this body and he is sharing that experience with us. I am pleased to yield at this time.

HIGH INTEREST RATES A PROBLEM

Mr. DIXON. Mr. President, the housing industry is in serious trouble. Nationally, housing starts are down approximately 300,000 units from last year's inadequate levels and over 700,000 units from 1978 levels. In some parts of Illinois, the situation is even worse: Housing starts are down to less than one-third of 1978 levels.

High interest rates have made it difficult for potential buyers to afford what little new housing is being built and have created problems for those trying to sell their homes. Mortgage rates are now approximately 15½ percent, a level that would have been considered unbelievable not very many years ago.

Rapid inflation and economic stagnation have combined over the last few years to drive up housing prices to levels that have forced many potential buyers out of the market.

Home ownership has always been a large part of the American dream. However, with housing prices up over 11 percent last year, that dream is fading for a rapidly increasing number of Americans. At the same time, the need for housing is rapidly increasing. With the post-war "baby boom" generation now in the market, we need to provide more housing, not less.

To solve the problems facing the housing industry will require action in a number of areas—including action by Government.

Even in an era of less Government, it is important to remember that Government has an important role to play in helping to create conditions under which private industry can supply the housing stock that is needed.

One of the chief problems facing the housing industry has been a shortage of mortgage funds caused by problems in the thrift industry, the savings and loans, mutual savings banks, and other depository institutions that supply mortgage funds.

Mr. President, as I am sure everyone is aware, the savings and loan industry is facing serious difficulties. Fully 40 to 60 percent of all S. & L.'s experienced operating losses in 1980. Further operating losses are expected for this year. More than half of their over $570 billion in loans are at fixed rates of 9½ percent or below, a problem for years to come if inflation continues unabated. Their share of new consumer savings has plunged to 13 percent in 1980, down from 52 percent in 1976.

The result of the growing capital formation problem was predictable—the thrifts' ability to meet the demand for mortgage funds declined sharply. The share of new residential mortgages provided by S. & L.'s declined from 43 percent in 1979 to an unprecedented low of 37 percent in 1980.

Other problems have contributed to the thrifts' current difficulties.

Regulatory reform is popular right now, and I support the elimination of unnecessary Federal regulation. Many S. & L.'s, however, seem to feel that deregulation has added to their problems and made it more difficult for them to supply necessary capital to the housing market.

Deregulation is designed to permit the thrift industry to evolve into "consumer banks." It gives them expanded power to compete against commercial banks. It permits them to offer new services, such as NOW accounts. To gain these advantages, though, they had to give up the protection of interest rate ceilings and their interest rate differential over banks.

Many savings and loans now argue that it was a bad bargain. One of the most difficult problems facing the Banking Committee, on which I serve, will be the question of how to mitigate the adverse impacts of deregulation on S. & L.'s without returning to the old regulatory scheme.

High interest rates, inflation, and expectations of future inflation have forced mortgage lenders to look to new types of financing mechanisms. It is becoming increasingly difficult to get a conventional mortgage at any interest rate. New financing concepts—variable-rate mortgages, wraparound mortgages, adjustable-rate mortgages with graduated payment features, price-level-adjusted mortgages, known as PLAM, and negative amortization schemes such as the "California Plan"—are getting increasingly serious attention.

They all have their place. They are all designed to meet the demands for housing capital in an inflationary era. They all share a disadvantage, however. They all serve to institutionalize inflationary expectations. They are not real solutions to the problems afflicting either the thrift industry or the private housing market in general. They are merely Bandaids, designed to cope with the symptoms, rather than the real underlying problems.

The problem all these exotic financing schemes are trying to cope with is the problem of high interest rates. Only when interest rates can be lowered, and stabilized at those lower levels, will the need for alternative financing schemes subside, thus returning some order to the housing market.

The Federal Reserve Board is attempting to deal with the problem by slowing the rate of monetary growth. Chairman Volcker, in testimony before the Senate Banking Committee, stated that the Board intended to reduce the targets for monetary growth rates by 0.5 percent. Now that sounds like a modest goal, and it is true that lower rates of monetary growth can lead to lower interest rates in the long run. In fact, there are those who argue that we should place almost total reliance on the Fed to reduce inflation and interest rates, through its control over the money supply.

I wish to express a few words of caution about that approach, however. First, Mr. President, it is important to note that the Federal Reserve's control of the money supply is not precise. In fact, the Fed missed its target last year, and that target was not a single number, but rather a range—3½ to 6 percent.

Second, if the Fed does hit the target for this year, the decline in the monetary growth rate would not be 0.5 percent, but could be as much as 2 full percentage points, or even more—a decline in the rate of monetary growth of more than 40 percent. Such a rapid decline could have severe adverse consequences for the housing industry as well as for the rest of the economy.

Mr. President, it is important to remember that, although the longrun effect of lower rates of growth in the money supply can be lower inflation rates and lower interest rates, the shortrun effect is likely to increase interest rates. As the lower rate of monetary growth chokes off the supply of credit, interest rates would have to climb to reduce credit demand. The housing industry is especially vulnerable in this area, and can ill afford further shocks. With the prime rate at 20 percent already, there is clearly no room for large increases in interest rates without severe further damage to the already traumatized housing industry and, indeed, to the whole economy.

What I am trying to suggest is not that restraint on the part of the Fed is undesirable, but that the Fed alone cannot reduce inflation and interest rates without unacceptable economic costs. Similarly, changes in the thrift industry's regulatory scheme cannot alone solve the thrifts' problems and restore stability to the Nation's housing markets.

Mr. President, it is worth noting that the thrifts are in trouble because they did precisely what they were chartered to do—lend long and borrow short. Economic instability and persistent inflation have combined to make that strategy—in years past the foundation for low-cost home financing—a sure recipe for financial disaster.

Deregulation and new kinds of mortgages will help. Monetary restraint on the part of the Fed will be of assistance, but is not alone a total solution to the thrifts' problems. Reducing inflation and interest rates requires the use of all available economic tools: Regulatory, monetary, and fiscal.

Mr. President, the Senate Finance Committee is currently marking up a tax bill based on President Reagan's proposal for an across-the-board tax cut of 25 percent over 3 years for individuals and an acceleration and simplification of depreciation for businesses. I support the President's objectives. I agree that the American economy needs a tax cut to help restore its former vitality. However, the administration's tax proposals are not without problems.

I am concerned that a 3-year across-the-board tax cut may be inflationary. I am particularly concerned, and I believe many other Members of the Senate and the House of Representatives share this concern, that the tax cuts are not targeted sufficiently toward increasing incentives for consumer savings. Provisions tailored toward creating additional necessary investment capital are needed to help minimize the tax bill's inflationary potential.

Mr. President, the administration's across-the-board approach may provide some assistance to the ailing thrift and housing industries over the long haul, but I am afraid that far too many thrifts may not survive long enough for that trickle down remedy to be effective. What is needed is a provision that will assist the thrifts in obtaining capital now—lower-cost capital that will ease their financial problems and permit them to begin to issue mortgages at lower rates.

What is needed is a provision tailored toward increasing consumer savings. Americans currently save less than residents of almost every other industrialized nation.

The link between savings and tax relief should be direct to maximize the savings potential of any tax measure. We cannot afford to merely hope that consumers will save part of any tax relief made available. We need to structure that relief to encourage them to do so.

Special relief should be targeted for the housing industry. Americans will save more if they are sure that their savings will assist them in obtaining a home. Homeownership is among the most important goals of most Americans. They now see that goal as slipping out of their reach. Nothing is more important than making it possible, once again, for ordinary Americans to own their own home.

The provision should be designed to help put downward pressure on interest rates. High interest rates, as I have already stated, have had terrible consequences for the thrift and housing industries. However, other segments of the economy, in particular small businesses, have also been hurt badly by continuing high interest rates.

Mr. President, I am a cosponsor of several measures with these objectives. I shall not attempt to describe them all

in detail. They are all well-thought-out proposals designed to meet some or all of the problems that I have discussed.

I believe that it is imperative that the tax bill that the Senate will soon consider contain a proposal designed to stimulate savings. I am pleased that the Finance Committee, in its meeting yesterday, has chosen to adopt such a proposal. While it does not meet all the objectives I have outlined, it does help insure that the Senate will have the opportunity to enact a tax bill that meets the objectives of encouraging savings, helping the thrift and housing industries, and putting downward pressure on interest rates.

Mr. President, I believe that any provision that meets these objectives will find broad support on the Senate floor. I am sure that it will also command wide support out in the country.

(The following occurred during the preceding remarks:)

The PRESIDING OFFICER (Mr. MATHIAS). The time of the Senator from Oklahoma under the special order has now expired.

Mr. BOREN. Mr. President, I discussed this with the majority representative on the floor a moment ago to see if I might be yielded 3 minutes out of the time given to the Senator from Maryland under the special order so that the Senator from Illinois might conclude and the Senator from Florida might be able briefly to express his feelings on the subject we are discussing. I ask unanimous consent that 3 minutes of the time previously set aside for the Senator from Maryland might be yielded me for that purpose.

The PRESIDING OFFICER. Without objection, 3 minutes from the time of the special order for the Senator from Maryland is allotted at this point to the Senator from Oklahoma.

(Conclusion of earlier proceedings.)

Mr. BOREN. I thank my colleague from Illinois for his remarks and for a very worthwhile addition to the discussion this morning.

Mr. President, I shall defer my own remarks, since we shall be speaking again in the morning on this problem and, hopefully, making a constructive contribution toward its solution.

At this time, I yield to my colleague from Florida (Mr. CHILES) who has been a leader in this effort to bring down short-term high interest rates. He is a person who has a vast knowledge and, I think, a very sound perspective on economic policy in this country. I yield the remaining time to the Senator from Florida.

Mr. CHILES. Mr. President, I thank the Senator from Oklahoma. I congratulate him on his efforts to put together this colloquy and this movement to try to see that we do something that will provide some savings for this country, will provide for housing for the country, and will also, at the same time, protect our thrift institutions.

Mr. President, I associate myself with the remarks of this distinguished Senator from Illinois, who, I think, made a very, very fine, constructive statement on this problem.

Mr. President, I rise today to express my concerns about key sectors of our economy that find themselves in difficult straits due to inflation and high interest rates. I am deeply concerned that this situation threatens to grow even worse unless this administration and this Congress take action in the near future to get a handle on inflation and to improve our ability to save and invest.

My concerns focus on two industries that are especially sensitive to these economic factors. I am speaking, of course, about the housing and thrift industries. The situation in these industries today is not irreversible but it certainly cannot be left unattended for any length of time.

The stakes we have in helping to solve their underlying economic ills are high. Riding on the outcome of the current situation is not only the health of many thrift institutions and the maintenance of a productive housing industry but also the belief in the long-held dream that Americans will be able to avail themselves of adequate housing at a reasonable cost.

The fact that these two industries are experiencing difficulty is well documented. The thrift industry for example is experiencing a serious outflow of funds. The reasons for this outflow are numerous but the bottom line is that in 1980 alone, thrifts lost some $28 billion in deposits.

With a substantial portion of their assets in low-yielding, long-term mortgages, thrifts are having difficulty making ends meet when their cost of funds, fueled by high interest rates, have soared.

This means that for the institution and the homebuyer alike, mortgage funds are drying up and what money is available for mortgage lending is prohibitively expensive. Regrettably, this situation has resulted in the merger of several ailing institutions and has placed over 200 others on a troubled institutions list.

It has also meant that thousands of prospective homebuyers are left out in the cold because they cannot afford current mortgage costs. If mortgage funds are scarce and rates are high, then trouble in the housing industry cannot be far behind. I am afraid this is exactly what has happened. I do not think there is any better illustration of this fact than the remarkable decline in housing starts over the last few years.

In 1979, for example, housing starts exceeded 2 million. In 1980 that number was down to 1.3 million and today the annual rate of housing starts is barely 1.15 million. It does not take a math major to figure out that this is a dramatic reduction in such a short period of time.

The fallout from this housing slump is widespread. Since the housing industry is heavily composed of small businesses, each relying on the other for work, there has been a substantial increase in unemployment. This can easily be seen by looking at such housing related industries as timer, cement, and furniture.

When times are bad for housing, they are bad for the other industries. Also, the decline in housing construction seriously threatens our ability to provide adequate housing in the years to come. I have heard it said that in order to insure adequate housing stocks in the next 10 years, we will have to build an average of 2.3 million units a year.

Certainly, continuation of the current levels for any length of time will leave us with a woefully inadequate housing supply in the next decade.

If this is the case, the cost of housing today will seem like a drop in the bucket to the next generation entering the housing market. Building up a shortfall of supply relative to demand can only mean higher prices and more inflation in the future.

In my view, before we can expect to see any long term changes in the condition of either industry we must make some fundamental changes in the way we manage our economy. The first thing we need to do is get inflation under control. To do this we must continue our efforts to reduce the Federal deficit, and apply a monetary policy that carefully limits growth in the money and credit supplies.

I applaud President Reagan's efforts to slash Federal spending and work toward a balanced budget in 1984. I have consistently supported the President in this effort and firmly believe that it is a critical first step to economic recovery.

However, I am concerned that he may have something akin to not being able to see the forest for the trees. He essentially has the right view of the forest but there is a big tree in the middle that is having some problems and needs some specific attention.

Within the tight budget targets we all agree upon, I believe that we need to make provisions to help the housing and thrift industries.

I hope in the future the President steps back a little and views the individual needs of these industries and realizes that their problems themselves can have a profound economic impact. In the area of monetary policy I realize that some of my colleagues part company with me in believing that a carefully structured policy of limited growth in the money and credit supplies is also essential in the inflation battle.

I do, however, believe that it is essential that the Federal Reserve Board continue on its announced course of carefully limiting money and credit.

I also believe that tax policy can play an important role in the inflation battle and can be a major factor in the rapid recovery of the thrift and housing industries. If we are going to foster noninflationary economic growth, then we have to design our specific tax policies in a way to increase savings, investment, and productivity.

As I mentioned, I have supported the President's spending cuts for 1981 and 1982 and I support his tax cut initiatives for these years.

However, I am concerned about legislating in advance extra tax cuts for 1983 and 1984 that exceed the spending cuts so far requested by the President. That leaves open the possibility for large inflationary deficits down the road. These

inflationary deficits are counter productive to our efforts to get the economy back on its feet and will lock us into high interest rates that are equally devastating for the home lender, homebuilder, and homeowner.

I have therefore come to like the idea of a 2-year tax cut, with the third year's cut dependent on some sort of trigger, tied to the performance of the economy and the budget. We can give the President an opportunity to put his plan into effect and see whether it works, to see whether inflation and interest rates actually come down.

But it will also give us a chance to stop the third round of tax cuts if it looks like they are going to increase the deficit and drive up inflation.

I am also pleased to see that the President has modified his tax plan to pick up several of the proposals which many of us in the Senate have been advocating. The President now proposes to reduce the estate tax and the marriage penalty in addition to making improvements for individual retirement accounts and Keogh plans. He did not, however, include in his tax plan any proposal that would significantly expand funds available for mortgage lending.

If we expect the situation in the housing and thrift industries to improve in the next few years, then we must act now to insure that sufficient funds are available to our mortgage lending institutions at a reasonable price.

What this requires is an overall tax plan that promotes savings and directs these savings into these institutions.

Also, we must seek to shift funds away from non-productive tax shelters and inflation hedges. Without this new inflow of savings, we will continue to see thrift institutions strapped for funds and all but a handful of home buyers priced out of the mortgage lending markets.

Already in this Congress a number of good bills have been introduced that would provide for a new, tax exempt savings certificate designed to attract funds back into mortgage lending institutions and away from the basically non-productive financial instruments that have become so popular in recent years.

I am extremely pleased to see the Congress take the initiative in this area and I'm equally distressed that the administration has balked at such efforts to date. Hopefully, it will come around and realize the seriousness of the situation faced by the thrift and housing industries and will accept the fact that we have a responsibility to act positively in this matter.

I was pleased to note late last night that the Senate Finance Committee took the first step toward helping these industries in the absence of any administration recognition of the problems they face. While I do not sit on the Finance Committee, I understand that they approved a plan, known as the All-Saver Act, that would create a tax exempt savings certificate designed to help housing and promote thrift in one package.

I have cosponsored legislation of this type and I believe that it is one useful approach that will help stimulate savings while providing depository institutions with less expensive funds. My concern with this plan is that it may not be specifically targeted enough.

I know that many of us here in the Senate have been interested in the concept of providing such a savings certificate by having it tied to housing in some specific way. That way we could be sure that the funds generated by the certificate would flow to those institutions primarily interested and involved in home mortgage lending.

This, I think, may more adequately assure that we will be targeting these funds to the industries that need them the most for the limited duration of the savings certificate. What I think is important to keep in mind is that these certificates will not be issued and maintained indefinitely. According to the Finance Committee plan they would only be issued for a 1-year period ending at the end of September next year.

Consequently, we need to make sure that we get the most bang for our buck and insure the areas of our economy that need the stimulation the most will get it. I understand that an amendment will be offered when the tax bill reaches the floor to specifically tie the savings certificate to housing. I know that I am interested in this idea and I am sure that many of the other 30 Senators who have cosponsored such legislation will also give it careful consideration.

I hope that review of the issue before us today will serve to focus attention on these critical areas of our economy. I also hope it will spur us to take the necessary action to help cure their underlying economic ills. Once we take these actions, I believe we will be well on our way to restoring the health of these industries and the belief that homeownership is more than just a dream for the vast majority of Americans.

Mr. HOLLINGS. Mr. President, I would like to discuss for a few moments this morning one of the most serious and most immediate problems affecting this Nation: High interest rates. I do not need to remind my fellow colleagues of the disastrous impact that high interest rates have on the economy, the small businessman who cannot obtain funds to expand production, the many young families who are unable to meet the monthly payments on a new home, the thrift institutions which are caught in a profit squeeze as the cost of new savings skyrocket and they are unable to fulfill their responsibility to finance residential construction. These problems are well known.

What may be less well known is the impact of high interest rates on the Federal budget. The Federal Government, as well, is at the mercy of high interest rates. It is proper that we address the question of higher interest rates on the very day that the reconciliation savings are also being considered.

The immediate and most direct impact of higher interest rates is on interest payments required to finance the public debt. Much of this debt is short term and thus must be refinanced frequently at ever higher interest rates. In fiscal year 1980 interest payments were $65 billion, but will rise to around $80 billion in fiscal year 1981, an increase of nearly 25 percent. These increases can dramatically limit the funds available for defense needs or social programs.

Interest rates, and more specifically mortgage rates, are included as an element of the Consumer Price Index (CPI). Higher interest rates raise the CPI and hence increase the cost of Federal indexed programs. Approximately 30 percent of Federal outlays are explicitly indexed to the CPI or other measures of inflation.

High interest rates endanger the financial soundness of the many thrift institutions. Since the Federal Government insures the depositors, any rash of bankruptcies could place additional strains on budgetary resources.

And finally, higher interest rates severely restrict the pace of economic growth. Housing construction is perhaps the hardest hit, but investment spending and consumer spending, particularly for durable goods, are also affected. Slow economic growth means slow growth in tax revenues, larger payments for unemployment compensation and other transfer programs, and larger budget deficits.

The Senate has spent a great deal of time and energy preparing a reconciliation bill that saves about $36 billion in fiscal year 1982. These spending cuts represent a major departure from "business as usual" in Washington, D.C. I intend to wholeheartedly support those cuts. However, it would be desirable if those cuts could be augmented by other reductions in spending as a result of declines in interest rates and higher tax receipts brought on by an expanding economy. However, large personal tax cuts cannot be made consistent with a fiscal program that takes seriously its commitment to reduce the rate of inflation and lower interest rates. For some time now the Federal Reserve has been diligent in its fight against inflation. But they cannot go it alone. It is high time that fiscal policy carried part of that burden. A smaller tax cut than the President's recent compromise package is needed to restore fiscal responsibility to the budget process and to participate in a program to reduce inflation and interest rates.

In essence we must decide between substantive tax relief coupled with large Federal deficits and continuing inflation, or smaller tax relief coupled with lower interest rates, a balanced Federal budget, and an expanding economy.

The small businessmen wanting to expand and the young families hoping to buy their home are asking for lower interest rates.

Mr. President, I have had correspondence with the distinguished Secretary of the Treasury, Donald T. Regan, in connection with high interest rates and, more specifically, the plight of the savings and loan institutions.

A week ago last Monday, we had a conference at the White House with the President and Secretary Regan in attendance. At that time, the administration expressed its concern about the savings and loan institutions; and the comment was made by the distinguished

Secretary of the Treasury, talking for the administration, "Yes, we are prepared to move quickly to prevent any significant loss."

Then the Secretary went on to observe that if assistance were given to the savings and loan industry, banks and other financial institutions would also want special provisions.

The inference from that statement, for many of us in attendance, was that the distinguished Secretary of the Treasury was looking upon the savings and loan institutions as nothing more than regular banking institutions; since we are now bringing private enterprise, free enterprise, and competition back to American financial institutions, the savings and loans should compete.

Yes, they should compete; but Congress has always given special provisions to the savings and loan institutions so that they can support the construction of homebuilding in this Nation. They were given an advantage; they were allowed to pay their depositors slightly higher interest rates; using that advantage they have grown into a multibillion dollar institution throughout the country—supporting home construction, of course, and working very, very successfully.

Now we have these new money market funds, which have drained the savings and loan institutions. The contention—and I believe it is well taken—is that money market funds have an unfair advantage. They are not required to put up non-interest-bearing reserves. They are not controlled by the Federal Reserve. In the past 2 months, $6 billion have been drained out of the savings and loan institutions in America.

I had stated that in a news release and in some public statements I made. Secretary Regan wrote that he was disappointed to hear that I had criticized his comments.

I have the highest regard for Secretary Regan. I voted for the confirmation of his nomination. I am proud of that vote. I believe he is a capable fellow. He has quite a record, a very enviable record of success in business and industry, particularly in finance. I respect him for his judgments. In his letter he writes of a lack of confidence. He says:

> I urge you to work with us to strengthen this industry and to prevent an unwarranted lack of confidence in its future.

That is exactly what I am trying to do. I believe that the lack of confidence could be due in part to his role in creating the very culprit, the money market funds, that has caused a good part of the grief of the savings and loan institutions.

He has stated that he is prepared to move quickly should other efforts to help savings and loans not be sufficient. Look at the record. The public is moving now. They are moving their deposits out of the savings and loan institutions into other institutions. It is not Secretary Regan or Senator HOLLINGS or any other individual doing any moving. It is due to the advantage that the money market funds have over the savings and loan institution. The lack of confidence in the savings and loans is being demonstrated every day.

I believe it is proper that we recognize the fundamental difference, the tremendous contributions made by the savings and loan institutions to the economy of this country. We believe in homeownership.

In other nations—such as West Germany, France, and others—people live in apartments. What some other countries do is not comparable. We are proud of this difference, and I believe we should not wait until the savings and loan institutions go broke to move in with financial assistance; but, rather, we should move in with a policy now that recognizes the financial facts of life.

Mr. President, I ask unanimous consent to have printed in the RECORD some brief remarks on interest rates, my letter to the President, the letter I received from the Secretary of the Treasury, and my letter to the Secretary of the Treasury.

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

U.S. SENATE,
Washington, D.C., June 16, 1981.

The PRESIDENT,
The White House,
Washington, D.C.

DEAR MR. PRESIDENT: I appreciate your courtesy in including me among the participants in yesterday's discussions on your Economic Recovery Program legislation. I wish to expand on one subject discussed briefly—my concern over the health of our nation's thrift institutions, the savings and loan associations and mutual savings banks.

As I'm sure you appreciate, these thrift institutions are structurally ill-equipped to cope with prolonged periods of high interest rates. Under the terms of their Government charters, the banking and the tax laws, they have invested almost exclusively in long-term home mortgage loans, many at rates of 6%, 7%, and 8%. Meanwhile, their source of funds—retail savings deposits—have become increasingly short-term and market rate (13% to 18% in the months since your election); almost two-thirds of savings and loan deposits are now market sensitive. When unable to hold and compete for deposits, these institutions must turn to even more expensive borrowings from their Federal Home Loan Banks and commercial banks. (In March and April alone the S&Ls experienced a $6.6 billion outflow of deposits.)

The squeeze between what they pay the public for deposits and earn on their mortgages is eating away at the accumulated reserves of these institutions. Nine out of ten companies are operating "in the red". I see where Alan Greenspan has projected losses of $5.5 billion in 1981 and $7 billion in 1982 if interest rates average at April 1981 levels. (New York Times article enclosed.) Industry-wide, that would consume one-third of the reserves of the business and force hundreds, maybe thousands, of companies out of business.

Since the Federal Government stands behind 90 percent or more of the deposits in these institutions (through FDIC and FSLIC insurance of accounts), the prospect of their liquidation is of very real concern to those of us on the Senate Budget Committee. The resources of the Federal Savings and Loan Insurance Corporation are only $6 billion. If the FSLIC is forced to liquidate hundreds of companies it will soon exhaust its resources. Selling off the assets will be of little help since the mortgages are worth only 60¢ or 70¢ on the dollar. There is no question in my mind that the Treasury eventually would have to make good on the familiar advertising promise: "Your deposit is insured by an agency of the Federal Government." Greenspan estimates the Treasury's contingent liability at approximately $55 billion—a figure which, obviously, would throw your efforts and ours to conquer inflation into disarray.

It would be nice if we could shrug and say that one of the privileges of doing business in a free enterprise system is the freedom to fail. Unfortunately, financial institutions are not like hardware stores; the public's money and savings—not to mention the Government's obligations—are at stake. Furthermore, the public cannot be expected to differentiate among institutions if one area gets in operational trouble; a loss of confidence in one category, thrifts, could quickly spread to banks.

Nor is the impact of S&L failure limited to S&Ls. We are not talking about just an S&L problem, or a banking problem. We are talking about something fundamental to the economy. We are talking about jobs in a wide diversity of economic enterprises. On the viability of S&Ls will depend the degree of home and commercial construction, and we all know how vital construction activity is to the overall performance of the American economy. Depleted S&Ls translate immediately into young people denied the dream of owning their own home. That translates into lost jobs in the building trades industry. And with fewer homes and other buildings goes diminished demand for lumber, for steel, for concrete, for home appliances, for furniture, and right on down the line to the light bulb going into the newly-built socket. No question about it—in relegating the S&L problem to the back-burner, we are guaranteeing economic doldrums, lost jobs, losing this perhaps last golden chance to turn the economy around.

In my opinion, the Congress, the Administration and the regulatory agencies cannot ignore further the rapidly deteriorating condition of the thrifts, given the "contingent liability" so graphically described by Alan Greenspan. An immediate decline of 3.5% in short-term interest rate levels would avert the problems according to Greenspan—but, despite the present downward trend on Wall Street, few among us would be so bold as to rely on that happening.

There are a number of steps which can be taken now to solidify the condition of these companies and the public's confidence in our financial institutions.

One of the major sources of the deposit loss by these institutions has been the competition from the money market mutual funds. Though uninsured, these alternatives to savings deposits—with their liquidity and current market rates—have accumulated over $120 billion outside the banking system; they have grown by almost $50 billion since January 1. At a minimum, the Federal Reserve should be empowered to exercise reserves control over money market funds as it does over the regulated depositories (including, as of last year, the S&Ls and credit unions). Since the money funds invest almost half of their resources in overseas and commercial paper markets, their unfettered investment discretion complicates, and frustrates, the exercise of the Fed's monetary policies.

At the regulatory level, propping up the bottom line is a far less expensive way of dealing with the thrifts' earnings problem than liquidating bankrupt companies. Though admittedly this is a temporary expedient (considering the resources of the FSLIC), Chairman Pratt of the Home Loan Bank Board has talked about a "capital maintenance program" of repayable cash in-

fusions. This looks promising—at least in terms of "buying time" until interest rates work down to reasonable levels. In a few years, the new rules of the Comptroller of the Currency and the FHLBB regarding flexible mortgage plans hold the promise of reforming the mortgage loan portfolios of the thrifts so that they move more closely with short-term market developments. What is needed now are steps to bridge the gap until that time arrives.

I would also urge the Administration to look carefully at the proposal (S. 985) of my colleagues John Heinz and Daniel Moynihan to permit the exchange of low-yielding mortgages for non-marketable subordinated notes from the FSLIC and the FDIC. This could be targeted to the companies in greatest difficulty (thanks to mortgages acquired under anachronistic usury laws) with the institutions permitted the "swaps" required to redeem the mortgages when their health is restored.

The most promising and timely proposal I am aware of is in the tax area.

It is known as the "All Savers Act" and has been introduced by a bipartisan group led by John Danforth in the Senate as S. 1279 and as H.R. 3456 in the House. It would authorize, for one year, a special savings account at banks, savings banks, savings and loans and credit unions, the interest on which would be excludable from Federal income tax to $1,000 (for individuals) and $2,000 (joint returns). Unlike other savings incentives plans, this certificate would recognize the tax advantage to the purchaser by pegging the rate to 70 percent of comparable one-year Treasury bills; savers in the 30 percent tax bracket and above would realize competitive market rates of return. Importantly, the 70 percent feature would assure lower cost of funds for the depository institutions and thereby enable credit to resume for housing, small business, and agriculture—the obvious victims of today's high interest rates. The establishment of an identifiable, separate account will give depositories something they can advertise to encourage the public to save rather than spend, in contrast to the $200/$400 exclusion of current law (which is "invisible" until tax returns are prepared).

The Joint Committee on Internal Revenue Taxation estimates a "static" revenue loss from the All Savers Act which is somewhat less than the permanent extension of the $200/$400 exclusion now part of your Administration's tax proposals. Of course, as you understand so well, incentives for capital formation hold "supply-side" benefits disregarded in any static revenue loss projections. The limited duration of the plan also serves to "bridge the gap," as I spoke of earlier, until our Economic Recovery Program convinces the money markets that inflation is truly under control.

While the hard-pressed thrift institutions are not the sole beneficiaries of the All Savers Act, it is clear that the promise of lower-cost funds directly addresses their situation.

I know that there is substantial bipartisan support in the Congress for the All Savers Act. It would be a popular refinement to your initiatives in the area of tax incentives for savers and help immensely to avert the "contingent liability" posed by the gathering difficulties of the thrift institutions.

I urge you to give serious consideration to including the All Savers Act in your tax package. Likewise, I ask you to add your Administration's voice to those who support S. 985 and legislation to enable the Federal Reserve to include money market funds in the conduct of monetary policy.

Again, I appreciate your willingness to work with the Congress in confronting inflation and high interest rates—our nation's number one economic problem.

Respectfully,

ERNEST F. HOLLINGS.

THE SECRETARY OF THE TREASURY,
Washington, D.C., June 18, 1981.

Hon. ERNEST F. HOLLINGS,
U.S. Senate,
Washington, D.C.

DEAR SENATOR HOLLINGS: It was with considerable surprise that I read comments attributed to you expressing "disappointment" because of an alleged lack of concern on my part for the thrift industry.

As I said, when we met with the President on Monday, I am extremely sensitive to the problems confronting the thrift industry and we are monitoring this situation closely. It is our view that the independent regulators have adequate authority and resources to deal with industry problems at the present time. However, should this situation change, we are prepared to move quickly to prevent any significant loss of confidence in the industry and to protect the public fully should some institutions have difficulties.

In addition, I am working, in my capacity as Chairman of the Depository Institutions Deregulation Committee, to stem withdrawal of funds from thrift institutions by permitting them to pay competitive rates of interest on their deposits. We are also encouraging the regulators in their efforts to prepare legislation which would increase the asset powers of these institutions.

I am confident that the industry will emerge from this temporary period of difficulties even stronger and more able to compete with other financial institutions for deposits and the provision of services.

You may be sure that this Administration does not expect, nor will it permit, the demise of a vital component of our financial system. I urge you to work with us to strengthen this industry and to prevent an unwarranted lack of confidence in its future.

Sincerely,

DONALD T. REGAN.

U.S. SENATE,
Washington, D.C., June 22, 1981.

Hon. DONALD T. REGAN,
Secretary of the Treasury,
Washington, D.C.

DEAR MR. SECRETARY: When concern was expressed over the financial plight of the savings and loan industry at the conference on last Monday, your response generally was to the effect, ". . . yes, we are prepared to move quickly to prevent any significant loss . . ." and then you added the observation that any provisions made for the savings and loan or thrift industry would immediately be countered by the banks and other financial institutions also wanting special provisions.

Many Senators discussed your reaction and as a result there will be quite a colloquy on the floor of the Senate to try to get the Administration's attention. The industry itself and its supporters feel that it is you who has the lack of confidence in its future. Rightly or wrongly, the feeling is that you invented the money market funds and that the savings and loan industry being another competitor in the financial world should be made to compete and should sink or swim on its own without provisions. The fact is the S & L's are special institutions, made so by law. They provide over 90 percent of the financing for private home construction and the banks and money market funds are not going to be attracted into this field. Now come your money market funds with an unfair advantage of no reserves, etc., draining the savings and loans to the point of bankruptcy and you are telling them to compete. If it were on an equal basis, I am sure they could compete but as a matter of public policy, we set them up differently as a "building and loan institution." Your comments have indicated a lack of appreciation for this fact. The problem is not merely financial, to move in when a few go broke. The problem is to make them whole and to position them financially so that we can continue with home construction. These moves ought to be made now and to refuse to do so on the basis that others may ask is a terrible mistake. The American people and the business community can easily see what is happening and I implore you to move immediately to strengthen this industry so that we can have confidence.

With kindest regards, I am

Sincerely,

ERNEST F. HOLLINGS.

SAVINGS AND LOAN ASSOCIATIONS

Mr. EAGLETON. Mr. President, the Nation's savings and loan industry is celebrating its 150th anniversary this year. The first S. & L. began in 1831 in Philadelphia as a small, local building club whose main purpose, then as now, was to finance housing. But unfortunately, the industry is doing little celebrating as it continues to reel from last year's earning figures which were the worst in the industry's history.

In my own State of Missouri, the 17 federally insured S. & L.'s belonging to the Kansas City Savings and Loan League increased their net income in 1980 by $283,000—compared with $9.1 million reported in 1979 and $11 million in 1978. In the St. Louis area, 15 S. & L.'s lost more than $22 million in net income last year; three associations are in danger of exhausting their net worth within 18 months if current trends continue.

Thus far in 1981, the situation for thrift institutions has deteriorated even further. In both January and February, the net return on assets was negative, indicating that the industry as a whole was losing money. The latest figures for April show that the hemorrhaging continues, as the industry reported a record loss of $4.6 billion. So stunning was the April outflow that the Federal Home Loan Bank Board, which tabulates the statistics, delayed the release of the numbers in order to recheck them.

Mr. President, it would certainly not be an exaggeration to say that this industry—which is the principal source of funding for the homebuilding industry—is taking a battering. Small savings and loan associations, particularly, are being hit hard. In fact, a Business Week article of several months ago gloomily prophesied that small financial institutions may become as endangered a species as the family farm. In 1980, the Federal Home Loan Bank Board gave approval to 97 mergers of S. & L.'s. That number compares with 37 mergers in 1979. For 1981, the figure is expected to reach 200 as more small S. & L.'s are unable to sustain themselves in an environment where they borrow on volatile floating interest rates and lend on much lower fixed rates.

The typical thrift institution these days earns about 9 percent interest on its outstanding loan portfolio. But it must pay out over 15 percent interest on 6-month money market certificates and 12 percent on 30-month certificates. It also faces hard competition from money market mutual funds. With interest rates fluctuating as they are, it is small wonder that there is such turmoil in the financial markets.

The new monetary policy put in to place on October 6, 1979 has had a substantial impact on the situation now confronting the thrifts. In 1952, the

Treasury Department and the Federal Reserve reached an agreement that monetary policy would be maintained independently under the jurisdiction of the Fed. Between 1952 and October 6, 1979, then, management of short-term interest rates was the characteristic feature of monetary policy. The success of the Federal Reserve in managing interest rates had an impact on a major sector of the economy, housing, which was extremely sensitive to interest rates. When market rates exceeded interest rate ceilings imposed by regulation Q, money flowed rapidly out of S. & L.'s—known as disintermediation—causing a severe slump in the housing industry.

In 1978, with the introduction of 6-month money market certificates, rising short-term interest rates no longer caused the loss of deposits from associations nor triggered a decline in housing; instead, they eroded profits. By the fall of 1979, the extreme volatility of the economy prompted a radical change in monetary policy: The Fed announced intentions of abandoning its previous policy of interest rate management and focusing on limiting the growth of the supply of money.

Consequently, short-term interest rates no longer reflected monetary policy but rather mirrored a spectrum of economic and financial forces. Without the Fed buffering the markets against these other forces, interest rates have varied far more than they have in the past. Thus, much stress is being put upon financial institutions from radical changes in interest rates.

Confronted by unprecedented interest rate levels and wide swings in rates, investors are understandably reluctant to make commitments for the long term. Uncertainty about the future also has prompted an increase in liquidity and a shift, to a certain extent, from financial assets to tangible assets. The net result: A decline in the personal savings rate. Thus, the low volume of total savings and extreme interest rate volatility have put the thrifts at a double disadvantage.

The present scenario for savings and loan associations is pessimistic; the future looks even gloomier, if we continue this course unabated. While the opportunity to shift from fixed-rate mortgages to variable-rate mortgages will offer beleaguered thrifts some respite, it will be years before fixed-rate obligations—which fall mostly in the 8.5-percent to 9.5-percent range—can be worked out of their portfolios.

S. & L.'s need to get their heads above water. Either interest rates need to drop dramatically or someone, somehow has to bail them out. Concern is growing as to whether or not governmental insurers would have the resources and the liquidity to deal with a barrage of insolvencies. We are still wrestling with the consequences of the Penn Central disaster a decade ago and last year's Chrysler rescue. A banking industry consultant stated in the April 13 issue of New York magazine:

Ten years from now we will have a remarkably different financial structure, but it will have been accomplished through crisis rather than forethought.

We cannot allow that to happen. Thrift institutions are an important component of our economy as well as the main supplier of home mortgage funds; we must take precautions to insure their viability and stability.

Yesterday, the Finance Committee considered several proposals before it that seek to aid the savings and loan industry. As you know, Mr. President, the committee voted 20 to 0 to accept an amendment by Senator DANFORTH which would create a tax-exempt savings certificate that would pay savers 70 percent of the rate on 1-year Treasury bill.

In addition to adopting the Danforth proposal, the Finance Committee repealed the $200/$400 interest and dividend exemption enacted by Congress in 1980 so as to mitigate the revenue loss to the U.S. Treasury. In fact, if I interpret the figures correctly, the revenue loss is more than mitigated, that is, the U.S. Treasury will gain more revenue by reason of yesterday's Finance Committee actions than it will lose. Note the following table:

[In billions of dollars]

	Fiscal year—		
	1982	1983	1984
Repeal $200/$400 exemption, Jan. 1, 1982	+0.623	+3.259	+3.388
Begin all savers certificate, Oct. 1, 1981	−.509	−2.427	−1.748
Net	+.114	+.832	+1.640
Total revenue gain	$2.586		

I am pleased that the Finance Committee has acted so promptly to give much needed relief to this troubled industry. At this time, I would like to strongly endorse this bill and urge my colleagues to act expeditiously in passing this legislation.

IT IS NOT NECESSARILY SO ABOUT HIGH INTEREST RATES

● Mr. LEVIN. Mr. President, I read with great interest an article by Mr. John Winthrop Wright that appeared in the New York Times, June 21, 1981. Mr. Wright, president of Wright Investors' Services, discusses the relationship between interest rates, inflation, and the tremendous influx of Eurodollars into the U.S. economy. The article will, I hope, contribute to this important discussion on the economy and interest rates. I ask that this article be printed in the RECORD.

The article follows:

IT IS NOT NECESSARILY SO ABOUT HIGH RATES

(By John Winthrop Wright)

The Reagan Administration, in conjunction with the Congress, has a mandate to increase productivity, improve the nation's standard of living, reduce wasteful Government spending and interference with the free enterprise system and stabilize monetary values. These objectives cannot be achieved unless there is a re-education of the Federal Reserve Board and the American public in the true causes of inflation and the effective control of money and credit.

There is no way that the waste of our manpower through unemployment can be reduced or the productivity of our workers increased while interest rates are significantly above 8 percent. Until interest rates are reduced to a level at which it is profitable for small, medium and large businesses to borrow capital, unemployment will increase, Government expenses for unemployment and welfare will grow, while taxable revenues fall.

United States interest rates rose above the 8 percent level on a sustained peacetime basis for the first time in 1973. Since then, the prime rate has averaged 10 percent and long-term corporate bonds 9 percent, compared with 4 percent and 3 percent, respectively, for the preceding 25 postwar years. These rates, if continued, will destroy the American economic system because of the following effects:

They take from the poor and add to the rich.

They diminish the producers and expand the lenders.

They inhibit and diminish long-term capital investment, productivity, research and development, production and development of new sources and efficient applications of energy.

They do not encourage capital formation and its productive applications.

They bankrupt small businesses, increasing the concentration of economic productive power, drastically reducing effective, competitive price cutting.

Our nation has been drastically misinformed and misled by officials who have made it an article of faith that inflation has been the result of excessive monetary growth; that high interest rates can cure inflation, and that because they say so, interest rates cannot safely be cut and Americans must suffer a decline in their standard of living.

Let me respond to these doctrines with the documented truth that gives a much different picture.

Although inflation can be caused by excessive monetary growth, there has been no such excessive growth in the United States during the last decade. Instead, while the gross national product rose 37 percent in constant dollars, the nation's money supply (M-1B) declined by 3 percent.

Money and credit are the essential lubricants of our economic system. In the past 10 years, money supply has contracted by one-third relative to G.N.P.—far more than can be explained away as a result of faster check clearing and other modern contributions to the "velocity" of circulation.

Tight money and high interest rates in the early 1970's spawned the prolific growth of Eurodollars, dollar credits and dollar deposits created by foreign-domiciled banks including the foreign branches of American multinational banks. Indeed, since they came on the scene, Eurodollars have grown to $550 billion, compared to about $400 billion for the nation's basic money supply.

By 1973, the huge upsurge of Eurodollars doubled the dollar value of world commodity prices, causing world-wide inflation and setting the stage for the Organization of Petroleum Exporting Countries. And the subsequent increase in the price of OPEC oil was more than 1,000 percent, while the G.N.P. price deflator rose only 76 percent.

In my opinion, the rise in the price of energy alone more than accounts for all of the United States inflation. The inflationary result of rising energy costs cannot be measured only in terms of its magnitude as a raw material component of G.N.P. Energy is also part of the cost of every other component and the cost of producing every component rises with the cost of energy.

High interest rates, instead of curing inflation, have stimulated it. They add to the costs of every business, to all forms of product distribution and to all types of consumer purchases. They are themselves a significant secondary cause of inflation. The interest rate rise in 1974 caused by tight monetary policies of the Federal Reserve, created the second-greatest recession in this century. The

1974–75 recession increased welfare and unemployment costs and decreased Government revenues so much that our Federal deficit from 1975 through 1978 totaled $226 billion and became the greatest and most inflationary deficit in our history.

Finally, interest rates can be reduced safely and promptly. Adequate money and credit can be supplied, provided that there is selective control in the application of credit. The Fed has the power and the ability, without significantly increasing its bureaucracy, to limit credit, which contributes to inflationary consumer demand, and to increase substantially credit available for "supply-side" capital investment in the development of new sources of energy, in increased production of goods and services and in cost-reducing equipment and technology.

A system of variable reserve requirements related to the mix of bank loan portfolios can produce a communion of profit-making interest between our banks and our national economic objectives. What is lacking is simply the mental effort to devise the plan and the will to put it into action.

One more thing concerning Eurodollars. Although they are not obligations of the United States or of American domestic banks, they can and do buy goods and services for dollars anywhere in the world, including inside the United States. For nearly 10 years, Eurodollar growth has added to American import costs and thus to domestic inflation by depressing the foreign exchange value of the dollar. This was and is because foreigners, and American multinational corporations, can acquire dollars by borrowing them from foreign-domiciled banks instead of selling their foreign currencies in exchange for dollars.

Today, Eurodollars are coming to the United States for investment. When they arrive here, these Eurodollars inflate the domestic money supply accordingly because they then become deposits in American banks. For our Federal Reserve Board to counter this by restricting the current money supply correspondingly is simply to deprive Americans of money and credit in order to offset the supply of Eurodollars coming into the United States from foreign investors.●

DEMOCRATIC CONFERENCE RESOLUTION ON HIGH INTEREST RATES AND THRIFT INSTITUTIONS

Mr. ROBERT C. BYRD. Mr. President, today the Senate Democratic conference endorsed unanimously, with one abstention, a resolution urging that something be done about high interest rates, the crumbling housing industry, and the financial plight of thrift institutions.

This resolution was developed by Senator DAVID BOREN, in cooperation with Senators BENTSEN, TSONGAS, MELCHER, JACKSON, CHILES, NUNN, BRADLEY, METZENBAUM, and others. It reflects the very deep concern among Senators on this side of the aisle that Government policy cannot continue to sanction the status quo of high interest rates, with their devastating impact on economic progress.

I ask unanimous consent that the resolution adopted by the Democratic conference today be printed in full in the RECORD.

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

DRAFT CONFERENCE RESOLUTION ON HIGH INTEREST RATES AND THRIFT INSTITUTIONS

Whereas there is an immediate threat posed to the health of key segments of our economy caused by the effects of high interest rates; and

Whereas the Administration has thus far failed to heed the signs of trouble by devising a program to prevent a critical situation from developing; and

Whereas it is far better to prevent a serious situation from developing rather than trying to deal with it after it has become critical; and

Whereas the serious and immediate nature of the problem is clear for all to see from the following set of facts:

(1) the withdrawal of depository reserves in the Nation's thrift institutions amounted to $28 billion in 1980 and have continued at the same pace through the first quarter of 1981. This constitutes the greatest reduction of monetary reserves in the history of this country.

(2) high interest rates have deprived all but a tiny percentage of all the people of the Nation of the opportunity to buy a home or conduct personal and business financial planning,

(3) on an annualized rate basis, housing starts have declined almost 2 million this year, pushing the unemployment rate in the construction industry to twice the national average,

(4) high interest rates have already eliminated one million jobs, and have placed farmers and small business people who must finance inventories on credit in desperate circumstances: Now, therefore, be it

Resolved, That the Senate Democratic Conference urges the President and the Administration to take notice of the serious and immediate nature of the threat to our national economy and further urges that a program be devised to our national economy and further urges that a program be devised to keep the situation from becoming more critical through the use of some or all of the following actions:

(1) increase the national pool of funds available for savings and investment through the use of appropriate tax exemptions on interest earned in an effort to assist hard-hit financial institutions and to reduce the cost of home mortgages through lower interest rates, helping to stimulate the construction industry and to restore the dream of home ownership for all Americans,

(2) take appropriate regulatory action to assure equal competitive opportunity for all financial institutions,

(3) take appropriate action on existing regulatory statutes to improve the regulatory agencies' ability to address financial institutions' difficulties and,

(4) urge the Administration to take such steps as are possible to lower the current high rate of interest which is severely damaging personal and corporate savings and investment planning.

S. 1413—THE REGULATORY FLEXIBILITY AND EXPANDED POWERS ACT OF 1981

Mr. TSONGAS. Mr. President, financial analysts have known it for a long time, and now it is breaking into news reports and public awareness. The fact is that these are very hard times for our Nation's thrift institutions—the savings and loans, mutual savings banks, and cooperative banks—and for some of our commercial banks. Depending on money market conditions in the coming months, many of these institutions could go out of business.

Mr. President, in light of this urgent situation, I am today introducing the Regulatory Flexibility and Expanded Powers Act of 1981. This bill provides bank regulators with additional flexibility to deal with the problems of financial institutions. It also expands the activities in which thrifts can participate. I believe that we must debate these two issues: more flexibility for regulators, and additional powers for thrifts.

Thrift institutions lost almost $900 million during the first quarter of 1981. Faced with high interest rates and relentless inflation, savers are forced to look for the best available rate of return. Many thrifts are finding that their increasing cost of money cannot be balanced by their mortgage portfolios, which were built during years of inflation-free expectations. Mr. President, I ask unanimous consent that a New York Times article by Leonard Silk, which highlights the problems of these banks, be printed at this point in the RECORD.

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

[From the New York Times, June 10, 1981]

SAVINGS UNITS: PRESSURE GROWS

(By Leonard Silk)

The nation's savings and loan associations and other thrift institutions are facing a serious threat to their survival. Unless interest rates come down sharply—and stay down—in the coming year, hundreds of thrift institutions will either have to be rescued by the Federal Government or allowed to go under.

Insured thrift institutions lost an estimated $900 million during this year's first quarter, as a result of the necessity of paying very high interest rates to attract or hold money on deposit, while receiving the bulk of their income from long-term mortgage loans made at far lower rates.

Nevertheless, money has been pouring out of the thrift institutions into other higher-paying assets, such as money market funds. During April, the savings and loans lost a record $4.6 billion in net deposits, which came on top of outflows of $2.1 billion in March. While savings bank deposits and their certificates of deposit are insured up to $100,000, some depositors were apparently nervous about getting paid off promptly in case of failure, and some holders of uninsured deposits or "jumbo" C.D.'s of more than $100,000 may have moved their funds in quest not just of higher yields but of greater security.

More serious losses lie ahead for the thrift industry unless interest rates come down a lot more than they have so far. Alan Greenspan, chairman of the Council of Economic Advisers under former President Gerald R. Ford and adviser of President Reagan, believes that the thrift industry is facing the worst losses in its history.

In a fresh analysis, Mr. Greenspan's economic consultant firm, Townsend-Greenspan, Inc., concludes that even if interest rates recede to their April 1981 levels, about one percentage point below where they are now, total pretax losses of the savings institutions would keep rising, from $900 million in the first quarter to $1.9 billion in this year's final quarter, with prospective losses totaling $5.5 billion in 1981 and $7 billion in 1982.

That sounds bad enough, and would mean failure for scores of institutions. But if money market rates climb still higher in the coming year, the losses of the thrift units, Mr. Greenspan warns, "would escalate to truly horrendous proportions."

Nine out of 10 savings and loans, he says, are currently in the red on income account, though only a few have run out of book equity. However, that number is likely to increase rapidly in the months immediately ahead.

If thrift institutions had to liquidate their existing assets at current market values, only a few would have any equity left. The Federal Savings and Loan Insurance Corporation estimates the book value of the savings and loans' total assets at $600 billion, of which five-sixths consists of mortgages.

Townsend-Greenspan estimates that their $500 billion mortgage portfolio, if sold at market, would produce a book loss of $100 billion.

Adjusting savings and loan balance sheets to current values would reduce the thrift industry's net worth from a current book level of $31 billion to a market deficit of approximately $70 billion.

On the extreme assumption that the industry had to liquidate its mortgage portfolio at current values, it would thus be $70 billion short of covering its liabilities. Of that amount, some $20 billion in liabilities is not insured by the Federal Savings and Loan Insurance Corporation. Whatever the legalities, it seems virtually certain that the United States Treasury would make good on the insurance of deposits up to $100,000. That now means that the Treasury's contingent liability is approximately $50 billion—plus another $5 billion to cover losses at mutual savings banks.

The best hope for avoiding such a drain on the Treasury would be a decline in interest rates, which would remedy the thrift institutions' imbalance between asset and liability maturities and income flows. A 3.5 percentage point decline from the current level of rates would, according to the Greenspan estimate, wipe out the current deficit and put the thrift industry over all back on a break-even status.

If the Administration pursues a fiscal policy that is excessively stimulative and keeps pressure on the Federal Reserve to control inflation basically by tightening the money supply, interest rates are likely to stay high and volatile, exacerbating the dangers to the savings and loans and mutual savings banks. The Administration would then, in all likelihood, be driven to employ one or another rescue device, such as the issuance of "letters of credit" for obtaining loans from the Treasury, or Federal warehousing of lower-yielding mortgages, to shore up the thrift industry.

The Reagan Administration is not eager to face up to the very real dangers confronting the savings industry; it is loath to undertake a huge rescue operation, and instead is looking for gimmicks and escape devices. These would require the ingenuity of a financial Harry Houdini, and none may exist. If interest rates stay high or move higher, a Federal ballout of enormous size may be needed to provide time for the restructuring of the thrift industry, and to hold down the damages to depositors.

The fundamental cure—lower inflation and lower interest rates—is the preferred solution, but it needs to come reasonably soon.

Mr. TSONGAS. These problems are very harmful to major sectors of our economy. The housing and construction industry is reeling. Unable to afford current financing, consumers and businesses put off buying homes and commercial buildings. Housing starts this year are far below 1980. To the construction industry, it is an economic disaster. To a growing family, it is a personal hardship.

I know that there are those in the housing industry—and in the Congress as well—who sincerely believe that unless thrift institutions are mandated to make fixed rate mortgage loans, housing will suffer. This view has a superficial appeal. But a close examination of the history of the thrift industry reveals that the very inflexibility of thrift institution investments has aggravated earnings rates and crippled thrifts in bidding for money against nonfinancial intermediaries such as the money market funds. This has literally dried up mortgage credit in some areas for months at a time.

Savings banks and savings and loan associations are our specialists in residential mortgage lending. They know the business and do it well. I am not afraid that these institutions, given broader powers, will turn away from housing. Housing loans will still be a dominant part of these institutions' portfolios, but future home lending will no doubt be tied to more interest sensitive mortgage notes, and the ability to make other interest sensitive investments, such as consumer and commercial loans, will give the thrifts the ability to moderate the dramatic and steep declines in mortgage credit availability which now occur during periods of tight money.

It is well known that the Federal financial regulatory agencies—acutely aware of the thrift industry's dilemma—sent draft legislation to the House and Senate Banking Committees. This legislation would authorize more flexibility for the regulators to deal with and to prevent financial institution failures. This so-called "regulators' bill' met with resistance in both the industry and the Congress because of certain controversial elements. After meeting with staff of the regulatory agencies, I have become convinced that increased regulatory flexibility is essential to the soundness and safety of our financial institutions.

Therefore, title I of this bill is comprised of the regulatory agencies' suggestions for streamlining and expanding their ability to deal with problem thrifts—the so-called "regulators' bill". I recognize that a number of these suggestions are controversial. I do not endorse each proposal. However, I believe that the issues addressed by this bill deserve public consideration and debate, and that the essential principles stated here are worthy of adoption.

TAX INCENTIVES PLUS REGULATORY CHANGES

A close look at the thrift industry reveals an immediate extreme problem, and also a longrun dilemma. In the short run, thrifts face deposit losses and money cost increases which are destroying earnings and could, if trends accelerate, translate into a liquidity squeeze. Over the long run, they face a more profound dilemma—surviving as a specialized industry in an age where consumers demand a wide range of services and where volatile interest rates make specialized portfolios risky at best.

To strengthen the thrifts, we must provide tax incentives and regulatory changes for both the immediate problems and the long-term dilemma. A sound future, then, is based on four initiatives:

First, tax incentives for short-term relief. It is vital for Congress to authorize a saving certificate to attract relatively inexpensive funds to thrift banks. Both yesterday's action in the Senate Finance Committee and today's Senate Democratic resolution reflect the need for this to occur.

Second, regulatory changes for short term relief. Federal regulators believe that this is also extremely important over the next 18 to 24 months, and I support their stance. The Federal Reserve, the FHLBB, and the FDIC all played a role in drafting the "regulators' bill" to allow greater flexibility for regulators and insurers. This will improve their ability to insure safety and soundness in the banking industry.

For the long term, nothing will help the thrifts and our Nation as much as increasing America's personal savings rate. Compared to the rate of Japan, Germany, and other competitors or to our own recent past, our present savings rate—below 5 percent—is absurd. The tax change that will help change this in the long run is to allow universal IRA accounts. This is the third policy initiative.

At the same time, over the long run, the thrifts desperately need to be able to structure balanced portfolios to afford them the best chance of surviving. Therefore, thrift institutions need new powers—the fourth and final basis of renewed competitiveness.

For thrifts to have a strong future, all four policies must be pursued.

ADMINISTRATION ATTITUDE

The Reagan administration has called the "regulators' bill" unnecessary. Presidential advisers seem to believe that the problems of our financial institutions will go away if only their supply-side economic theories are adopted. And one need only review the projections of their economic forecaster, the Claremont Economic Institute, to see how they could believe such is the case. The Institute predicts the prime rate will tumble to 8 to 9 percent by 1983 and that inflation will be below 5 percent—an environment of relatively easy adjustment for thrifts.

Unfortunately, no other economic forecaster is nearly as optimistic. Chase Econometrics sees the prime in 1983 at 13.7 percent. Data Resources predicts a 1983 prime rate above 13 percent. Wharton Econometrics sees the prime at 15.5 percent in 1983. If the other forecasters are closer to the truth, then many more thrift banks will find themselves closer to the brink.

I, for one, question whether we ought to play Russian roulette with the fate of a large segment of our country's financial institutions in the hope that Arthur Laffer has found an economic elixir.

We should never underestimate the role that public confidence plays in the maintenance of an orderly marketplace. The prospect of hundreds of financial institutions being declared insolvent in a short period of time is one that America has not faced since the 1930's. Deposit insurance or no, if this scenario unfolds, the public will get a clear signal that something is drastically wrong. Maybe confidence would be maintained, but it is impossible to predict accurately what investors would do.

The point is, we do not want to be forced to find out. And we need never come to the point, if we are prepared to deal responsibly with the problem now.

We are told that the Reagan administration opposes a so-called "bail-out" for financial institutions. But what Treasury Department experts ignore is that the

Federal Government is already obligated to protect the soundness of financial institutions through our deposit insurance programs.

Without summoning up doomsday scenarios, I think we must recognize that the plight of our thrift industry is serious, too serious for us to delay coming to grips with the problem for partisan reasons. There are some who ask, "Why not let the Reagan administration take on a tough one? Let's see how long it takes them to get their act together, or fall flat on their face." Such a reactive approach to minority status cuts the political risk, but it does nothing to change the dangerous reality. With the health of a large section of our financial institutions industry at stake, and with the Reagan administration lagging, I believe we must lead the way with legislation.

BILL DESCRIPTION

Mr. President, title I of this bill provides the regulatory modifications that the bank regulators believe are an essential component to any plan to deal with both the short and long term problems of the thrifts. Regulatory authorities are convinced that, by expanding the powers to the regulators to loan to thrifts, or to merge or otherwise assist them, they will be able to meet any foreseeable problems in the next 18 to 24 months.

As I stated earlier, I do not at this time endorse each and every provision in this bill. Nevertheless, I am convinced that these issues must be addressed. Included in the regulatory changes are the following:

First, the FDIC is given expanded authority to make loans to purchase the assets of or make deposits in any insured bank.

Second, the FHLBB may waive the notice requirement for thrift acquisitions that exists under the present statute if the Board finds that an emergency exists.

Third, the FHLBB may require the conversion of charter from mutual to stock to permit merger or acquisition of thrifts.

Fourth, the FSLIC has broadly expanded powers to make loans to, to make deposits in, to purchase the assets of, to assume the liabilities of or to make contributions to insured institutions.

Fifth, the FSLIC, where it deems necessary, shall permit mergers of institutions across State lines as well as across industry lines.

Sixth, the FHLBB is given expanded access to the Treasury loan window, an increase from $750,000,000 to $3,000,000,000.

Seventh, loan access to the Treasury is also increased for credit unions as are powers to merge credit unions.

Eighth, the FDIC is also granted the authority, under extraordinary conditions, to merge large thrifts (greater than 0.12 percent of the assets of all U.S. banks) across State and industry lines.

Title II of this bill would authorize expanded powers for Federal mutual savings banks. Last year, when the Congress considered the Depository Institutions Deregulation and Monetary Control Act of 1980, I introduced an amendment which ultimately became section 408 of that bill. This amendment authorized federally chartered mutual savings banks to invest up to 5 percent of their assets in commercial, corporate and business loans and to accept demand deposits in connection with a commercial, corporate or business relationship. Responding to this initiative, State legislatures in a number of States, including the Commonwealth of Massachusetts, have adopted similar expansions of powers for savings banks. Savings banks in other States have started applying for Federal charter in increasing numbers.

Title II of the bill I introduce today has the same rationale as last year's amendment. Thrift institutions must be given greater flexibility and more powers if they are to deal with our rapidly changing economic environment.

Banks in Massachusetts are in far better condition than their counterparts in the thrift industry elsewhere precisely because they have been in the forefront of change. They were the first to have NOW accounts, which were invented at the Consumer Savings Bank in Worcester. Also, Massachusetts savings banks historically have had more liberal investment powers than other thrifts. Their relatively strong net worth positions today testify to the efficacy of broader powers.

Title II would continue the process of strengthening and modernizing savings banks. Specifically, title II would:

First, delete the present limitation on the equity, bond, and consumer loan investment authority of Federal mutual savings banks, which restricts such investments to the 5-year average immediately preceding conversion.

Second, remove current limitations on commercial lending and substitute a single provision derived from—and similar to—the 10 percent (of capital stock and surplus) loan limitation to any one borrower imposed on national banks by 12 U.S.C. 84.

Third, permit acceptance of demand deposits from individuals as well as corporations.

Fourth, increase authority to invest in service corporations to corporations jointly owned by mutual savings banks as well as by savings and loan associations. It would also increase investment authority from 3 percent of assets to 10 percent of assets.

Fifth, clarify the FDIC obligation to indemnify the FSLIC on the occasion of the conversion of a State-chartered FDIC-insured savings bank to a Federal mutual savings bank.

Mr. President, I had hoped to introduce today a companion title to title II, which would have been "Title III: Lending, Investment, and Operating Authority of Federal Savings and Loan Associations". I have met at length with representatives of the Federal Home Loan Bank Board and discussed the need to broaden the powers of savings and loan associations. I am encouraged that the Bank Board is preparing legislation along these lines, and rather than attempting to present an independent version of an S. & L. powers bill at this time, I will wait for the Board to complete work on its proposals to modernize S. & L. operations.

Both titles II and the S. & L. powers, which I plan to attach to this bill shortly, will help to bring about a long overdue update of our thrift institutions. It has been nearly a decade since the Hunt Commission proposed increased flexibility for thrift institutions. Over that period, there have been many attempts to expand thrift powers. Most of these efforts have failed.

NO TIME FOR DELAY

Mr. President, some public officials may be reluctant to talk about this impending crisis. Admittedly, erosion of public confidence in these institutions can make matters worse. But the heart of the matter is not a confidence game. It is the basic inability of thrifts to be competitive and profitable.

If 1980 and 1981 have taught us anything, it is that financial reforms delayed since the early 1970's have cost us dearly. We have lost a decade. Some thrifts that might have survived given broader powers are no longer with us, and there is a clear danger that more will go out of business. Mr. President, this urgent situation means that we can no longer delay debate on basic changes in the thrift industry and its regulation.

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

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

S. 1413

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this act may be cited as "The Regulatory Flexibility and Expanded Powers Act of 1981".

TITLE I—FINANCIALLY DISTRESSED DEPOSITORY INSTITUTIONS

ASSISTANCE TO INSURED BANKS

SEC. 101. Section 13(c) of the Federal Deposit Insurance Act (12 U.S.C. 1823(o)) is amended to read as follows:

"(c)(1) In order to reopen a closed insured bank or, when the Corporation has determined that an insured bank is in danger of closing, in order to prevent such closing, the Corporation, in the discretion of its Board of Directors, is authorized to make loans to, purchase the assets of, or make deposits in such insured bank upon such terms and conditions as the Board of Directors may prescribe, when in the opinion of the Board of Directors the continued operation of the bank is essential to provide adequate banking service in the community.

"(2) Whenever severe financial conditions exist which threaten the stability of a significant number of insured banks, the Corporation, in the discretion of its Board of Directors, is authorized to make loans to, purchase the assets of, or make deposits in any insured bank so threatened upon such terms and conditions as the Board of Directors may prescribe, if it is probable such action will substantially reduce the risk of loss or avert a threatened loss to the Corporation.

"(3) Any loans and deposits made pursuant to the provisions of this paragraph may be in subordination to the rights of depositors and other creditors.".

LOANS TO INSURED BANKS

SEC. 102. The first paragraph of section 13(e) of the Federal Deposit Insurance Act

(12 U.S.C. 1823(e)) is amended to read as follows:

"Whenever in the judgment of the Board of Directors such action will reduce the risk of loss or avert a threatened loss to the Corporation and will facilitate a merger or consolidation of an insured bank with another institution or will facilitate the sale of the assets of an open or closed insured bank to and assumption of its liabilities by another institution, the Corporation may, upon such terms and conditions as it may determine, make loans secured in whole or in part by assets of an open or closed insured bank, which loans may be in subordination to the rights of depositors and other creditors, or the Corporation may purchase any such assets or may guarantee any other institution against loss by reason of its assuming the liabilities and purchasing the assets of an open or closed insured bank. Any insured national bank or District bank, or the Corporation as receiver thereof, is authorized to contract for such sales or loans and to pledge any assets of the bank to secure such loans. As used in this subsection, the term 'institution' means an insured bank or an association or bank insured by the Federal Savings and Loan Insurance Corporation.".

FDIC ASSESSMENTS

SEC. 103. Third sentence of section 7(d)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1817(d)(1)) is amended—

(1) by striking out "and" the second place it appears: and

(2) by inserting before the period at the end thereof the following: "; and (4) any lending costs for the calendar year, which shall be the difference between the rate of interest earned, if any, from each loan made by the Corporation pursuant to section 13 after January 1, 1981, and the Corporation's average investment portfolio yield for the calendar year".

WAIVER OF NOTICE REQUIREMENTS

SEC. 104. (a) Section 4(c)(8) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(c)(8)) is amended by inserting before the semicolon at the end thereof a period and the following: "Notwithstanding any other provision of this Act, if the Board finds that an emergency exists which requires it to act immediately on any application under this subsection involving a thrift institution, the Board may dispense with the notice and hearing requirement of this subsection and the Board may approve or deny any such application without notice or hearing".

(b) Section 2(i) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(i)) is amended—

(1) by striking out "or" before "(3)"; and

(2) by inserting after "shares" the following: "or, (4) a Federal stock savings bank or savings and loan association organized under section 5(o) of the Home Owners' Loan Act of 1933 (12 U.S.C. 1464(o))".

(c) Section 3(d) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(d)) is amended by inserting after "application" the following: "(except an application filed as a result of a transaction to be accomplished under section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2))".

FEDERAL STOCK SAVINGS INSTITUTIONS

SEC. 105. (a) Section 5 of the Home Owners' Loan Act of 1933 (12 U.S.C. 1464) is amended by adding at the end thereof the following:

"(o) Notwithstanding any other provision of this section or section 402 of the National Housing Act or State law, and consistent with the purposes of this Act, the Board may authorize (or in the case of a Federal association, require) the conversion, on an equitable basis, of a mutual savings and loan association or mutual savings bank into a Federal stock savings and loan association or Federal stock savings bank, or charter a Federal stock savings and loan association or Federal stock savings bank to acquire the assets of, or merge with such a mutual institution under the rules and regulations of the Board. The Federal Savings and Loan Insurance Corporation shall insure the accounts of any federally chartered stock savings bank. The Board may condition its approval of the conversion or acquisition of a mutual savings bank under this subsection that was previously insured by the Federal Deposit Insurance Corporation upon the receipt from the Federal Deposit Insurance Corporation of reasonable indemnification of the Federal Savings and Loan Insurance Corporation for losses that may be incurred by the latter during a period not to exceed five years as a consequence of its insuring the accounts of such institution, as agreed to by the Corporations. In addition to engaging in any investment or activity permitted a Federal mutual savings bank under this section, a Federal stock savings bank created pursuant to this subsection may, to the extent authorized by the Board, but subject to the limitations of subsection (a) hereof, continue to engage in any activity in which the institution which it acquires was engaged on December 31, 1977, and retain and make any investments of a type that the institution that it acquires held on that date. Authorizations under this subsection may be made only to assist an institution in receivership, or if the primary Federal supervisor has determined that severe financial conditions exist which threaten the stability of an institution and that such authorization is authorization is likely to improve the financial condition of the institution, or when either of the Corporations has contracted to provide assistance to such institution under section 406 of the National Housing Act or section 1823 of the Federal Deposit Insurance Act.".

(b) Section 403 (a) of the National Housing Act (12 U.S.C. 1726 (a)) is amended by inserting after the first time the word "associations" appears in the first sentence the following: ", Federal stock savings banks,".

(c) Section 2 (d) of the Home Owners' Loan Act of 1933 (12 U.S.C. 1462 (d)) is amended by inserting immediately before "or" the first time it appears the following: ", Federal stock savings bank,".

ASSISTANCE TO THRIFT INSTITUTIONS

SEC. 106. (a) Section 406(f) of the National Housing Act (12 U.S.C. 1729(f)) is amended to read as follows:

"(f)(1) In order to prevent the default of an insured institution, or in order to restore an insured institution in default to normal operation, or, when severe financial conditions exist which threaten the stability of a significant number of insured institutions, or of insured institutions possessing significant financial resources, in order to lessen the risk to the Corporation posed by an insured institution under such threat of instability, the Corporation is authorized, in its sole discretion and upon such terms and conditions as it may determine, to make loans to, to make deposits in, to purchase the assets or securities or to assume the liabilities of, or to make a contribution to, such an insured institution or such an insured institution so threatened.

"(2) Whenever an insured institution is in default or, in the judgment of the Corporation, is in danger of default or, whenever severe financial conditions exist which threaten the stability of a significant number of insured institutions, or of insured institutions possessing significant financial resources, and in order to lessen the risk to the Corporation posed by an insured institution under such threat of instability, the Corporation is authorized, in its sole discretion, in order to facilitate a merger or consolidation of such insured institution with another insured institution or the sale of assets of such insured institution and the assumption of its liabilities by another insured institution, and upon such terms and conditions as the Corporation may determine, to purchase any such assets or assume any such liabilities, or make loans or contributions to, or deposits in, or purchase the securities of, such other insured institution, or guarantee such other insured institution against loss by reason of its merging or consolidating with or assuming the liabilities and purchasing the assets of such insured institution in or in danger of default, or under threat of instability. The Corporation may provide any party acquiring control of, merging with, consolidating with, or acquiring the assets of an insured institution under section 408(m) of this title with such financial assistance as it could provide an insured institution under this subsection.

"(3) No assistance shall be provided pursuant to this subsection in an amount in excess of that which the Corporation finds to be reasonably necessary to save the cost of liquidating, including paying the insured accounts of, such insured institution in or in danger of default, or under threat of instability, but if the Corporation determines that the continued operation of such institution is essential to provide adequate savings or home financing services in its community, such limitation upon the amount of assistance shall not apply.".

(b) Section 406(b) of the National Housing Act (12 U.S.C. 1729b) is amended to read as follows:

"(b) In the event that a Federal savings and loan association is in default, the Corporation shall be appointed as conservator or receiver and as such (1) is authorized (A) to take over the assets of and operate such association, (B) to take such action as may be necessary to put it in a sound and solvent condition, (C) to merge it with another insured institution, (D) to organize a new Federal association to take over its assets, (E) to proceed to liquidate its assets in an orderly manner, or (F) to make such other disposition of the matter as it deems to be in the best interest of the association, its savers, and the Corporation, and (2) shall pay all valid credit obligations of the association. The Corporation shall pay insurance as provided in section 405. The surrender and transfer to the Corporation of an insured account in any such association which is in default shall subrogate the Corporation with respect to such insured account, but shall not affect any right which the insured member may have in the uninsured portion of his account or any right which he may have to participate in the distribution of the net proceeds remaining from the disposition of the assets of such association.".

EMERGENCY THRIFT ACQUISITIONS

SEC. 107. (a) Section 408 of the National Housing Act (12 U.S.C. 1730a) is amended by adding at the end thereof the following:

"(m) Notwithstanding any other provision of State or Federal law, except as provided in subsections (e)(2) and (1) hereof, the Corporation, upon its determination that severe financial conditions exist which threaten the stability of a significant number of insured institutions, or of insured institutions possessing significant financial resources, may authorize, in its discretion and where it determines such authorization would lessen the risk to the Corporation, an insured institution that is eligible for assistance pursuant to section 406(f) of this Act, to merge or consolidate with, or to transfer its assets and liabilities to, any other insured institution, or may authorize any company to acquire control of said insured institution or to acquire the assets or assume the liabilities thereof. Mergers, consolidations, transfers, and acquisitions under

this subsection shall be on such terms as the Corporation shall provide. In considering authorizations under this subsection, the need to minimize financial assistance required of the Corporation shall be the paramount consideration, but the Corporation shall also make a reasonable effort to authorize transactions under this subsection in the following sequence: First, institutions of the same type within the same State; second, between institutions of the same type in different States; third, between institutions of different types in the same State; and fourth, between institutions of different types in different States. Notwithstanding any other provision of this section, no transaction subject to this subsection and involving a commercial bank or bank holding company shall be permitted without the prior approval of the Corporation and of the Board of Governors of the Federal Reserve System.".

(b) Section 408(e)(2) of the National Housing Act (12 U.S.C. 1730a(e)(2)) is amended by inserting in the first sentence after the term "subsection" the following: "or any transaction under subsection (m) of this section,".

(c) Section 408(a)(1)(A) of the National Housing Act (12 U.S.C. 1730a(a)(1)(A)) is amended by adding after the word "cooperative" the words "or savings".

(d) The provisions of subsections (a) and (b) of this section shall cease to be effective five years after the date of enactment of this Act.

ASSISTANCE TO FEDERAL HOME LOAN BANK MEMBERS

SEC. 108. Section 16 of the Federal Home Loan Bank Act (12 U.S.C. 1436) is amended by inserting "(a)" after "Sec. 16." and adding at the end thereof the following:

"(b) Notwithstanding subsection (a) or any other provision of this Act, if the Board determines that severe financial conditions exist threatening the stability of member institutions, it may suspend temporarily the requirements under subsection (a) that a portion of net earnings be set aside semiannually by each Federal Home Loan Bank to a reserve account and permit each Federal Home Loan Bank to declare and pay dividends out of undivided profits. Thereafter, dividends shall be paid in accordance with subsection (a).".

BORROWING AUTHORITY

SEC. 109. (a) Section 402(d) of the National Housing Act (12 U.S.C. 1725(d)) is amended by striking the period at the end of the first sentence and adding the following: ", except that interest on loans from the Federal Home Loan Banks shall be not less than their current marginal cost of funds, taking into account the maturities involved, and loans from the Federal Home Loan Banks shall be adequately secured, as determined by the Board.".

(b) Section 402(1) of the National Housing Act (12 U.S.C. 1725(1)) is amended—

(1) by striking out "$750,000,000" and inserting in lieu thereof "$3,000,000,000";

(2) in the first sentence, immediately after the word "source", by inserting the following: ", except the Federal Home Loan Banks"; and

(3) in the first sentence, immediately after the first time the word "loan" appears after the first colon, by inserting "from the Treasury".

INSURANCE FUND RESERVES

SEC. 110. Section 404 of the National Housing Act (12 U.S.C. 1727) is amended by redesignating subsection (h) as subsection (i) and by inserting after subsection (g) the following:

"(h) Notwithstanding any other provision of this section, the Corporation, upon its determination that extraordinary financial conditions exist increasing the risk to the Corporation, may terminate distribution of shares of the secondary reserve and utilize said reserve on the same basis as the primary reserve. If otherwise authorized, the Corporation may resume such distribution upon its determination that said conditions no longer exist.".

ASSISTANCE TO CREDIT UNIONS

SEC. 111. Section 203 of the Federal Credit Union Act (12 U.S.C. 1783) is amended—

(1) by inserting "or (4)" after "paragraph (1)" in subsections (d)(2) and (d)(3) and by adding at the end of subsection (d) the following:

"(4) Notwithstanding the limitation contained in paragraph (1), the Secretary of the Treasury is authorized to lend such additional amounts as are authorized in advance in appropriation Acts, not to exceed $400,000,000.";

(2) in subsection (e) by inserting "from the Secertary of the Treasury" after "loans" the first time it appears therein; and

(3) by adding at the end thereof the following:

"(f) In addition to the authority to borrow from the Secretary of the Treasury provided in subsection (d), if, in the judgment of the Board, a loan to the fund is required at any time for carrying out the purposes of this title, the fund is authorized to borrow from the National Credit Union Administration Central Liquidity Facility.".

CREDIT UNION MERGERS

SEC. 112. Section 205 of the Federal Credit Union Act (12 U.S.C. 1785) is amended—

(1) by redesignating subsections (d) and (e) as subsections (f) and (g), respectively; and

(2) by inserting after subsection (c) the following:

"(d) Notwithstanding any other provision of this Act, other Federal law, or any State law, the Board may authorize a merger or consolidation of an insured credit union which is insolvent or is in danger of insolvency with any other insured credit union or may authorize a purchase and assumption by an insured credit union of all or any part of the assets and liabilities of any other insured credit union which is insolvent or in danger of insolvency if the Board is satisfied that an emergency requiring expeditious action exists with respect to the credit union, that other alternatives are not reasonably available, and that the public interest would best be served by approval of such merger, consolidation, or purchase and assumption. Any merger, consolidation, or purchase and assumption of an insured credit union approved under this section shall not operate or serve as the basis for any additional expansion of the continuing or acquiring insured credit union's field of membership.

"(e) Notwithstanding any other provision of this Act or any State law, the Board may authorize a purchase and assumption of all or any part of the assets, liabilities, and insured accounts of an insured credit union which is insolvent or in danger of insolvency, by a federally insured financial institution other than a credit union. For purposes of this authority, insured accounts of the credit union may upon consummation of the purchase and assumption be converted to insured deposits or other comparable accounts in the acquiring institution, and the Board and the National Credit Union Share Insurance Fund shall be absolved of any liability to the credit union's members with respect to those accounts.".

CENTRAL LIQUIDITY FACILITY ADVANCES

SEC. 113. Section 307(a) of the Federal Credit Union Act (12 U.S.C. 1795) is amended—

(1) by striking out the word "and" at the end of paragraph (15);

(2) by striking out the period at the end of paragraph (16) and inserting in lieu thereof "; and"; and

(3) by adding at the end thereof the following:

"(17) advance funds to the National Credit Union Share Insurance Fund under such terms and conditions as may be established by the Board.".

EXTRAORDINARY ACQUISITIONS

SEC. 115. Subsection (e) of section 13 of the Federal Deposit Insurance Act (12 U.S.C. 1823(e)) is amended—

(1) by inserting "(1)" after "(e)";

(2) by redesignating the second paragraph as paragraph (4); and

(3) by inserting the following after paragraph (1):

"(2)(A) Whenever an insured bank that had total assets equal to or greater than 0.12 percent of aggregate assets in United States offices of insured banks (as determined from the most recently compiled Reports of Condition filed by insured banks) is closed and the Corporation is appointed Receiver, then, the Receiver may, in its discretion and upon such terms and conditions as it may determine, and with such approvals as may elsewhere be required by any State or Federal courts and supervisory agencies, sell assets of the closed bank to and arrange for the assumption of the liabilities of the closed bank by an insured depository institution located in the same State as that in which the closed bank was chartered but owned by an out-of-State bank or bank holding company. Notwithstanding subsection (d) of section 3 of the Bank Holding Company Act of 1956 or any other provision of law, State or Federal, the acquiring institution is authorized to be and shall be operated as a subsidiary of the out-of-State bank or bank holding company; except that an insured bank may operate the assuming institution as a subsidiary only if specifically authorized by law other than this paragraph.

"(B)(i) In determining whether to arrange a sale of assets and assumption of liabilities of a closed insured bank under the authority of this paragraph (2), the Receiver may solicit such offers as is practicable from any prospective purchasers it determines, in its sole discretion, are both qualified and capable of acquiring the assets and the liabilities of the closed bank.

"(ii) If, after receiving offers, the highest acceptable offer is from a subsidiary of an out-of-State bank or bank holding company, the Receiver shall permit the highest acceptable offerer of any existing in-State insured depository institutions and subsidiaries of in-State bank holding companies to submit a new offer for the assets and liabilities of the closed bank. If this institution reoffers a greater amount than the previous highest acceptable offer, then the Receiver shall sell the assets and transfer the liabilities of the closed bank to that institution.

"(iii) If there is no acceptable offer received from an existing in-State depository institution or subsidiary of an in-State bank holding company, or if there is no reoffer greater than the highest acceptable offer, then the Receiver shall permit the highest acceptable offeror of the subsidiaries of the insured banks chartered in States adjoining the State in which the closed bank was chartered and bank holding companies whose banking subsidiaries' operations are principally conducted in States adjoining the State in which the closed bank was chartered (if its offer was not the highest received by the Receiver) to make a new offer for the assets and liabilities of the closed bank. If this subsidiary reoffers a greater amount than the previous highest acceptable offer then the Receiver shall sell the assets and transfer the liabilities of the closed bank to that institution.

"(iv) If no offer under subparagraph (ii) or (iii) is received which exceeds the original highest acceptable offer, then the Receiver shall sell the assets and transfer the liabili-

ties of the closed bank to the highest acceptable offeror.

"(C) In making a determination to solicit offers under subparagraph (B), the State bank supervisor of the State in which the closed insured bank was chartered shall be consulted. The State bank supervisor shall be given a reasonable opportunity, and in no instance a period of less than twenty-four hours, to object to the use of the provisions of this paragraph (2). If the State supervisor objects, the Receiver may use the authority of this paragraph (2) only by a unanimous vote of the Board of Directors. The Board of Directors shall provide to the State supervisor, as soon as practicable, a written certification of its determination.

"(D) The Receiver shall not make any sale under the provisions of this paragraph (2)—

"(i) which would result in a monopoly, or which would be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the business of banking in any part of the United States; or

"(ii) whose effect in any section of the country may be substantially to lesson competition, or to tend to create a monopoly, or, which in any other manner would be in restraint of trade; unless it finds that the anticompetitive effects of the proposed transaction are clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served.

"(E) Nothing contained in this paragraph (2) shall be construed to limit the Corporation's powers in paragraph (1) to assist a transaction under this paragraph.

"(F) As used in this paragraph (2)—

"(i) the term 'Receiver' means the Corporation when it has been appointed the receiver of a closed insured bank;

"(ii) the term 'insured depository institution' means an insured bank or an association or bank insured by the Federal Savings and Loan Insurance Corporation;

"(iii) the term 'existing in-State insured depository institution' means an insured depository institution that is chartered in the same State as the State in which the closed bank was chartered;

"(iv) the term 'in-State bank holding company' means a bank holding company whose banking subsidiaries' operations are principally conducted in the same State as the State in which the closed bank was chartered; and

"(v) the term 'out-of-State bank or bank holding company' means an insured bank having its principal place of banking business in a State other than the State in which the closed bank was chartered or a bank holding company whose banking subsidiaries' operations are principally conducted in a State other than the State in which the closed bank was chartered.

"(3) The provisions of paragraph (2) of this subsection shall cease to be effective five years from the date of its enactment. The expiration of the effectiveness of paragraph (2), however, shall have no effect on the continued legality of any sale or operation authorized while it was effective.".

TITLE II—LENDING, INVESTMENT, AND OPERATING AUTHORITY OF FEDERAL MUTUAL SAVINGS BANKS

CHARTERING

SEC. 201. Section 5(a)(1) of the Home Owners' Loan Act of 1933 (12 U.S.C. 1464(a)(1)) is amended to read as follows:

"(a)(1) In order to provide local mutual thrift institutions in which people may invest their funds and in order to provide for the financing of homes, the Board is authorized, under such rules and regulations as it may prescribe, to provide for the organization, incorporation, examination, operation, and regulation of associations to be known as 'Federal Savings and Loan Associations', or 'Federal mutual savings banks' (but only in the case of institutions which, prior to conversion, were State mutual savings banks located in States which authorize the chartering of State mutual savings banks, provided each conversion is not in contravention of State law), and to issue charters therefor, giving primary consideration to the best practices of local mutual thrift and home-financing institutions in the United States. An association which was formerly organized as a savings bank under State law may not convert from the mutual to the stock form of ownership. An association which was formerly organized as a savings bank under State law may, to the extent authorized by the Board, continue to carry on any activities it was engaged in immediately prior to conversion and to retain or make any investments of a type it held on that date, and such an association which was formerly organized as a savings bank under State law shall only be permitted to establish branch offices and other facilities in accordance with the limitations imposed by State law controlling applications of a savings bank organized under such State law, provided that such an association: (A) shall be exempt from any numerical limitations of State law on the establishment of branch offices and other facilities, and (B) may, in any case, subject to the approval of the Board, establish branch offices and other facilities in its own standard metropolitan statistical area, its own county, or within thirty-five miles of its home office, but only in its State of domicile. An association which was formerly organized as a savings bank under State law shall be subject to the requirements of State law (including any regulations promulgated thereunder and any sanction for the violation of any such law or regulation) in effect at the time of conversion, in the State of its original charter—

"(i) pertaining to discrimination in the extension of home mortgage loans or adjustment in the terms of mortgage instruments based on neighborhood or geographical area, and

"(ii) pertaining to requirements imposed under the Consumer Credit Protection Act, if the Board determines that State law and regulations impose more stringent requirements than Federal law and regulations.".

COMMERCIAL LENDING

SEC. 202. Section 5(a)(2) of the Home Owners' Loan Act of 1933 (12 U.S.C. 1464(a)(2)) is amended to read as follows:

"(2) A Federal mutual savings bank may make commercial, corporate, and business loans. The total obligations to any Federal mutual savings bank of any person, copartnership, association, or corporation shall at no time exceed 10 per centum of the net worth of such Federal mutual savings bank. The term 'obligations' means the direct liability of the maker or acceptor of paper discounted with or sold to such Federal mutual savings bank and the liability of the endorser, drawer, or guarantor who obtains a loan from or discounts paper with or sells paper under his guaranty to such Federal mutual savings bank and shall include in the case of obligations of a copartnership or association the obligations of the several members thereof and shall include in the case of obligations of a corporation all obligations of all subsidiaries thereof in which such corporation owns or controls a majority interest. Such limitation of 10 per centum shall be subject to such exceptions as the Board shall by regulation prescribe from among those exceptions provided for national banks in section 5200 of the Revised Statutes or elsewhere.".

DEMAND DEPOSITS

SEC. 203. Section 5(a)(3) of the Home Owners' Loan Act of 1933 (12 U.S.C. 1464(a)(3)) is amended to read as follows:

"(3) Federal mutual savings banks may accept demand deposits from any source whatever.".

SERVICE CORPORATIONS

SEC. 204. Section 5(c)(4)(B) of the Home Owners' Loan Act of 1933 (12 U.S.C. 1464(c)(4)(B)) is amended to read as follows:

"(B) Service Corporations.—Investments in the capital stock, obligations, or other securities of any corporation organized under the laws of the State in which the home office of the association is located, if the entire capital stock of such corporation is available for purchase only by savings and loan associations or mutual savings banks of such State and by Federal associations having their home offices in such State, but no association may make any investment under this subparagraph if its aggregate outstanding investment under this subparagraph would exceed 10 per centum of the assets of the association, except that not less than one-half of the investment permitted under this subparagraph which exceeds 1 per centum of assets shall be used primarily for community, inner-city, and community development purposes.".

CONVERSION INDEMNIFICATION

SEC. 205. Section 26 of the Federal Deposit Insurance Act (12 U.S.C. 1831c) is amended to read as follows:

"Sec. 26. With respect to any State-chartered insured mutual savings bank which converts into a Federal mutual savings bank or a Federal stock savings bank or merges or consolidates into a Federal mutual savings bank or a Federal stock savings bank, the Corporation shall indemnify the Federal Savings and Loan Insurance Corporation against any losses incurred by it which arise out of losses incurred by the converting bank, as follows: 100 per centum of such losses incurred by the Federal Savings and Loan Insurance Corporation during the first three years after conversion, 75 per centum during the fourth year, 50 per centum during the fifth year, and 25 per centum during the sixth year. The Corporation, at its discretion, may provide a greater degree of indemnification where circumstances warrant. The Corporation and the Federal Savings and Loan Insurance Corporation shall, within six months after enactment hereof, mutually agree on what shall be treated as 'losses incurred by it which arise out of losses incurred by the converting bank' for purposes hereof and, failing such agreement, the General Accounting Office shall prescribe the meaning of those terms. The General Accounting Office shall also have the authority to arbitrate and its decision shall be final and binding, as to any dispute between the Corporations relative to this section. Any conversion, merger, or consolidation covered by this section shall not be deemed a termination of insured status under section 8(a) of this Act.".

GENERAL POWERS

SEC. 206. Section 5(a) of the Home Owners' Loan Act of 1933 (12 U.S.C. 1464(a)) is amended by adding at the end thereof the following:

"(5) A Federal mutual savings bank may carry on all activities which are authorized to bank holding companies under section 4(c)(8) of the Bank Holding Company Act of 1956 or elsewhere, as such powers are defined by the Board.".

RECOGNITION OF SENATOR MATHIAS

The PRESIDING OFFICER (Mr. HATCH). The Senator from Maryland has 7 minutes.

RETIREMENT OF ROBERT S. McNAMARA AS PRESIDENT OF THE WORLD BANK

Mr. MATHIAS. Mr. President, we all have a special affection for our classmates, those who are contemporaries,

the people of our own time, of our own generation, and those who have shared our trials and troubles, as well as our days of sunshine and success. In a very real sense, Robert McNamara is my classmate in Washington, since we came to town together in January 1961. My service in the other body began early in that month, when the 87th Congress convened. Bob McNamara arrived a few days later, in the wake of a blizzard, when John F. Kennedy was inaugurated as President of the United States on the 20th of January.

In the intervening years, Mr. President, we have shared many experiences and I have benefited from his counsel, his advice, and his broad knowledge. In those same years, we have grown to know each other well. Our wives became good friends, my wife, Ann, and his wife Margie. So, it has been a close and a rewarding association.

In those years, Bob McNamara served with great distinction as Secretary of Defense and then became president of the World Bank.

Now, Mr. President, Robert S. McNamara will retire as president of the World Bank at the end of this month after more than 13 years in that office. Robert McNamara has made an extraordinary contribution in those 13 years, not only to the Bank, but to all mankind. He has made the Bank a powerful force for development in poor countries, helping the poorest people in the world grow their own crops, obtain safe drinking water, and educate their children.

Under the leadership of Robert McNamara, the World Bank has grown from a modest institution, with $1 billion in financial commitments in fiscal year 1968, to a major factor in development financing, extending $11.5 billion in financing during the Bank's most recent fiscal year. The World Bank today is supervising more than 1,600 projects—with a total value of some $100 billion—in 100 countries.

But the tremendous growth of the World Bank is not, in my opinion, Bob McNamara's most impressive contribution. What stands out most, is his unceasing effort to promote growth with equity, to insure that development improves the lives of the people who need it most.

Bob McNamara calls the attack on absolute poverty "the most fundamental struggle of all." Absolute poverty, he says:

> • • • is a condition of life so limited by malnutrition, illiteracy, disease, high infant mortality, and low life expectancy as to be beneath any rational definition of human decency.

Bob McNamara has made the clearest possible statement of where the priority in development ought to be placed:

> To reduce and eliminate massive absolute poverty lies at the very core of development itself. It is critical to the survival of any decent society.

Bob McNamara is personally responsible for shifting the emphasis of the Bank's programs toward meeting the basic human needs of the 800 million absolute poor who live literally on the margin of life. His persistent effort to demonstrate that equity and growth can be achieved together—that there is no necessary trade-off between the two—is paying off. The developing countries have realized steady, and in some cases, remarkable, economic growth in the past 15 years, while at the same time improving the living conditions for the poor. As more countries and institutions adopt the McNamara philosophy of development, we can look forward to still more rapid alleviation of the worst conditions of poverty.

The Bank-supported projects which exemplify Bob McNamara's approach range from rural health and family planning programs in Bangladesh to dairy cooperatives in India to rural road-building, irrigation, and electrification in Mexico, to building a water supply system for Manila in the Philippines. Such projects provide direct and lasting benefits to millions of poor people.

Mr. President, Bob McNamara is leaving the World Bank, and he will be sorely missed by all who have an interest in development, but the McNamara philosophy and the McNamara focus on growth with equity will continue at the World Bank and elsewhere. The unfinished work of eliminating absolute poverty will be finished, and the world will remember that it was Robert S. McNamara who took the critical steps.

Mr. President, I ask unanimous consent to have printed in the RECORD an article which appeared in the New York Times with reference to Mr. McNamara's retirement.

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

[From the New York Times, June 21, 1981]

MCNAMARA WARNS UNITED STATES OF PERILS IN REDUCING AID TO WORLD'S POOR

(By Leonard Silk)

Robert S. McNamara, who will retire this month after 13 years as president of the World Bank, believes the economic and political interests of the United States will be seriously injured if it retreats further from commitments to aid the poor people of the third world.

In an interview in his office in Washington, Mr. McNamara said Congress was "on the verge of repudiating" agreements made by the Carter Administration, and endorsed by the Reagan Administration, to contribute $658.3 million toward a general increase for the World Bank and $3.2 billion over three years to the sixth replenishment of the International Development Association, the bank's affiliate, which lends to the poorest countries.

"WE ARE BANKRUPT TODAY"

"With respect to I.D.A.," he said, "essentially we are bankrupt today. At the end of next week, the end of our fiscal year, we will have about $1 billion of I.D.A. credits approved by our board, but for which we have no commitment authority, and hence no authority to sign."

And, he added, "those are for projects that are to deal with these very basic problems," of poverty and financial crisis, "the solution to which will benefit not only the developing countries but the United States."

If the United States fails to support the development affiliate, Mr. McNamara said in the interview last week, other countries, acting under a trigger clause tied to the United States contribution will withhold their support, and the affiliate will collapse.

While the Republican-dominated Senate, following the White House endorsement, has voted the full authorization of $3.2 billion for the development affiliate, the Democratic-led House Banking and Currency Committee has cut the authorization to $1.9 billion.

But since there is actually little support for even the truncated bill among Republicans or Democrats in either the House of Representatives or the Senate, it may be excluded from the huge reconciliation bill that ultimately emerges from Congress.

Thus, with just over a week to go in his present job, Mr. McNamara is worrying and working down to the wire. At 65, he looks thin and fit; his eyes are bright and restless behind silver-rimmed spectacles. He is deeply tanned, both from his wanderings in the hot countries of the third world and from the tennis courts of Washington; last week, however, he was wearing a surgical harness on his right arm, having just broken his wrist playing tennis.

He still works in shirt-sleeves, donning a jacket only for picture-taking. He seems as passionately involved in his job as he did when President Lyndon B. Johnson accepted his resignation as Secretary of Defense in 1968 during the Vietnam War and backed him for the presidency of the World Bank. This post has always been held by an American, and Mr. McNamara's successor will be A. W. Clausen, former chairman of the Bank of America, with headquarters in San Francisco, which was also Mr. McNamara's hometown.

It was President Carter who named Mr. Clausen to the post, with Mr. Reagan's concurrence, although the extent of the Reagan Administration's commitment to the World Bank's aid program remains in doubt.

ROLL-CALL VOTE SHUNNED

So unpopular is foreign aid with voters, at a time when even domestic food stamp and welfare programs are being slashed, that the Democrats in Congress are loath to support foreign aid on a roll-call vote, lest they be attacked by their Republican rivals as "big foreign aid spenders."

The crucial factor that will determine whether the authorization of aid for the World Bank Group dies in Congress or passes is likely to be the pressure exerted by President Reagan and his lobbyists on Capitol Hill on behalf of the bill.

But the White House appears reluctant to fight hard for foreign aid, hoarding its capital for what it regards as more urgent causes. Some high Administration officials, such as David A. Stockman, the director of the Office of Management and Budget, are on record as favoring deep cuts in foreign aid, including funds for the World Bank.

WIDE-RANGING TALK

In last week's interview, Mr. McNamara talked extensively on a wide range of economic, political and technical subjects, rarely consulting notes for data. But the McNamara personality is not computerlike but a blend of precision and emotion. He himself speaks of the need to combine "a soft heart and a hard head."

His uppermost immediate concern is to rescue and strengthen United States support for the World Bank. He said he believed American economic and political interests would be seriously injured if this country retreated further from its earlier commitments to aid the poor people of the third world, which appears likely as Congress wranges over economic legislation.

"The United States contribution to development assistance," he said, "is disgracefully low; it has declined in relation to national income 90 percent since the Eisenhower Administration at a time when national income in real terms per capita has more than doubled. It is today the 15th lowest among the major industrial nations. There is no other large industrial nation providing as low a proportion of its national income to development assistance; it is disgraceful."

"A HARD-HEADED LOOK"

Mr. McNamara declined to criticize the Reagan Administration for not lending the bank stronger support. "The Administration," he said, "is a reflection of the views of the American people." But he said: "I think our people have failed to recognize in the last 10 or 20 years what has happened to the world today they live in. They do not understand how our nation should respond to these changes in ways that address its national interest. I am not talking about 'do-goodism' now. I am talking about taking a hard-headed look at where the nation's interests lie."

Mr. McNamara said that if the United States slashed its support for poor countries, the country would be penalized in the following areas:

Inflation, because the World Bank finances production of essential commodities, the scarcity of which could raise world price—foodstuffs and energy, for example.

Economic growth, because third world countries absorb roughly a third of United States exports. If lack of financial support erodes this market, domestic production and employment could be badly hurt.

Strategic interest, because lower rates of economic and social advance in the developing countries are almost certain to bring political instability damaging to the United States, adding to its military costs and adversely affecting its national security.

Mr. McNamara, who will leave the World Bank in July, is in a sense the last of the generation of post-World War II crusaders for a better world order to hold high public office. It was a group who combined a militant anti-Communism with a concern for world economic development.

COMMISSIONED PENTAGON PAPERS

Although Vietnam was for a time called "McNamara's War"—it was he who commissioned the Pentagon Papers, which explored the origins of the war—he declined in the interview to give his present views on the American involvement in Vietnam saying: "I have not talked about my period in Vietnam, and I am not going to start today. I may some time, but not while I am in this institution. It is inappropriate for an international civil servant to do that."

With both the cold war and the drive for social and economic reform at home and abroad in their background, Mr. McNamara and others like him have been attacked from the left as self-interested capitalists pretending to be socially responsible and from the right as socialists undermining the free-enterprise system.

Mr. McNamara considers such charges to be baseless and ignorant as applied to himself and the institution he has headed. When asked about the assertion made by some on both the right and the left that the World Bank is supported by American commercial bankers as a kind of bailout operation for banks that lent too heavily to the developing countries, Mr. McNamara responded:

"On the contrary, it's supported by individuals in this country who understand that our own economy will suffer, not the banks. The banks are intelligently managed; their loans to developing countries are a relatively small percentage of their total loans outstanding; they have appropriate reserves in relation to them; they are concentrated in some of the strongest developing countries. Brazil, for example, is a very rich country, even if it does at times have liquidity problems. Over the long run the banks aren't going to lose a lot of money on Brazil.

"So the charge that this bank is moving in ways that are designed to bail out U.S. commercial banks is absurd. This bank is, however, moving in ways that are consistent with the broad economic interests of the U.S. And if this bank is prevented from continuing to move in those ways, not only will the developing countries be hurt, and particularly the poorest people in those countries, but the U.S. economy will be hurt, and the American people will be hurt."

CRITICISM REJECTED HARSHLY

Mr. McNamara rejects harshly the criticism, offered by a host of conservatives, including some within the Administration, that the World Bank is undermining private enterprise and promoting socialism. He called the accusation an extreme hindrance to the bank's operations, especially in the United States.

"They are ignorant," Mr. McNamara said of the conservative critics. "They are ignorant of what the bank is doing. The bank in a very real sense is the largest single source of financing of private enterprise in the developing world, without qualification."

Mr. McNamara noted, for instance, that more than 30 percent of the bank's financing went to agriculture, almost all of it for financing individual, private farmers. He said the bank urges developing countries to increase their efficiency by relying on the price system to direct resources and to stop subsidizing the urban centers at the expense of the poor rural people. "We consistently urge real interest rates," he added, "that is, avoidance of interest subsidies, in order to stimulate savings and assure a directing of capital investment to situations where there will be a real rate of return. We consistently advise against, and as a matter of fact we'll refuse to loan for investment in utilities, public utilities, electric companies, water companies, railroads where the tariffs, the prices, are not set to yield profits, real rates of return so that they are self-sustaining investments."

He feels that the bank has made great strides in its attack on absolute poverty. The most obvious accomplishment of the bank under this administration, he said, had been to increase its annual commitments of loans from $1 billion in 1968 to $13 billion in the fiscal year ending June 30, which has meant, after allowing for inflation, quadrupling or quintupling its real lending. But the most important accomplishment, he feels, was learning to focus resources and technical assistance on the poor, raising their productivity and hence their output and real income.

With the statistical exactness for which he has long been noted, first as a Harvard Business School professor, then as a statistical controller in the United States Air Force during World War II and as president of the Ford Motor Company, Mr. McNamara reeled off the rates of return from investments in antipoverty programs in Bangladesh, Pakistan, Burundi and other poor countries. These rates of return ranged as high as 50 percent and averaged 19 to 20 percent on invested capital.

GREATEST ACCOMPLISHMENT

This, he feels, was his greatest accomplishment: the discovery that the bank could help the poor and society simultaneously.

It is with some regret that Mr. McNamara will leave his post at the World Bank. "I don't want to quit yet, either," Mr. McNamara said. To that end, he has already accepted a number of appointments to the boards of nonprofit institutions, including the Brookings Insttiution, the Ford Foundation, the Urban Institute and the California Institute of Technology, as well as the boards of such corporations as Royal Dutch/Shell, Corning Glass and The Washington Post.

"I am going to divide my time roughly 50-50 between the public and the private sectors," he added. "I hope to be active in continuing to advise both our Government and other governments in fields that I may have some competence in. I am not wealthy, but I don't have to choose my activities on the basis of compensation, and I don't care about status or prestige. I am willing to do anything that will be of assistance to either our Government or other governments. I do believe in public service, I am interested in it, excited about it. Foreign governments have asked me to provide advice and I will be doing so. And I am not going to accept compensation. I'm just going to do it when I feel like it, and when it will be helpful."

Has he any disappointments as he looks back over his performance as president of the World Bank?

He said he had, among them "the deferral of certain actions that I had hoped to initiate." One of them would have been a ratio change—a higher proportion of lending relative to the bank's capital. Another, he added, "would have been an expansion of our research program, a very substantial expansion, because I think that through that we would increase the world's understanding of the development program and how to accelerate it, with advantage to all parties."

He said his greatest disappointment was that "we and others have failed to inform the people of the industrial countries of the nature and magnitude of the changes in the relationships among nations, economically and politically, over the last decade"—especially their greater interdependence.

"For that reason," he said, "we have failed to show them where their own narrow interests lie. We have failed to convince them that there is a plus-sum game as part of which they can move to assist the developing countries to achieve economic and social advance with benefits to both the developing and industrialized countries."

"Now that is my strong belief," he added. "It is a belief I think is shared by most of my associates, and by many others outside the institution, and it is that failure which I think is leading to less than rational action by many of the nations, particularly the United States."

Mr. MATHIAS. Mr. President, I ask unanimous consent to have printed in the RECORD remarks delivered by Mr. David Rockefeller at a dinner in honor of Robert S. McNamara in New York City on March 19.

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

DAVID ROCKEFELLER REMARKS

Ladies and gentlemen, your presence here tonight is a more eloquent tribute to Bob McNamara than I could ever fashion.

Such a gathering of distinguished leaders in many fields who have played pioneering roles in our country over several decades can only mean, Bob, that your voice, which at times must have seemed to you to be "crying in the wilderness," has, in fact, been heard—and by men and women whose opinions count.

You have made us all aware of the awesome magnitude of the problems that beset millions of human beings living in impoverished countries of Asia, Africa and Latin America. You have warned us that what we have seen in these areas in the immediate past must be viewed as a prologue to a decade that could be characterized by a crescendo of crises from mass starvation in one region to political anarchy and civil war in another.

But we have heard you and that is why we are here tonight to pay to you our profound respects.

Before turning the evening over to you, however, I feel compelled to express my own deep concern that your message has not been fully understood by important segments in our society—even by many in our government—who must understand if our country is to act responsibly.

Speaking as a banker, whose bank participates daily in the vast international exercise of global financial intermediation, I hear you saying that we Americans must re-double our efforts to improve the investment climate where new wealth, new jobs, new growth are so desperately needed.

Speaking as an American, with a deep belief that the democratic design of our culture contains the power to keep the peace of the world and to enrich the world by creating greater opportunities, I heard you saying that we have been drifting in this gravely important area.

Speaking as an individual who believes that the duty of the older generation is to preserve common sense, while the Young discover new knowledge. I hear you saying that what you want to see done is only common sense.

I share that conviction, Bob, and would like to take just a few moments to add my own thoughts on this subject.

First, let me say that the new Administration has my wholehearted support in its efforts to tame the overblown Federal budget and stem the drain of productive capital into unproductive programs. In my view, the Federal budget simply must be cut if, once and for all, we are to reverse the inflationary curse that has plagued our nation for more than a decade.

In the foreign policy area, as in the domestic area, the President rightfully has asked that we think first of our own national self-interest.

And it is here that I would fervently hope the Administration will profit from the wisdom of Bob McNamara and will heed his words. Specifically, in this regard I would suggest that we reexamine, in a comprehensive way, the proper role of the United States in the world economy, to see if we are contributing what we should be contributing to enhance our own best interest.

Such a reexamination, I believe, could take the form of a blue ribbon panel of diversified American opinion makers. Bob McNamara, himself, had a similar idea in inspiring the Brandt Commission, and it certainly served a useful purpose. But, I would see the need at this time for a commission concerned solely with answering the most pressing international questions as they relate to United States interests and policies. I feel this body should seek answers to such questions as:

What are our proper responsibilities to the nations of the Third World?

And how can we exercise these duties in our own best, self-interest?

In the process, we must carefully reassess our nation's role both in bilateral programs and in our dealings with multilateral agencies like the World Bank, IDA, the Export-Import Bank and the regional development banks of Asia, Latin America, and Africa.

This reassessment should consider the costs of such programs—certainly—but it must also focus on the impact these programs have on our competitiveness in world markets, the development of jobs in the world, and the creation of a constructive climate for global investment.

The re-examination I am calling for should take place within a broad context of foreign policy. The international financial system, of course, is linked closely with the international security system. We should address this relationship and what it means for the organization and magnitude of our foreign aid programs.

The re-examination I am calling for should also take place within the context of domestic economic policy. Paul Volcker has pointed out on many occasions that sometimes we try to separate "foreign" economic policy from "domestic" economic policy as though one were on Mars and the other on Venus. Economic policy, Paul says—and I think correctly—should be seen as the bridge between domestic policy and foreign policy.

Finally, if the re-examination I am suggesting is to be productive, it must have credibility and therefore should be undertaken by the best minds in this country. For the consequences of our action—or our inaction—in this field of foreign aid and economic development will be great indeed.

Our relationships with the Third World will inevitably be of growing importance as this decade proceeds. And it seems to me we would be wise to address this reality sooner in a comprehensive way rather later in a catchup fashion. This, I believe, is very much a part of the lesson we can learn from what Bob McNamara has been telling us for so many years.

But Bob, I'm trespassing on your time. We came here not to bury you with words. But to praise you and hear what you have to say. What you have been talking about for so long has moral and social implications. It equally should be of concern to us for its political, economic, and military implications.

And for my part this evening, I did want to take just a few moments to urge that our distinguished friends and guests raise their voices in support of yours to stress the urgent importance of, first, helping to solve the problems you have so eloquently brought to light and, second, of working to improve relations with those countries of the world whose future will be so critical to our own national self-interest in the years ahead.

● Mr. HEINZ. Mr. President, it is with great pleasure that I join my colleagues in honoring Mr. Robert S. McNamara. Mr. McNamara has had a long and most distinguished career as a professor, business executive, lieutenant colonel in the U.S. Air Force, Secretary of Defense for 7 years, and president of the World Bank for the past 13 years.

Since 1968 when he became president of the World Bank, the Bank has grown tremendously in both capability and importance. Under Mr. McNamara's expert guidance, annual financial commitments have risen sharply. In the past 13 years the Bank has experienced an 11-fold expansion in lending operations. Today, the World Bank is the largest development agency in the world, providing financial and technical assistance to over 100 developing countries.

We have all benefited from his outstanding contributions to his profession and our country. Mr. McNamara's illustrious service to the Nation deserves our highest praise.●

● Mr. INOUYE. Mr. President, it is with great pleasure that I join my colleagues in a tribute to Robert McNamara, the president of the World Bank. When this man—the incomparable international civil servant—retires from the World Bank later this month, he will have served for 13 years as its president.

During his tenure in office, Robert McNamara has set a standard of excellence which must assuredly now become the goal for all who aspire to recognition as truly international servants of the people. His unique vision of economic development, his truly exceptional managerial ability, and his tireless efforts in service of the poor of the world have led the World Bank to its preeminent position in international development finance. The World Bank, under Robert McNamara's leadership, has become the most effective institution for meeting the enormous task of bringing a decent life to those living in absolute poverty.

Lending by the World Bank has risen from the $1 billion annual program in 1968, when Robert McNamara joined the Bank, to $11.5 billion in the fiscal year ending June 30, 1980. Today, the Bank is supervising more than 1,600 projects in about 100 countries. The total value of these projects approaches $100 billion.

The World Bank—this single institution—is now responsible for providing economic advice and financial assistance to more than a hundred developing countries with a combined total population of some 3½ billion people.

Robert McNamara has met this responsibility by recognizing—and leading us also to see—that economic growth is not necessarily economic development. His contributions are many but, perhaps, the most notable has been his tenaciously held belief that the poor must be engaged in the process of development, that they must be participants and not just the objects of change, if economic growth is to mean economic progress.

He taught us that the lesson of the past 30 years, indeed of all of history, is that there is more to economic development than increasing the wealth of nations. He caused us to address the central issue, to recognize that, fundamentally, economic progress is nothing more, nor less, than the improvement of the human condition. Nations might grow in wealth and power, but, to him, if they could not meet the basic human needs of their individual citizens, they could make no claim to economic progress.

Mr. President, Robert McNamara believed and still believes that, if we are to have peace, if we are to have justice, the world must face the reality that 800 million people among us live in absolute poverty, their lives enclosed by hunger and disease. He knew, and he never lost sight of the fact, that the one workable solution to this most pressing problem was raising the productivity of the poor.

For this, for his dedication to the poor of the world and for his ability to transform visions into practical programs which insure that the poor have access to basic education, primary health care, and safe drinking water, we honor him. We, who share his views and his hopes for the betterment of mankind, will sorely miss his leadership at the World Bank. We know that his voice will not be stilled and that he will continue to give advice and counsel to us. And, for that, we thank him.●

A TRIBUTE TO ROBERT S. M'NAMARA, PRESIDENT OF THE WORLD BANK

Mr. LEAHY. Mr. President, the retirement of Robert S. McNamara as president of the World Bank marks the end of 13 years of exceptionally distinguished service to one of the most important, respected and successful international institutions. At a time when concerned leaders everywhere are increasingly ready to focus their attention on the searing poverty of 40 percent of this globe's inhabitants, the World Bank offers hope and inspiration that we have within our power the means to mitigate this enormous suffering. No person has given substance to the idea that some-

thing can be done more than Mr. McNamara. The record of accomplishment under his direction deserves our study. The inspiring contribution of Mr. McNamara merits our applause.

During Mr. McNamara's presidency bank lending grew from $1 billion in 1968 to $11.5 billion in 1980. The Bank now supervises more than 1,600 projects in 100 countries. This record of expansion was established against a backdrop of world economic depression, the energy crisis, extraordinary expenditures on armaments, and a widening gap between the rich nations and poor nations. It reflects not only Mr. McNamara's conviction that the bank must dedicate itself to improving the lot of the "absolute poor," but also his success in projecting management techniques adequate to mobilizing the vast economic and social data generated by the Bank as part of its diagnosis of an economically ailing and politically volatile planet.

Over the span of a decade and more Mr. McNamara argued forcefully an uncomfortable but compelling message:

> Development is clearly not simply economic progress measured in terms of gross national product. It is something much more basic. It is essentially human development, that is the individual's realization of his or her own inherent potential.

Under McNamara's supervision the World Bank transcended the limitations traditionally associated with a bank. Increasingly he came to preside over a development agency dedicated to the idea that, in his own words:

> The rich and the powerful have a moral obligation to assist the poor and the weak.

McNamara then went on to demonstrate that the poverty which constitutes everyday reality for 800 million people can be relieved by reshaping development strategies. In such fields as basic education and primary health care the Bank has promoted the concept that essential public services must be made available as widely as possible. In place of emphasis upon a simple maximization of growth McNamara urged concentration upon investments most beneficial to the very poorest members of the society. His message, and the effective implementation of that message, constitutes Mr. McNamara's enduring monument.

I join my colleagues in expressing profound regret that the World Bank will no longer have the benefit of Mr. McNamara's leadership. I rejoice nonetheless that we can use this occasion to remind ourselves that man possesses the resources and technology to meet this world's overriding need for cooperation, vision, and determination in directing international development. Mr. McNamara's vision has become our counsel. My fellow Vermonters join me in this testimony to Mr. McNamara and to the institution he served so well.

Mr. LEVIN. Mr. President, Robert McNamara has brought the same dynamic energy and drive to the job of President of the World Bank as he has to all of his other distinguished positions—from Harvard Business School professor to Ford Motor Co. executive to U.S. Secretary of Defense.

In his 13 years as World Bank President, Mr. McNamara has become a great champion of the poor all over the world. Under his leadership the Bank began to emphasize programs promoting rural development for the poorest people; such as, rural water projects, basic education, primary health care, and rural agriculture improvement projects.

Mr. McNamara has repeatedly reminded us of our responsibilities to the poor. He has pointed out that the promotion of economic progress and the reduction of human suffering worldwide will ultimately bring us a more stable and more humane world.

As a specific example of his leadership, consider Mr. McNamara's approach to educational loans. Previously, development bankers had argued that loans for education were considered consumption, so they couldn't be given. Under Mr. McNamara, the development economists have won out, arguing that output does rise from education, nutrition, and health loans. And these loans are now an integral part of the Bank's program.

But Mr. McNamara was more than a concerned humanist. He was also an efficient businessman. Even taking into account inflation, World Bank lending has also broadened the geographical distribution of the loans. Today, the Bank is supervising more than 1,600 projects in about 100 countries—projects with a total value of about $100 billion. Equally significant is the fact that the Bank has almost tripled its profits from 1978 to 1980, never experienced a loan loss, and enjoys an excellent worldwide credit rating.

We will miss Robert McNamara's strong leadership as president of the World Bank. But we should applaud the excellent work he has done, and the improved programs which his compassion for humanity has brought to the World Bank.

TRIBUTE TO ROBERT M'NAMARA

Mr. HART. Mr. President, Robert McNamara's name has become synonymous with that of the World Bank during the past 13 years of his stewardship. His energy, driving force and dedication on behalf of the world's poor will be sorely missed upon his retirement June 30. Thomas Paine's words my country is the world are an apt description of this outstanding public servant's outlook, which has so benefited the people of developing nations.

Most Americans are content to have succeeded in one or two careers during a lifetime. But Robert McNamara has given long and dedicated service to a variety of careers, both in business and Government.

When he assumed the presidency of the World Bank, in 1968, he shifted the focus of the institution from the traditional emphasis on large, engineering-style projects to one favoring smaller-scale efforts destined to reach and affect the individual more directly.

Under his leadership, the Bank sought to double both its loans to the poor countries and its borrowing efforts in the wealthy ones, and shaped its economic development policies to attack he personal poverty of the poorest 40 percent of the world's population. In practical terms, this meant financing rural and urban projects of low skill, labor-intensive dimensions, related directly to the daily life of the people in the areas of schooling, health, nutrition, farming, and family planning. These kinds of projects are in their own way more difficult to accomplish than building powerplants and road networks.

Robert McNamara has campaigned vigorously to persuade the industrial nations to increase their level of aid, and the United States has been one target of his attempt at consciousness-raising. He has argued convincingly that, in this economically and politically interdependent world, it is in the United States' best national interest to give more generously to the poorer countries, for they provide the fastest growing markets for export and a stimulus to U.S. trade and employment. This argument is moot in addition to humanitarian and moral considerations, of course. He has tried to combat the erroneous impression held by some Americans that the United States is doing more than we should in the size of our contributions; in fact, we give $20 per capita for economic development, while most other industrial countries give twice as much. We would do well to heed his warning that we will face a much worse set of social and political problems in the developing world later if we as a nation do not do more now.

It is natural that an activist like Robert McNamara will attract criticism, and he has had his share throughout his different public roles. He has been accused of being an "internationalist, a citizen of the world," an accusation he deserves to be proud of. He has been accused of overreaching, of pushing the Bank too far by those afraid that it may lose its borrowing power; yet, as the poet Browning once said, "Ah, but a man's reach should exceed his grasp, or what's a heaven for?" and his mission to alleviate world poverty has been a most worthy one.

It is fortunate indeed that Robert McNamara will not retire from public life, but will leave the presidency of the World Bank for service on nonprofit institutions as well as corporate boards. From his new vantage point, I am sure he will continue to speak out against short-sighted temptations, such as the erection of trade barriers, reduction of foreign aid and isolation from the developing world's needs.

I look forward to hearing his voice and benefiting from his wisdom in the years to come.

THE RETIREMENT OF ROBERT S. M'NAMARA AS PRESIDENT OF THE WORLD BANK

Mr. MATSUNAGA. Mr. President, I rise to pay tribute to a prominent American, Robert S. McNamara, who is resigning from the presidency of the World Bank after 13 years of service in that trusted office. No doubt all of us in the United States, and indeed the entire world, will suffer a loss upon the retirement of this gifted and dedicated public servant.

Robert McNamara has had a long and distinguished career from which millions of Americans have benefited. As Secre-

tary of Defense under Presidents Kennedy and Johnson, Robert McNamara brought great personal integrity and keen management skills to the Pentagon, serving the Nation with honor and distinction during seven of our country's most trying years. I might also note, Mr. President, that he accepted that office of public trust at no small sacrifice to himself, foregoing, according to some reports, an estimated $13 million in stocks and options in the Ford Motor Co. of which he had just been made President, to serve in a then $25,000 per year post.

Since leaving the Pentagon, Robert McNamara has devoted his unique talents to the World Bank, achieving remarkable successes both for that institution and in the lives of all those that it serves. Perhaps even more important and praiseworthy than the more than tenfold increase in annual lending achieved by the World Bank during his tenure at the helm, has been Robert McNamara's passionate and unrelenting advocacy on behalf of the poorest and neediest nations. As a self-appointed champion of underdeveloped countries, and conscience of the wealthier nations, Mr. McNamara is largely responsible for shifting the focus of the World Bank, and in doing so has helped to bring necessary, sensible, and purposeful aid to impoverished peoples. In this endeavor, Mr. McNamara has helped immensely to help establish good will between the industrialized nations and the Third World.

Mr. President, it is on rare occasions that we have the opportunity to pay tribute to a man who has served as effectively in both war and peace, in both government and nongovernment positions of power and trust as has Mr. Robert McNamara. Accordingly, I am extremely pleased to have the opportunity to do so at this time, and wish Bob many years of contentment in a richly deserved retirement that I know will be both active and well spent, and most probably—like his entire life—dedicated to the service of others.

A TRIBUTE TO ROBERT M'NAMARA UPON HIS DEPARTURE FROM THE PRESIDENCY OF THE WORLD BANK

Mr. BRADLEY. Mr. President, at the time of his appointment as Secretary of Defense under the Kennedy administration, Robert Strange McNamara said:

> I had once told Henry Ford that I was interested in public service. At some particular point I felt I would have to do it if I was asked. You just can't go on saying 'No' all your life.

More than 20 years later, it is clear that Robert McNamara forgot how to say "No" to the question of public service. We have benefited immeasurably from his decision to continue that service as president of the World Bank.

After a sterling academic career, a distinguished contribution to the Army Air Force in World War II as a statistical controller, and a "whiz kid" climb to the presidency of the Ford Motor Co., McNamara turned to public service. He served as Secretary of Defense under the Kennedy and Johnson administrations during an embattled period for our Nation. Throughout his tenure, he was an early and important force behind strategic arms negotiations with the Soviets. He also pressed hard for civilian control over the Military Establishment.

After working as a dominant figure in the Kennedy and Johnson cabinets for nearly a decade, McNamara made what many considered to be a drastic switch to the presidency of the World Bank. He brought to the bank, vast energy, a driving sense of mission, an unshakable faith in the power of reason to solve insoluble problems, and a compassion for humanity.

Assuming the presidency, he proposed nothing less than a new offensive on world poverty, with the Bank to double its lending over the next 5 years.

The Bank, in operation since 1946, started with 28 member nations and concentrated on making or guaranteeing loans for post-WWII reconstruction and development. Now the bank has 134 member nations and the emphasis has shifted to loans to the developing countries.

Bankers feared the sort of expansion that McNamara wanted might mean less profitable, riskier loans, imperiling the Bank's hard-won reputation for soundness. They were wrong.

In the past 13 years, McNamara has become a leading spokesman for the cause of economic development. The former Pentagon chief weighs more heavily the role of economic development in assuring world peace, suggesting that security might best be advanced by promoting economic progress and reducing human misery.

Mr. McNamara's leadership during his 13 years as president of the World Bank, has made the Bank the proud and central international economic institution it is today. His name virtually is synonymous with the developmental ideals that underlie the Bank's activities.

Whenever we think of dedication to human betterment, economic progress for the world's less advantaged, and an economic order that is fair and therefore stable, we think of the work of Robert McNamara. There is no more valuable legacy that a retiring president can leave an institution, and the people it serves.

It does not overlook Mr. McNamara's dedication to the process of development to observe that his work has made the World Bank more than a development institution in the narrow sense. The Bank has emerged as a mighty pillar, essential to maintaining the stability of the world economic order.

It has become an institution that not only advances development among the poor and aspiring nations, but promotes broad world economic growth by strengthening the basis for productive economic transactions among nations.

The Bank makes this broader contribution because Robert McNamara understood from the start that development is not a process isolated from the growth of the larger world economy. Development achievements and failures in the nonindustrialized countries shape the prospects for economic growth and stability in the industrialized world.

Development is not just a poor country issue; for sound economic and political reasons, it is an issue in which rich nations have a large stake.

Markets in the developing world have become the most dynamic source of growth for U.S. exports. During the 1970's, U.S. exports to these countries climbed at a yearly rate of 18 percent, compared with a yearly rate of only 15 percent growth in U.S. exports to other industrialized countries.

Developing countries now buy nearly 40 percent of total U.S. exports, purchases which account for more than one-half million jobs in the United States. Sales to these countries are greater than our sales to the European Community and Japan combined. And the United States has enjoyed large surpluses in its balance of trade in manufactured products with developing countries.

They are also important customers for U.S. services exports, contributing substantially to the U.S. surplus in the services account in recent years.

These figures describe only our trade interactions with the developing world. The United States also has a large private investment stake in these countries, amounting to some $50 billion in direct investment and some $86 billion in credits from U.S. banks. Further, we rely heavily on developing countries for our supply of minerals, many of which are critical to our economy and defense capability.

Finally, it is important to remember that the United States continues to have a political stake in the long-term stability and friendship of the developing world. These nations are, and will continue to be, major arenas of competition between the United States and the Soviet Union.

Many of them are passing through sensitive stages of political development. Their ability to generate new wealth and distribute it equitably will determine their ability to develop stable democratic institutions and participate in the free world economy.

The World Bank acts to reinforce the very processes of growth and stability which support U.S. global interests. Not only does U.S. business grow in response to the increased aggregate demand generated by development, but World Bank figures show that since its inception in 1946, Bank loans have directly generated some $6.4 billion in contracts to U.S. companies.

This is certainly a hefty return on the $935 million which the United States has contributed to the Bank since that time. And since 1946, U.S. firms have won about 25 percent of the annual value of contracts offered under Bank projects.

The Bank also has stepped up lending for energy development projects, a process which strongly serves U.S. interests in increased world energy production and in diversifying the sources of energy supply to the United States and its allies.

I regret that President Reagan has withdrawn U.S. support for the creation of an energy lending affiliate at the Bank. I believe that a focused effort to support the proliferation of world energy sources would accelerate the pace at

which our own energy security objectives are realized.

But I hope the Bank will continue to increase its energy lending because of the contribution source proliferation can make toward alleviating the balance-of-payments and adjustment problems that hinder healthy economic development in so many countries.

Finally, those who criticize the Bank for serving political interests unrelated to the foreign policy concerns of the United States, should note the support the Bank lends to countries in which the United States has demonstrated a special interest. While serving U.S. interests alone is not, and should not, be the purpose of the Bank, the effect of its lending pattern nevertheless has been to support countries in which the U.S. shows a special interest. Four of the 10 largest bank borrowers—India, Indonesia, Turkey, and the Philippines—are also among the 10 largest recipients of U.S. bilateral aid.

Further, the other six largest Bank borrowers are also recipients of U.S. bilateral aid. Clearly, Bank lending policies are far from incongruous with our own political objectives.

The Reagan administration has placed special emphasis on the role of the private sector in advancing the development process in low- and middle-income countries. Mobilizing the private sector for development historically has been an American theme.

I agree with President Reagan that today this emphasis is particularly warranted.

Therefore, I hope the President will reaffirm U.S. support for the World Bank as an institution critical to the maintenance of a stable and healthy economic order, a prerequisite to robust activity in the private sector.

The key function performed by the Bank in the world economy today is not to supplant private entrepreneurship, but rather to support private international transactions. Its lending activities—projects creating economic infrastructure, helping to eradicate poverty, supporting social sector investments, facilitating energy and other mineral developments, and most recently programmatic lending to assist countries to undertake the structural adjustment necessary to stabilize their economies—strengthen the structural base of the world economy.

The kind of lending done by the World Bank must occur for world economic growth to occur, and much of it would not take place without the World Bank.

It is in this context that the work of Robert McNamara should be understood. He has been instrumental in creating a pillar of the world economy, not a poverty agency. And his emphasis on projects to eradicate poverty was inspired by sound economic calculation as much as basic humanitarianism. The criteria applied to assess these projects are hard economic criteria—success in generating output, income, and productivity.

Surely there are fair criticisms that can be leveled at Bank projects, procedures and philosophy. For one, I think more should be done to mobilize private capital through the International Finance Corporation and through the practice of cofinancing, and particularly for investment in energy resource development.

I am sure that Mr. McNamara looking back can think of failures and looking forward can recommend improvements. But the bottom line is a clear verdict: A historic contribution has been made by the World Bank under the stewardship of this extraordinarily gifted man.

We will not forget his wise leadership, and I hope he will not forget to continue to share with us his wisdom as we search for ways to share a better world.

Mr. President, I think it would be fitting on this occasion to ask unanimous consent that there be inserted in the RECORD an excellent, realistic assessment of the contributions and shortcomings of World Bank lending by Dr. Robert Ayres, a senior fellow of the Overseas Development Council. The article appears in the current issue of the magazine Foreign Policy. I ask unanimous consent that the article be inserted in the RECORD.

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

BREAKING THE BANK

(By Robert L. Ayres)

Reagan administration budget cutters now stand poised for attack on one of the conservatives' long-standing pet peeves: foreign aid. The principal target of the impending assault is the assistance supplied by the United States to the Third World through multilateral development banks, chiefly the World Bank (International Bank for Reconstruction and Development) and its soft-loan affiliate, the International Development Association (IDA).

The World Bank uses capital from member country subscriptions as collateral for the sale of bank securities on international capital markets, making loans from these funds on near-commercial terms for economic development projects in middle-income developing countries. IDA depends on contributions from its wealthier member countries for the bulk of its resources, which it uses to grant credits to the low-income nations of the Third World. At immediate issue is the fate of two agreements signed by the Carter administration, one providing for a $658.3 million U.S. contribution toward a proposed general capital increase for the World Bank; the second authorizing $3.2 billion for the sixth replenishment of IDA.

In his now-famous foreign aid retrenchment memo of Janary 27, 1981, David Stockman, director of the Office of Management and Budget (OMB), fired the administration's opening salvo. Stockman proposed that the United States revoke its pledge to the sixth replenishment of IDA and reduce its contribution by one-half. He further proposed that the United States cease to provide paid-in capital to the World Bank and instead attempt to pursue bank objectives through guarantees of commercial borrowing.

In the face of sharply critical foreign reaction, Secretary of State Alexander Haig, Jr. took exception to the memo, arguing that the suggested course of action would severely cripple a traditional arm of U.S. policy. He effected a tenuous compromise: The United States would stretch out its donations to the bank's capital increase over a six-year period and make its contributions to IDA in three graduated payments, instead of depositing three uniform sums, as originally planned.

The vigor with which the administration intends to support even its own reduced commitments remains in doubt, however. The authorizing legislation has already stalled on Capitol Hill, possibly portending an indefinite hold on expanded U.S. participation; for Congress is unlikely to appropriate the earmarked $1.85 billion in a single fiscal year (1983), as now proposed. Neither the State Department nor the White House has pushed the issue hard.

These proposed cutbacks mask a long-building ideological assault on the World Bank. In a series of scathing editorials, the *Wall Street Journal* attacked the institution for supporting "harebrained schemes" and proposed severe economies. Edwin J. Feulner, Jr., president of the conservative Heritage Foundation and head of a Reagan transition team on development assistance, charged in a recent *New York Times* article that the World Bank is "subsidizing utopianism." Pointing to loans for collective farming in Tanzania, Feulner charged that American taxpayers should not have to pay for the bank's "little experiments in so-called social progress." These criticisms call into question not only the expenditure of several billion dollars but also the future of U.S. development assistance programs and the role of multilateral lending institutions in these programs.

A BAD BUSINESS BARGAIN?

When Robert S. McNamara assumed the presidency of the World Bank in 1968, the joint new loan commitments of the bank and IDA totaled $953.5 million. In fiscal 1980, with new loan commitments of $11.5 billion, the bank had become the world's largest official supplier of development finance. Conservative critics claim that the World Bank has grown too big and too fast, that it has usurped the international development effort at the expense of bilateral assistance programs and regional development banks (e.g., the Inter-American Development Bank), and that future growth along these lines is financially impossible. But their quantitative objections mask more fundamental disagreements over the general goals and management of the bank.

The conservatives are particularly critical of the bank's qualitative reorientation during the McNamara presidency. Beginning with his Nairobi address to the bank's Board of Governors in September 1973, McNamara focused attention on the glaring dimensions of world poverty, outlining a comprehensive strategy for rural development and proposing, two years later, a strategy for alleviating urban poverty in the developing world.

The bank responded with new directions in its lending activities. From 1974 to 1978, more than 50 per cent of the bank's lending for agricultural and rural development went to projects in which "more than half of the direct benefits are expected to accrue to the rural poor." Concern with problems of urban poverty led to lending for low-cost housing projects and slum upgrading in the cities of the developing world. Lending also increased sharply for small-scale industrial development, primary and non-formal education, health, nutrition, and population planning activities.

According to the bank's conservative critics, such poverty-oriented projects represent giveaways, welfare programs, money wasted on projects with marginal rates of return. The OMB memo claimed that IDA "in recent years has placed a major emphasis on programs fostering income redistribution," with the implication that this emphasis was incorrect. Some of the criticisms are overtly ideological, claiming that the bank's loans go to support socialist schemes in developing countries. The memo argued that IDA "has supported state planning efforts in some countries" and "has not been vigorous in using the leverage inherent in its large lending program to press recipients to redi-

rect their economies toward a market orientation."

Conservatives also contend that the World Bank is a bad business bargain for the United States. Contracts for the provision of goods and services under bank projects are awarded through international competitive bidding. Critics allege that procurement of U.S. goods and services is insufficient. They argue that U.S. firms do not receive enough export promotion; hence, the bank is not a good buy for the United States. The country should place greater emphasis on the role of its private investment in the economic development of developing countries and much less emphasis on official development assistance.

Another major objection conservatives pose is that the bank is not sufficiently subject to U.S. influence and is therefore ineffective as a means of carrying out American policy. They argue that the United States lacks the ability to effect major changes at the bank because the institution is insufficiently accountable to either donor or recipient countries, particularly the former. Under McNamara, the bank allegedly escaped the control of both the Congress and the executive branch. Conservatives contend that U.S. aid policy must be made more responsive to American interests, either through a return to bilateral assistance directly under the aegis of the State Department or by sharply improving mechanisms designed to insure the accountability of the bank.

INVESTMENT IN GROWTH

In the context of the staggering external financial problems of the developing countries following the international economic shocks of the 1970s, the World Bank's allegedly explosive rate of expansion has far from kept up with increased need. The internal growth rates the conservatives hold so important, in fact, are inextricably linked to balance of payments considerations and attendant needs for external finance. In order to support a 3.5 per cent growth in per capita gross domestic product, the least developed countries will require $11 billion in external capital a year during the 1980s and $21 billion annually during the 1990s. The external capital needs of the middle-income developing countries may be as high as $155 billion annually by 1985 and $250 billion in 1990. As large as the bank has grown, it still provides only about 1 per cent of these total external capital needs.

The argument that the World Bank operates a vast welfare program neglects both the relative emphasis it places on antipoverty activities, compared with the more traditional projects that remain the bank's main priority, and the fundamental rationale behind the McNamara-era projects. Although any effort to ascertain the precise allocation of lending between traditional projects for infrastructure investments and poverty-oriented projects is fraught with methodological difficulties, considerably more than one-half and perhaps as much as two-thirds of combined bank and IDA lending remains traditional. Far from granting welfare to developing countries, the traditional programs play a key role in building the basic facilities that pave the way for profitable private investment. In constructing a productive base, they also help restore international economic and financial equilibrium. Furthermore, the bank helps transfer financial resources at a time when non-oil-producing countries are in desperate need of them.

At the same time, those recent projects explicitly designed to alleviate poverty are consistent with long-standing bank emphasis on economic growth. In an earlier day, the institution's economists believed the main route to growth lay in development of basic economic infrastructure—roads, dams, ports, steel mills, and telecommunications facilities. Experience and research gradually changed this perception. At least part of the key to growth was seen to lie in social sector investments, human resource development, assistance to small-scale farmers and industrial establishments, and in the many links that poverty alleviation has to growth. The basic goals of all these projects are defined in terms of output, income, and productivity, not welfare.

The bank's rural development projects, for example, are designed to raise the output and income of small rural producers, integrate them into the market economy and, thus, make subsistence or near-subsistence farmers into commercial producers. In support of this approach, bank officials cite an accumulating body of evidence indicating that the production of small holdings can make substantial contributions to alleviating food deficits in many countries. The evidence so far obtainable from the bank's project performance audits, albeit limited, also indicates acceptable, if not more than adequate, rates of return from the completed rural development projects. In one project in Colombia, for example, the yields achieved for all crops in the targeted area were greater than those obtained with the existing methods. These projects have also produced important research findings of relevance to small farmers, some relating to appropriate technology; others, to fertilizer use, new varieties of plants, and cropping patterns.

In some instances, the bank's rural projects have had an impact well beyond the confines of the project itself, illustrating the leveraging role of the bank in recipient countries. Again, in Colombia, the bank's nationwide rural development project brought about important changes in public sector investment planning for rural development. The project led to the preparation of a new credit manual by the Colombian authorities substantially liberalizing the types of guarantees required for loans to small-scale farmers.

Like the rural development projects, the bank's urbanization projects define their goals in such sound business terms as affordability, cost recovery, and replicability. Although the point of these new urban projects is to make housing available to those now too poor to afford the traditional public sector housing units, the bank desires full or near-full cost recovery. This recovery may take any number of forms, including mortgage payments, rental fees, and user charges. Such cost recovery is the key to replicating the projects without requiring outright subsidies from the public treasuries of developing countries.

The most publicized bank initiatives in urban development are its basic urbanization projects, which blend new housing and slum upgrading. The bank's first project in El Salvador offers a good example of a low-cost housing project, providing 7,000 serviced lots and 3,500 basic dwellings to poor residents in four cities. Slum upgrading projects have proven especially successful in the Tondo slum in Manila, Philippines, and in Jakarta, Indonesia. Both entail provision of basic urban infrastructure, including water supply, human waste disposal, drainage, footpaths, and roads. As of 1979, 1.25 million poor urban dwellers lived in housing or housing sites supplied through bank-assisted projects and 4.5 million were helped through slum upgrading projects.

NO SOCIALIST RECIPES

Perhaps no element of the conservative critique is as fanciful as the notion that the World Bank is propagating socialism in these developing countries. This criticism betrays a lack of understanding of two key features of the bank's work: its "country dialogues" with members concerning the general contours of their economic policies and the underlying political rationale of the bank's poverty projects.

An important ingredient of the bank's work is production of country economic reports and memorandums on its borrowing countries. These are the culmination of frequent interactions between bank staff and officials in recipient countries. In these interactions—and in the reports emanating from them—the bank urges upon developing countries the institution's preferred development strategies and policies. An analysis of the bank's country economic studies reveals a consistent set of institutional preferences that are a long way from adding up to socialist recipes.

If the bank has a dominant ideology, it is best defined as neoliberalism, using liberal in the classical sense of the term. The principal objective of its neoliberal policies is economic growth. The principal routes to growth are seen to lie, domestically, in capital accumulation via savings and investment and, externally, through export expansion and diversification. Ingredients of neoliberalism that derive from these basic goals include fiscal and monetary probity; removing obstacles to free-market determination of prices, wages, interest rates, and user charges for public services; a sound currency; external economic equilibrium; export dynamism; and a favorable investment climate. Deviations from any of these elements constitute deviations from World Bank norms. Even when the bank operates in putatively socialist countries, such as Tanzania or Yugoslavia, efforts are made to encourage policies along the lines suggested by the institution's prevailing neoliberal philosophy.

Most bank officials reject the notion that these initiatives embody an ideology. In their view, the bank is neutral, advocating sound economic and financial management, technocratically orchestrated and applicable to any kind of economic system—be it capitalist, socialist, or something in between.

Moreover, the underlying political rationale behind the bank's poverty focus is the pursuit of political stability through what might be called defensive modernization. This strategy rests on an assumption that reform can forestall or pre-empt the accumulation of social and political pressures if people are given a stake in the system. Reform thus prevents the occurrence of full-fledged revolutions. In rural areas, defensive modernization, if successful, will create a small-holder sector closely integrated with the national economy. Bank projects will encourage subsistence farmers to become small-scale market producers. With economic ties to other sectors, the farmers will be loath to link their interests to those of the not yet modernized and will hesitate to disrupt the national economy for fear of losing their own markets. In urban areas, the policy is expected to create or fortify an individualistic class of small-scale industrialists, entrepreneurs, and the newly employed.

Because conservatives have lately made much of the World Bank's "utopian" work in Tanzania, it is worthwhile to make brief mention of what the bank has really urged on the Tanzanian government. Tension has always marked the relationship between Tanzanian officials and the bank. In 1974 an agricultural study conducted by the bank led to confrontation with the Tanzanian government because the bank's criticisms of the u'aama (villageization) policy and its espousal of a production-first strategy apparently were perceived as giving low priority to income distribution and the governments's rural equity goals.

COMPARISON OF AID RECIPIENTS

[In millions of U.S. dollars]

Bank and IDA cumulative lending: 1948 to 1980[1] (10 largest recipients)						U.S. bilateral economic assistance 1980[2] (10 largest recipients)	
Bank		IDA		Bank/IDA		Total	
Brazil	5,313.7	India	8,285.2	India	11,055.8	Egypt	1,813.4
Mexico	4,113.6	Bangladesh	1,454.2	Brazil	5,313.7	Israel	786.0
Indonesia	3,056.0	Pakistan	1,244.9	Mexico	4,113.6	India	231.9
South Korea	2,948.5	Indonesia	931.8	Indonesia	3,987.8	Turkey	198.1
India	2,770.6	Egypt	783.6	South Korea	3,059.3	Indonesia	196.8
Colombia	2,761.4	Tanzania	538,7	Colombia	2,780.9	Bangladesh	175.4
Yugoslavia	2,684.1	Sudan	522.5	Yugoslavia	2,684.1	Sudan	96.6
Turkey	2,407.4	Kenya	408.3	Turkey	2,585.9	Philippines	84.6
Philippines	2,389.9	Sri Lanka	369.6	Philippines	2,512.1	Pakistan	72.7
Thailand	1,960.4	Ethiopia	368.1	Pakistan	2,128.9	Jordan	70.4

[1] Computed from World Bank Annual Report, 1980.
[2] U.S. International Development Cooperation Agency.

A 1976 bank mission produced a report that again aroused the government's hackles. Some Tanzanian officials believed the authors of the report were more concerned with criticizing basic Tanzanian social goals than with constructive discussion. For example, Tanzanian officials judged the bank's concern about the sound performance of public sector enterprises in this light. The bank's work in the agricultural sector led to periodic discussions with the ministry of agriculture—discussions recalled by the ministry's pragmatists as helpful in pursuit of output and efficiency goals. Moreover, the bank's first rural development project in Tanzania appeared to increase social and economic differentiation among project villages, counter to the leveling emphases of the *ujaama* policy.

Such stories are by no means limited to the bank's work in Tanzania. The bank long struggled to commit Brazilian authorities to a positive real rate of interest on agricultural loans; engaged in fruitless efforts to increase the efficiency of public sector enterprises in Mexico; tried to encourage an increase in user charges in all recipient countries; and has worked in almost all developing nations on behalf of open trade, import liberalization, and similar policies.

COSTS AND BENEFITS

A related criticism charges that, program content aside, the Bank aids countries hostile to U.S. interests. But sober consideration of the list of the 10 largest World Bank and IDA borrowers reveals a who's who of developing countries in terms of their historical and contemporary importance to U.S. foreign policy interests, as shown in the accompanying tables. Conservative critics would be hard pressed to argue that World Bank and IDA support for these 10 countries is inconsistent with U.S. interests. Judged solely on the basis of where the bank has put its money, the United States seems to have been an effective advocate of its interests at the bank.

Those singing the praises of bilateral aid on the grounds that it is more likely to go to countries of importance to the United States should note that four of the 10 largest bank borrowers—India, Indonesia, Turkey, and the Philippines—are also among the 10 largest recipients of U.S. bilateral assistance funds in 1980 and have received almost 18 percent of total bank loan commitments since 1948. Six of the 10 largest IDA borrowers are also found on the bilateral list—Bangladesh, Egypt, India, Indonesia, Pakistan, and Sudan. More than 60 percent of total IDA credits since 1948 have gone to these six countries.

The apparent aberrations (from the conservative point of view) can be readily explained. The bank has greatly reduced lending to Ethiopia since the overthrow of the late Emperor Haile Selassie. The conservatives had to swallow Yugoslavia under the late President Josip Broz Tito as preferable to Yugoslavia under Moscow. Sri Lanka is one of the world's best examples of a growth-with-equity development strategy.

The "numerous occasions" of bank lending to Vietnam turn out to number one IDA credit of $60 million in fiscal year 1979 for construction of an earth dam and associated irrigation works. Similarly, IDA lending to Laos numbered just three credits totaling $32 million for rural rehabilitation and irrigation. IDA lending to South Yemen since fiscal 1970 adds up to only 0.1 per cent of all cumulative World Bank and IDA lending to date. The bank made no new loans to Salvador Allende Gossens's Chile, sharply curtailed lending to Peru following nationalization of the International Petroleum Company, and made no loans to Peronist Argentina from 1973 to 1976. Meanwhile, it has continued lending to socialist deviants such as Romania and Yugoslavia—countries not unimportant to U.S. foreign policy—although on strict per capita income grounds these countries should have graduated from bank assistance. The institution's actions may indeed be wrong, but not for the reasons cited by the conservatives.

The conservative argument that the bank is not a good buy for the United States is insufficiently attentive to the increasing importance of the developing countries to U.S. economic interests. The critics should consider the readily available data. U.S. exports to developing countries, for example, have expanded at an average annual rate of 19.2 per cent over the past decade, compared with an expansion of 15.6 per cent for exports to developed countries. In 1979 American exports to developing countries totaled more than $60 billion or almost 35 per cent of total U.S. exports.

But the debate about the economic costs and benefits of U.S. participation in the multilateral development banks has increasingly focused upon the more specific question of what U.S. firms obtain in procurement under bank projects compared with how much the United States contributes in bank capital subscriptions and IDA replenishments. In December 1980 a member of a Reagan transition team on development assistance contended that "Bank advocates should find other, more solid grounds on which to argue for Bank programs. There are such grounds, but relative benefits to the American private sector is not one of them."

Resort to the contribution/procurement ratio as the main criterion for assessing the benefits and costs of participation is simplistic since it completely ignores the overall importance of the growth of developing country economies to U.S. private sector trade and investment. Even so, the equation works in favor of the United States.

World Bank procurement figures show that while the United States has contributed $935 million to the bank since its inception in 1946, bank loans to other countries have generated $6.4 billion in contracts to American companies. Since 1946 U.S. firms have secured about 25 percent of the annual value of the contracts offered under bank projects. Recently that figure has slipped—in 1979 American firms obtained 16.8 percent of the value of contracts.

Although it is true that U.S. contributions to IDA since 1960 have totaled $3.2 billion and U.S. enterprises have obtained only $1.15 billion in contracts under IDA projects, this discrepancy may result from a tendency of a contracts in former colonies to go to former colonial powers, or from the absence of a U.S. comparative advantage in providing the goods and services required by IDA projects, or from the relatively high percentage of local procurement by IDA projects—not from an institutional bias against buying American. Even with the inclusion of IDA, the ratio of contributions to procurement favors the United States. A recent Treasury Department assessment concluded that the U.S. current account suplus over the life of all of the multilateral development banks was approximately $11 billion.

This contention that the bank is not responsive to the interests of its largest single contributor stems partly from a sense that the bank is administratively out of control. But this perception is only partially correct at best. There is certainly no lack of information produced by the bank about its development projects and other activities. For example, the project appraisal reports meticulously describe every proposed development project, including anticipated economic and financial rates of return. The country economic reports and memorandums reveal the bank's assessment of each of its developing member countries. The project performance audits on completed projects assess implementation. All of these reports are regularly supplied to the executive directors of the bank. Through the U.S. executive director, they are available to Treasury Department officials, members of Congress, and other government policy makers.

The problem is to systematize access to such information to improve the U.S. Government's own procedures for insuring the accountability of the bank. The paltry staffs of the executive directors are inadequate to perform an oversight function, and the part of the Treasury Department that deals with the bank is likewise understaffed and insufficiently knowledgeable about the details of the bank's work.

Conservatives argue that the bank is inherently less capable of pursuing U.S. interests than is the United States through its own agencies and, particularly, private enterprise. Private investment has a role to play in development, but its own set of institutional demands makes it a poor substitute for official development assistance. The need for flattering quarterly reports and competitive profit margins constrains even the most socially concerned businessman. Private investment enters a country only when there is something profitable to invest in and especially when the poor are not poor any longer. Investment is much less likely to take place in desperately poor countries or even in poverty areas within moderately well-off countries, such as rural Mexico or northeast Brazil. It gravitates toward the more advanced, technologically sophisticated areas. Private investors are unlikely to engage in rural development of the Sahel or in non-formal education in Brazil.

M'NAMARA'S LEGACY

Rebuttal of the conservative critique of the bank does not imply, however, that McNamara leaves a legacy that is an unmixed blessing. A number of problems require attention as A. W. Clausen, the new bank president, assumes command. It is to these problems that the United States should direct its attention.

Some of these have to do with McNamara's antipoverty directives. For example, substantial organizational, managerial, financial, and political problems within the recipient countries themselves have beset the new

projects. Although many governments of developing countries tolerate minor efforts to help the poor, they balk at larger efforts. A more effective program might alter criteria for the country allocation of funds, channeling the bulk of the bank's antipoverty resources into countries with a serious commitment to relieving poetry and not just into antipoverty projects in countries without such commitment. Moreover, the governments of developing countries are not always the most effective agencies for implementing these projects. The bank should explore lending through non-governmental intermediaries with greater local expertise—voluntary organizations, non-profit foundations, and local activist groups of the poor.

The bank's top-down approach to development, however, would frustrate this modification of its traditional role. Although the bank has 26 resident missions in individual member countries and three regional missions, these encompass only about 6 percent of the total professional staff. The vast majority of the bank's important decisions are made in Washington, D.C., depending on information provided by traveling missions. It is questionable whether this approach can provide the sustained picture required for bank decision making.

The new antipoverty projects also require greater staff resources per dollar loaned than more traditional agricultural and industrial projects. The Latin American region of the bank found that implementation of its newer rural projects increased the required amount of supervisory time by almost 80 percent per project a year. Thus, the bank must reconcile growing supervisory demands with demands that it limit growth of its professional staff.

Other problems stem from the quantitative expansion of the bank. Under McNamara, the number of projects approved per staff member has increased. Commitments for each staff member expanded from $1.59 million in fiscal year 1968 to $1.95 million in fiscal year 1978, resulting in what some members of the bank's staff association refer to as the "assembly line approach" to project preparation. Pressure has increased to meet the yearly quantitative goals—to the detriment of project development and supervision, some believe.

Finally, the effort to expand the transfer of needed resources is frustrated by the bank's low gearing ratio. At present, the bank's articles of agreement stipulate that the amount of outstanding loans cannot exceed the bank's total capital plus reserves (a one-to-one ratio). A two-to-one ratio, as recommended by the Brandt Commission, would enable the bank to double its lending without requiring additional capital subscriptions from its member countries. Another avenue worthy of exploration is increased co-financing, in which private commercial banks join in bank loans. Such leveraging of bank funds would substantially increase the aggregate transfer of resources to developing countries without increasing the amount of resources transferred by the bank itself.

These and related problems suggest that the international community must address two central tensions in the bank's work. The first is that between the bank's role as a bank and its role as a development agency. Many bank officials are quick to point out that the institution is first and foremost a bank. It makes loans. It has to be concerned about credit worthiness of borrowers, interest rates, and amortization schedules. Even in antipoverty projects, bankers' criteria stand out: in rural projects, the requirement of a positive rate of interest on loans to small farmers; in urban projects, the requirement of full cost recovery from the direct beneficiaries.

But, in fact, the World Bank has always been something more and something less than a real bank. In addition to providing loans, it gives technical assistance, supports research and experiment, extends financial help to high-risk poor countries, and encourages the exchange of ideas through its publications. If the bank is to continue its involvement in antipoverty activities, it must become even less of a bank and more of a development agency, acquiring the skills necessary for efficient administration of such projects. It might draw more heavily on organizations with existing local expertise, such as the U.S. Inter-American Foundation.

A closely-related tension in the bank's current work exists between McNamara's goal of substantially increasing the aggregate amount of resources transferred by the bank and his goal of orienting the bank to play a predominant role in the world antipoverty effort. Many developing countries depend on the bank's transfer of resources as an indirect means of maintaining equilibrium in their balance of payments. But the bank's role in transferring resources is best fulfilled through traditional infrastructure projects requiring substantial capital outlays. Poverty-oriented projects are typically smaller in their commitment of resources, more time consuming, more staff-intensive, and more difficult to implement. The bank will face increasing trade-offs between its role as a transferrer of resources and as poverty alleviator. It must find ways to harmonize its roles so that economic growth and financial equilibrium are not attained at the expense of the antipoverty projects that are crucial to long-run growth.

Congress and the executive branch need to look closely at the World Bank and initiate a careful examination of current policies and administrative practices. The United States should review the whole range of international institutions with an eye to using them more effectively. But a long-term concept of U.S. security interest—not a simplistic guns or butter dichotomy—should guide reform of these institutions. More than 600 million people will live in absolute poverty in the year 2000, even under the most favorable assumptions about growth and distribution in developing countries. Opting out of the struggle against world poverty is one certain way of insuring that a military focus will guide U.S. activity abroad. The Reagan administration thus bears a heavy responsibility. It can approach the bank from an ideological point of view, but in the process it will cripple a valuable institution. Or it can use its skeptical approach to development to reform an institution that on the whole has well-served U.S. interests.

Mr. KENNEDY. Mr. President, I am proud to join my colleagues in today's tribute to Robert McNamara. Since his appointment as President of the World Bank, Robert McNamara has been tireless in the effort to alleviate world poverty and promote international development. His ideas, his vigor, and his leadership have made the World Bank a powerful development of international development.

Under his tenure, the World Bank has achieved enormous growth. In 1968, the World Bank made $1 billion in aid commitments; in fiscal 1981 alone the Bank made $8 billion in aid commitments for 127 projects.

Equally important has been Robert McNamara's leadership in shifting the emphasis of World Bank projects away from capital-intensive projects and into programs, such as population control, health care, agriculture, and education, which can promote both economic growth and economic equity. Bob McNamara's deep commitment to meeting fundamental human needs has improved the lives of millions of people.

In this time of necessary budgetary restraint, America must not retreat from the enormous progress forward meeting fundamental human needs that has been achieved. Nor must we waver in our commitment to Third World development. The American people must have no illusions of the national security implications of failing to resolve world poverty. As Robert McNamara has correctly stated—

> U.S. contributions to the World Bank and International Development Association are for projects that deal with the basic problems of poverty and financial crisis, the solution of which will benefit not only the developing countries but the United States.

Failure to improve the economic and social well being of Third World nations will only enhance the opportunity for political instability to fester throughout the developing world. Instead of falling prey to the fallacious belief that foreign aid is merely an American handout, let us recognize the costs of failure and begin today to pursue a bipartisan policy appropriate to the true dimension of the threat.

Yet today America is on the verge of turning its back on Third World development. In a recent interview with the New York Times, Robert McNamara stated that—

> The United States contribution to development assistance is disgracefully low; it has declined in relation to national income 90 percent since the Eisenhower Administration at a time when national income in real terms per capita has more than doubled. It is today the 15th lowest among the major industrial nations. There is no other large industrial nation providing as low a proportion of its national income to development assistance; it is disgraceful.

It is disgraceful when America fails to meet this fundamental challenge to our national security.

It is disgraceful when the world's greatest Nation abdicates its responsibility to enhance the economic well-being of those less fortunate.

Let us resolve that we will meet the challenge posed by the Third World. To do so will help America in meeting the challenge of inflation, contribute to economic growth, and enhance America's national security. To do so will leave no doubt that America is truly capable of providing international leadership.

In his final annual address to the World Bank last fall, Robert McNamara stated that—

> None of us, of course, can pretend that our understanding of the complexities of the poverty problem is complete. We are still learning.

In the years ahead, let us not forget the example of Robert McNamara, a man who has made a profound contribution to America and the world.

Bob McNamara has been a very close personal friend of mine and of the entire Kennedy family. He and his extraordinary and courageous wife Margaret, whose death was a great loss to America and to the reading is fundamental pro-

gram to which she had dedicated her life, were a deep source of advice and inspiration to me.

Today I reaffirm my commitment to carrying on the work that Bob McNamara has started.

Mr. PELL. Mr. President, at the end of this month, the United States and other nations of the world will lose the services and skills of a distinguished American, a highly respected international civil servant, when Robert S. McNamara steps down as President of the World Bank after 13 years of service. I think that the Minister of Finance from Tanzania, Amir Jamal, a colleague of McNamara, best summed up the contributions of Bob McNamara to the world community:

> Above all, Robert McNamara has been a voice of compassion, of conscience and of competence. He leaves behind a legacy of . . . programs whose quality and character have become increasingly responsive to the fundamental needs of developing societies.

Under Mr. McNamara's stewardship, the World Bank has grown in capability and importance. The level of financial assistance extended by the Bank to the developing world has expanded dramatically. In 1968, when Robert McNamara joined the World Bank, it was only capable of lending $1 billion for development projects. Today, only 13 years later, the Bank's lending capacity has increased elevenfold, thanks largely to the tenacity of its President.

In addition to its quantitative growth, the nature of the World Bank's lending has changed under the enlightened leadership of its President. As before, the Bank provides loans to projects which build highways, electric power facilities, and other traditional infrastructure—investments once thought the key to promoting development. In addition, the Bank now funds projects for agricultural and rural development which directly touch the poorest people in the developing world. This is in recognition of McNamara's firmly held belief that if absolute poverty is to be eradicated any time soon, developing countries must devise policies which directly attack the causes of poverty.

Bob McNamara has always been quick to point out the moral imperative for assisting the 40 percent of the world's population that is poor—some 800 million people. He has also spoken of the pragmatic reasons for doing so. It is his belief—a belief I share—that "we cannot build a secure world upon a foundation of human misery . . . and that force alone does not guarantee security." He has cautioned us that—

> A nation can reach a point at which it does not buy more security for itself simply by buying more military hardware. There are far better ways of contributing to global security.

One way is by fostering economic growth and development in the developing world.

Mr. President, I would be remiss if I did not also point out to my colleagues the services which Mr. McNamara rendered directly to this country in the course of his long and distinguished career. In 1943, McNamara took leave from his job as assistant professor at Harvard University to assist in the war effort as a consultant. He was instrumental in establishing a statistical control system to manage the flow of men, money, and materiel for the Eighth Air Force. This system was crucial to the war effort. By the end of the war, he had become a commissioned officer in the U.S. Air Force—a lieutenant colonel—and was awarded a Legion of Merit. After the war, McNamara joined Ford Motor Co. to assist Ford with its serious managerial and statistical control problems. In late 1960, after only 14 years with the company, he became its president and chairman of the board. However, within a month he was once again asked to serve his country—this time as Secretary of Defense for President John Kennedy. It was from this position some 8 years later that McNamara resigned in order to take up his duties at the World Bank.

Clearly, Mr. President, such a distinguished career of public service could not go by without this body extending its heartfelt thanks to Robert S. McNamara for his many deeds. I, for one, express my gratitude to him; once again extend my heartfelt sympathy over the loss of his wife, Margaret, earlier this year; and wish him well in his future endeavors.

ROUTINE MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order there will now be a period for routine morning business, not to extend beyond 10:30 a.m. with Senators permitted to speak therein for 5 minutes each.

NOTICE OF DETERMINATIONS BY THE SELECT COMMITTEE ON ETHICS

Mr. WALLOP. Mr. President, it is required by paragraph 4 of rule 35 that I place in the RECORD this notice of a Senate employee who proposes to participate in a program, the principal objective of which is educational, sponsored by a foreign government or a foreign educational or charitable organization involving travel to a foreign country paid for by that foreign government or organization.

The Select Committee on Ethics has received a request for a determination under rule 35 which would permit Mr. John Ritch, of the Foreign Relations Committee staff, to participate in a workshop sponsored by a foreign educational organization, the Friedrich-Ebert-Siftung (Foundation), in Bonn, West Germany, on June 19 and 20, 1981.

The committee has determined that participation by Mr. Ritch in the program in West Germany, at the expense of Friedrich-Ebert-Siftung (Foundation), is in the interests of the Senate and the United States.

The Select Committee on Ethics also has received a request for a determination under rule 35 that will permit a Senate employee to participate in a program at the Graduate School of American Studies of Tamkang University in Taipei, Taiwan, from June 26 to July 4, 1981. The employee is Ms. Kathryn Taylor of the staff of the Committee on Foreign Relations.

The committee has determined that participation by Ms. Taylor in the program at Tamkang University is in the interests of the Senate and the United States.

HOUSE OILSPILL LEGISLATION

Mr. MITCHELL. Mr. President, the State of Maine is blessed with abundant marine resources. These resources are the backbone of some of our most important industries; many Maine citizens depend on water resources for their livelihood, whether it be from fishing, tourism, or other marine-related activities. Maine has long recognized the value of these resources for our way of life and has taken effective steps to protect them. However, there are some in Congress who would deprive Maine and other States of the ability to continue to protect these resources. Last week, the House Committee on Merchant Marine and Fisheries and the House Public Works Committee included in their reconciliation bills an entire piece of legislation dealing with oilspills. I have several serious concerns about this action. They are both procedural and substantive.

The use of a bill relating only to budgetary matters as a vehicle for the enactment of substantive legislation is unprecedented. The Senate Environment Committee, of which I am a member, has also been working on oil pollution legislation. We are content, however, to let the legislative process work its will, and to submit our work product to the full Senate for its scrutiny once we report out the bill.

Mr. President, the Senate will not have such an opportunity if these pieces of legislation remain a part of the House reconciliation bill. We will be presented with a take it or leave it proposition in conference for the first time. And the reconciliation conference report is given extraordinary procedural treatment. There is a statutory limit of 10 hours on debate; no amendments are permitted; and there is no way to prevent the conference report from being enacted into law no matter how onerous its contents may be to any Member of the Senate or House.

Mr. President, the oilspill bill written by the House committees is onerous. It would preempt the oil pollution program established by the State of Maine in 1969, and successfully implemented since then. The Maine coastal conveyance law imposes strict liability for the discharge of oil into any coastal waters, estuaries, tidal flats, beaches and lands adjoining the State, or into any river, stream, sewer, surface water drain, or other waters of the State. There is no limitation on a party's liability except the extent of the damage caused by an oilspill. The law establishes the Maine coastal fund, financed through a 1-cent-per-barrel fee on oil off'oaded at a Maine port. The fund provides for the cleanup of oilspills, and for compensation to third parties for damages to real or personal property, or loss of income directly or indirectly as a result of an oil discharge. The Maine law has been used

effectively to clean up several spills, including the oil spilled last year when the coastal tanker *Christian Reinhauer* ran aground on Metinic's Ledge. Maine's oil spill law is an essential element in the State's ability to carry out its responsibility to protect its natural resources.

The Maine statute remains one of the strongest in the country. But since the Maine law imposes liability only for spills into the State waters and the Maine fee is imposed only on oil contained in vessels which come directly into Maine ports, it does not deal with tankers which pass through the Gulf of Maine en route to or from other American ports. I recognize, and the State of Maine recognizes, the need for a comprehensive Federal law to provide minimum protection from oil pollution damage. There are gaps in the protection provided against oilspills by Federal law now. Although there is a proliferation of Federal oilspill liability and compensation statutes already, there is no comprehensive oil pollution law which provides coverage under all situations.

I support the enactment of a Federal oil pollution statute. But I believe that any State wishing to impose a greater degree of protection than is provided under the Federal law for its resources must be permitted to do so. I could not in good conscience support legislation that preempts Maine's ability to compensate its citizens and protect its resources more fully than would any Federal law in the event of an oilspill. I will oppose any and all efforts to impose such a Draconian and potentially devastating regime on the State of Maine.

As I stated before, the vehicle for this onerous legislation is the House budget reconciliation bill. I have conferred with the chairman and ranking member of the Budget Committee, Senators DOMENICI and HOLLINGS, on the inclusion of substantive legislation on budget bills. I have expressed my unrelenting opposition to this precedent in general and to the oil spill bill in particular. I have urged them to oppose all nonbudgetary items in the budget legislation, and they have agreed that this is the appropriate action.

I have also consulted with my colleagues, the chairman and ranking Democrat on the Environment and Public Works Committee, about my extreme concerns with this oil pollution legislation. They share these concerns, and we have agreed to oppose this action of the House committees and the House of Representatives as a whole should they act upon it. They have agreed to join me in efforts to protect the prerogatives of States against the heavyhandedness represented by the preemption of States rights to protect their resources more than the Federal Government does.

The Senate bill, S. 681, that I have cosponsored, contains no preemptive language. It would permit any State to impose the degree of protection for its resources that it desires. To make the intent of the Senate unequivocal, Senator STAFFORD and I have introduced an amendment that states—

> Nothing in this Act shall be construed or interpreted as preempting any State from imposing any additional liabilities or requirements with respect to oil pollution, spills, discharges, or other releases within such State.

Mr. President, I would like to discuss now the specific ways in which H.R. 85 would affect the State of Maine.

Maine could no longer have a fund to pay for cleaning up oilspills or to compensate persons who have incurred economic loss from an oilspill. The Federal funds would become the only source available for the recovery of cleanup costs, damages arising from injury or destruction of real or personal property, loss of use of real or personal property, injury to or destruction of natural resources, loss of subsistence use of natural resources, loss of profits or impairment of earning capacity due to injury or destruction of property or natural resources and loss of tax revenue due to injury of property.

Mr. President, this makes those injured by an oilspill completely dependent on the Federal Government for recourse. If the Federal fund is inadequate, under the House bill that is just too bad. The injured party will simply have to bear the cost of that oil spill himself. If the Federal Government decides that the economic injury is not deserving of compensation from its fund, that is just too bad for the person who has suffered the economic loss. If the Federal fund is slow to compensate victims, the State is not permitted to retain its oil pollution fund, the immediate loss may be sufficient to ruin coastline businesses. Later recovery may be completely inadequate to rehabilitate a region's economy, but that is just too bad, under the House bills.

The harm to natural resources will simply have to be dealt with at a later date. And, Mr. President, if an oil spill occurs which is not deemed deserving of a Federal cleanup response, that is just too bad. The State could not respond itself, except to buy cleanup equipment.

Even if the Federal compensation fund were under some circumstances available for a particular damage claim, there is no assurance that the amount of money in the fund will be adequate to cover such claims. The total amount that will be collected during the 3-year life of this fund is approximately $300 million, which must necessarily be adequate to reimburse parties for all damages incurred when compensation for claims is not forthcoming from a responsible party, or where the responsible party cannot be identified, or is not liable for the damage.

Mr. President, recent history is replete with incidents of massive oilspills. In December of 1976, the *Argo Merchant* ran aground 27 miles southeast of Nantucket Island, spilling 8.5 million gallons of fuel oil. The entire Cape Cod coastline was threatened with devastation, which would have occurred had the oil not been blown out to sea. However, the mere threat of millions of gallons of oil washing ashore was sufficient to alert New Englanders to the enormous potential harm of oilspills.

The expense to the United States just to monitor this disaster was approximately $2 million.

The devastation of natural resources that was feared from the wreck of *Argo Merchant* actually occurred 2 years later when the *Amoco Cadiz* went aground off the coast of France. The 240.000-ton supertanker lost its entire cargo of 67 million gallons of oil. Total claims for damage to real and personal property and to natural resources, still pending in an Illinois Federal District Court, are over $1 billion.

The House report itself states that approximately 11,000 oil pollution incidents occur in U.S. waters each year. I ask unanimous consent to have printed at this point in the RECORD a chart from the report of the House Merchant Marine Committee, showing major oil pollution incidents in U.S. waters, and another chart showing major oil pollution incidents in non-U.S. waters, and the cleanup costs associated with these spills.

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

FIGURE 1.—MAJOR U.S. OIL POLLUTION INCIDENTS

Date	Incident	Cleanup costs	Location	Amount spilled (gallons)
June 1979	Ixtoc I	$7,500 000	Gulf of Mexico	20 000 bbl/day, June 1979 to March 1980.
December 1979	Lee Wang Zin	$2,100 000	Southeast Alaska	100,000.
November 1979	Burma Agate	$1,500 000	Galveston	10.668,000 (burned, evaporate recovered).
January 1979	ESSO Bayway [1]	$1.500,000	Texas	270.000.
March 1978	Global Hope	$2,608,113	Massachusetts	83,300.
February 1978	Tank barge ATC 133	$1,691	Chesapeake Bay	25,600.
December 1976	Argo Merchant	$1,826.609	Nantucket	7,500.000.
Do	Sansinena	$1,000,000	Los Angeles	844,000.
June 1976	Oswego Barge	$8,492,000	St. Lawrence River	312,270.
February 1976	Tank Barge STC 101	$122,300	Chesapeake Bay	250 000.
April 1975	Butane barge [2]	$1.000 000	Louisiana	1.700,000.
December 1975	Z-102	$685,069	Puerto Rico	322,518.
January 1975	Corinthos	$2,512.115	Philadelphia	
June 1974	Barge ABC 2311 [2]	$914,127	Lower Mississippi	1,100.000.
January 1974	Barge [2]	$3,500,000	do	1,800,000.
March 1973	Zoe Colocotroni	$677,660 [1]	Puerto Rico	1,000,000. [2]
October 1971	Amoco Oil [2]	$15,400,000 (mainly correctional drilling)	Gulf of Mexico	

Date	Incident	Cleanup costs	Location	Amount spilled (gallons)
January 1971	Oregon Standard [2]	$6,000,000	San Francisco	930,000.
December 1970	Shell Platform [2]	$35,000,000 (mainly correctional drilling)	Louisiana	2,200,000.
February 1970	Chevron [2]	$15,000,000 (mainly correctional drilling)	Gulf of Mexico	1,400,000.
January 1969	Santa Barbara	$10,400,000	California	3,360,000.
March 1968	Ocean Eagle	$500,000 +$1,500,000 (salvage) [2]	Puerto Rico	3,500,000.

[1] Meyers, Robert, Exxon Co., U.S.A. 1981. "Response to the Esso Bayway oil spill," in proceedings: 1981 Oil Spill Conference. American Petroleum Institute Publication No. 4334.
[2] "Certain Financial Aspects of Prevention and Control of Oil Spills," report prepared by the Environment Committee of the Organization for Economic Cooperation and Development (OECD), February 1981.

Note: The statistics in figure 1 were compiled by committee staff from a variety of reliable sources. It is difficult, however, to develop fully accurate, complete and uniform statistics for oil spill incidents which have occurred in widely varying locations over a period of more than 10 years. Although the numbers above are believed to be accurate, it should be recognized that differences in methods of defining and assessing cleanup costs, conducting cleanup operationst and handling damage claims can result in dollar figures which may distort the comparative seriousness of particular oil pollution incidents. It should also be noted that the cost of correctional drilling is borne directly by the owner or operator. Correctional drilling is needed to re-open the well and is not, in that sense, a cleanup cost. However, correctional drilling does reduce both cleanup and damage expenses because it cuts off the pressure at the point of the blowout.

Source of all other figures is U.S. Coast Guard.

FIGURE 2.—MAJOR OIL POLLUTION INCIDENTS IN NON-U.S. WATERS

Date	Incident	Cleanup costs	Location	Amount spilled (gallons)
January 1981	Deifovos [1]	$900,000 (excepted)	Norway	
August 1980	Hosei Maru [1]	$1,440,000 (total damages and clean up)	Japan	90,000
June 1980	Furenas	$984,500	Denmark/Sweden	56,000
March 1980	Tanio [1]	$13,000,000 spent to date, $60,000,000 expected	Brittany	2,000,000
January 1980	Showa Maru [1]	$52,000	Japan	26,000
March 1979	Kurdistan	$5,860,000	Canada	2,250,000
September 1989	Yanxilas	$605,000	Denmark	56,000
January 1979	Betelgeuse	$1,297,440	Ireland	7,600,000
June 1979	Vera Berlingieri	$1,584,000	Italy	1,500,000
March 1979	Miya Maru No. 8	$490,000 (damages and clean up)	Japan	150,000
February 1979	Antonio Gramsei	$25,760,000	U.S.S.R.	1,400,000
December 1978	Esso Bernicia	$6,720,000	Shetland, United Kingdom	450,000
October 1978	Christos Bitas	$3,659,996	South Wales	1,100,000
May 1978	Eleni V	$6,962,597	United Kingdom	1,400,000
March 1978	Amoco Cadiz [2]	$100,000,000; $75,000,000 to $125,000,000 (damages), unsettled claims $3,000,000,000.	Brittany	65,000,000
October 1976	Boehlen	$31,899,000	do	2,800,000
January 1976	Olympic Bravery	$1,043,725	do	350,000
December 1975	Erik K. Fornstrom	$139,400	Japan	600
February 1970	Arrow	$3,100,000	Nova Scotia	1,970,000
January 1969	London Harmony	$1,045,000	Sweden	56,000

[1] Oil Spill Intelligence Report, an international weekly newsletter from the Center for Short-Lived Phenomena and Cahners Publishing Co., various issues 1980–81.
[2] National Oceanic and Atmospheric Administration.

Note: The statistics in figure 2 were compiled by committee staff from a variety of reliable sources. It is difficult, however, to develop fully accurate, complete and uniform statistics for oil spill incidents which have occurred in widely varying locations over a period of more than 10 years. Although the numbers above are believed to be accurate, it should be recognized that differences in methods of defining and assessing cleanup costs, conducting cleanup operations, and handling damage claims can result in dollar figures which may distort the comparative seriousness of particular oil pollution incidents. It should also be noted that the cost of correctional drilling is borne directly by the owner or operator. Correctional drilling is needed to re-open the well and is not, in that sense, a cleanup cost. However, correctional drilling does reduce both cleanup and damage expenses because it cuts off the pressure at the point of the blowout.

Source of all other figures is "Certain Financial Aspects of Prevention and Control of Oil Spills" report prepared by the Environment Committee of the Organization for Economic Cooperation and Development (OECD), February, 1981.

Mr. MITCHELL. Surely, none of the authors of H.R. 85 believe that their bill will provide adequate resources to cover such damages. Yet, they are also removing at the same time the ability of any State to provide additional economic compensation for damage to natural resources. If the purpose of this legislation is to provide a comprehensive system of compensation for damage caused by oil pollution, what justification is there for rejecting one source of compensation which if available could only make recovery more comprehensive?

Mr. President, there are other problems that arise from the preemption of States, with respect to liability of parties responsible for oilspills. H.R. 85 would prevent a State from pursuing a party responsible for an oilspill, even if the Federal Government chooses not to pursue that party. The bill also contains limits on the extent to which the party may be held liable. Those limits are based on the tonnage of a vessel, not the damage that is caused by a spill from that vessel. To the extent that the damage incurred exceeds those limits, the victim of economic loss may go uncompensated. I recognize the policy reasons behind the placement of Federal limits on a party's liability. But I fail to recognize why we would deny a State the ability to further pursue that party if it means the difference between restoring damaged natural resources or leaving them unproductive. The State of Maine's oilspill statute contains no limit on liability. A party is liable to the extent of the actual damage caused. This is simply another way in which H.R. 85 would prevent States from protecting their resources. The House bill dictates to the States the manner in which the economic loss from an oilspill must be allocated. Under their scheme, it is the damaged party who bears the burden of loss that exceeds the limits of liability, not the party who spilled the oil. This is inequitable and totally unacceptable.

Mr. President, the House oilspill bills represent the ultimate in overbearing Federal presence that this administration so abhors. This bill would make the people of Maine powerless to act in their own interest. This bill threatens the livelihood of our State and I will not stand by idly while some in Congress make the judgment that such oppression is good public policy. It is not good, and it does not benefit the public in Maine.

I believe that we do need a uniform national solution to the threat of oilspills. But I do not believe that we need to negate the laws of Maine and the many other States that have acted to protect their water resources long before the Federal Government became interested in doing so. We can have a Federal law that permits States to participate in solutions also. It is said in the House committee report that preemption is necessary to avoid duplicative sources of compensation. I see nothing wrong with providing duplication when that is what the problems call for.

No area of this country should find itself with less protection after Federal oilspill legislation is passed. Different States may have different needs and priorities. States should be able to make the judgment that protection of their coastlines is crucial to their tourist and fishing industries. At the same time, the overall laws governing oilspill liability should be expanded and strengthened in order to provide adequate funds for compensating victims of large catastrophes. It is in this spirit of cooperative federalism that I have approached the issue. I would commend that approach to my colleagues also, when the Senate considers oilspill legislation. Until then, I would urge every Member of the Congress to reject the substantive legislation that has been made part of the budget bills and may be enacted in a manner that prevents Members from acting to protect the interests of their States.

VERMONT ARMS LIMITATION RESOLUTIONS

Mr. LEAHY. Mr. President, I ask unanimous consent to insert into the RECORD copies of resolutions approved by a number of Vermont communities on town meeting day last March. These resolutions reflect the deep concern of a broad cross-section of Vermonters that nuclear arms control constitutes one of the most serious problems facing the

United States today. I share their concern.

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

VERMONTERS ARE ASKING TO HALT THE NUCLEAR ARMS RACE

As residents of Vermont, we ask the members of our Vermont Congressional delegation to introduce into Congress a resolution calling for an immediate nuclear weapons freeze (US and USSR), and we ask them to call upon the Administration to negotiate with the USSR a permanent moratorium on nuclear weapons.

The United States and the Soviet Union should immediately and jointly stop the nuclear arms race. Specially, they should adopt an immediate, mutual freeze on all further testing, production and deployment of nuclear weapons and of missiles and new aircraft designed primarily to deliver nuclear weapons.

TOWN OF ANDOVER, VT.,
OFFICE OF TOWN CLERK,
Chester, Vt., March 12, 1981.

Senator PATRICK LEAHY,
U.S. Senate,
Washington, D.C.

As residents of Vermont, we ask the members of our Vt. Congressional delegation to introduce into Congress a resolution calling for an immediate nuclear weapons freeze (U.S. & U.S.S.R.) and we ask them to call upon the Administration to negotiate with the U.S.S.R. a Permanent Moratorium on nuclear weapons.

74 votes cast—59 yes; 15 no.

SHEILA PLUMB,
Town Clerk.

TOWN OF BAKERSFIELD, VT.

AMENDMENT

The following Article was inadvertently left out of the Warning of the Town of Bakersfield.

Article 29a. To see if the Town will vote to have the State Senators and other representatives from this district be advised to introduce a resolution in the Vermont State legislature advising the Vt. Congressional Delegates to the United States Congress to request the President of the United States to propose to the Soviet Union a mutual nuclear weapons moratorium by which the United States and the Soviet Union agree to halt immediately the testing, production and deployment of all nuclear warheads, missiles and delivery systems with verification safeguards satisfactory to both countries.

Dated at Bakersfield, Vermont, County of Franklin, this 4th day of February, 1981.

ROBERT GERVAIS,
JACK GOSS,
SCOTT HASTINGS,
Selectmen of Bakersfield.

CITY OF BURLINGTON

In the year one thousand nine hundred and eighty-one, resolved by the City Council of the City of Burlington, as follows:

That the following question be placed upon the ballot of the Annual City Meeting to be held March 3, 1981:

Shall the State Senators and other representatives from this district be advised to introduce a resolution in the Vermont State Legislature, advising the Vermont Congressional delegates to the United States Congress to request the President of the United States to propose to the Soviet Union a mutual nuclear weapons moratorium by which the United States and the Soviet Union agree to halt immediately the testing, production and deployment of all nuclear warheads, missiles and delivery systems with verification safeguards satisfactory to both countries?

TOWN OF DUXBURY

The inhabitants of the Town of Duxbury, Vermont who are legal voters in said Town and Town School District meetings are hereby notified and warned to meet at the Dillingham Grange Hall in the Town of Duxbury, Vermont, on Tuesday, March 3, 1981 at nine o'clock in the forenoon to act upon the following: (Ballot boxes shall open at nine o'clock a.m. and close at seven o'clock p.m.)

20. Shall the State Senator from this District be instructed to introduce a resolution in the State Senate:

A. Requesting the President of the United States to propose to the Soviet Union a mutual nuclear weapons moratorium by which the United States and the Soviet Union agree to halt immediately the testing, production and deployment of all nuclear warheads, missiles and delivery systems.

B. Requesting Congress to transfer the funds saved to civilian use.

Article 20. A motion to pass over this Article was not passed. Motion made and carried to adopt this Article as written. The Article read as follows:

Shall the State Senator from this District be instructed to introduce a resolution in the State Senate:

A. Requesting the President of the United States to propose to the Soviet Union a mutual nuclear weapons moratorium by which the United States and the Soviet Union agree to halt immediately the testing, production and deployment of all nuclear warheads, missiles and delivery systems.

B. Requesting Congress to transfer the funds saved to civilian use.

TOWN OF FAIRFIELD

FAIRFIELD, VT.,
March 17, 1981.

Senator PATRICK LEAHY,
U.S. Senate,
Washington, D.C.

DEAR SENATOR LEAHY: At our annual Town Meeting held on March 3rd a motion was made to recommend to you as our representative, to encourage the limitation of nuclear armaments.

Sincerely,

G. F. LONGWAY,
Town Clerk.

TOWN OF FLETCHER

Art. 20. Will the Town vote to instruct the Selectmen to borrow money, if necessary, to match State money for permanent roads?

Art. 21. Will the Town vote to have the names and amounts of Delinquent Taxpayers printed in the Town Report?

Art. 22. Will the Town vote what to spend Revenue Sharing money for? (Approx. Amount $18,604.00)

Art. 23. Will the Town vote a sum of money to be used in paying current expenses and such appropriations as may be voted at said meeting?

Art. 24. Will the Town vote a sum of money to help support the Target Area Development Corporation?

Art. 25. Will the Town authorize the Selectmen to appoint for a (1) year term, an Energy Coordinator?

Art. 26. Will the Town vote to exclude the transportation, storage or disposal of radioactive wastes from nuclear reactors and weapons in the land, air or water of the Town of Fletcher?

Art. 27. Shall the State Senators and other representatives from this district be advised to introduce a resolution in the Vermont State Legislature, advising the Vermont Congressional delegates to the United States Congress to:

Request the President of the United States to propose to the Soviet Union a mutual nuclear weapons moratorium by which the United States and the Soviet Union agree to halt immediately the testing, production and deployment of all nuclear warheads, missiles, and delivery systems with verification safeguards satisfactory to both countries? (Ballot)

Art. 28. To transact any other business of the Town that may properly come before this meeting.

Art. 29. To adjourn Town Meeting.

REGINALD TINKER,
GORDON GILLIAN,
RICHARD STREETER,
Town of Fletcher Selectmen.

TOWN OF JERICHO

We the undersigned registered voters of Jericho, Vermont, wish the following referendum to be placed on the Warning (agenda) of March 3rd, 1981.

Shall the State Senators and other representatives from this district be advised to introduce a resolution in the Vermont State Legislature, advising the Vermont Congressional delegates to the United States Congress to:

Request the President of the United States to propose to the Soviet Union, a mutual nuclear weapons moratorium by which the United States and the Soviet Union agree to halt immediately, the testing, production and deployment of all nuclear warheads, missiles and delivery systems with verification safeguards satisfactory to both countries?

TOWN OF MILTON, VT.

Article XII. Shall the State Senators and other representatives from this district be advised by the Selectmen on behalf of the Town to introduce a resolution in the Vermont State Legislature, advising the Vermont Congressional delegates to the United States request the President of the United States to propose to the Soviet Union a mutual nuclear weapons moratorium by which the United States and the Soviet Union agree to halt immediately the testing, production and deployment of all nuclear warheads; missiles and delivery system with verification safeguards satisfactory to both countries.

TOWN OF MORETOWN

A request to the Honorable Governor Snelling, Senator Stafford, Senator Leahy, Representative Jefford, and State Senators and representatives.

We, the undersigned citizens of Moretown, Vermont, respectfully request that you utilize the influence of your respective public offices to take immediate steps against the further development of nuclear, bological and chemical weapons. We ask that you actively support policies—such as those being promoted by the cooperating group of American and Soviet scientists and medical doctors—for the mutual reduction of tension and the limitation of weapons systems which could spell doom for ourselves and our children.

We are not all of the same mind regarding the peaceful utilization of nuclear power; however, we do share a common view that steps must be taken to reverse the present, multi-billion dollar trend in the development of ever more deadly nuclear and biochemical weapons.

In addition to the signed resolution, the town of Moretown passed a motion as follows:

Resolved that the Town of Moretown instruct its senators and representatives to introduce legislation to instruct the Vermont congressional delegation to request that the President of the United States take immediate steps to support a mutual nuclear moratorium with the Soviet Union, with verification safeguards satisfactory to both nations.

TOWN OF MOUNT HOLLY
MOUNT HOLLY, VT.,
March 11, 1981.

Senator PATRICK LEAHY,
Senate Office Building,
Washington, D.C.

DEAR SENATOR LEAHY: At the Mount Holly annual town meeting on March 2, 1981, the townspeople passed the following measure:

"To direct the members of our Vermont Congressional delegation to support a resolution calling for an immediate and mutual * * * (U.S. and U.S.S.R.) and ask them to call upon the administration to negotiate with the U.S.S.R. a permanent moratorium on nuclear weapons."

Sincerely yours,

JUDSON S. LYON,
Selectman for the Board of Selectmen.

THE TOWN OF NORWICH, VT.
March 4, 1981.

Senator PATRICK J. LEAHY,
Russell Office Building,
Washington, D.C.

DEAR SIR: A record of the Annual Town Meeting of town of Norwich, Vermont: Article XXVIII. To see if the Town of Norwich will vote to ask the members of the Vermont Congressional delegation to introduce a resolution in the United States to propose to the Soviet Union a mutual * * * by which the United States and the Soviet Union agree to halt immediately the testing, production and deployment of all nuclear warheads, missiles and delivery systems (by petition). Motion made to accept the article. Seconded. Voted in the affirmative—155 yes, 13 no.

Sincerely,

CLAIRE MENARD,
Assistant Clerk.

ANNUAL TOWN MEETING
RICHMOND, VT.

The legal voters of the Town of Richmond, Vermont, are hereby notified and warned to meet at Camels Hump Middle School, in said Town, on Tuesday, March 3, 1981, at 10:00 o'clock in the forenoon, voting for Town Officers to be by Australian Ballot, such voting to close at 7:00 o'clock in the afternoon, to transact the following business:

Article 1. To receive and act upon the reports of the Town Officers.

Article 2. To see if the Town will vote to pay it's Real Estate and Personal Property Tax to the Town Treasurer, in quarterly installments, with due dates being August 15, November 15, February 15, and May 15.

Article 3. To see if the Town will authorize the Selectmen to borrow money when needed, to meet current expenses and indebtedness of the Town.

Article 4. To see if, the Town will authorize the Selectmen to borrow money to match advance State Aid Money.

Article 5. To see if the Town will authorize the Selectmen to acquire by gift or purchase, land for a municipal forest, to produce wood products, maintain a wildlife habitat, protect water supplies, provide forest recreation and for conservation education purposes.

Article 6. To see if the People in the Town of Richmond will vote to establish a three-year term for the Office of Town Clerk to take effect in 1982 as provided in 17 V.S.A. Sec. 2646 subsection (2).

Article 7. To see if the People in the Town of Richmond will vote to establish a three-year term for the Office of Town Treasurer to take effect in 1982 as provided in 17 V.S.A. Sec. 2446 subsection (3).

Article 8. To see if the voters in the Town of Richmond will vote to ask the members of our Vermont Congressional delegation to introduce into Congress a resolution calling for an immediate nuclear weapons freeze (US and USSR), and we ask them to call upon the Administration to negotiate with the USSR a permanent moratorium on nuclear weapons.

TOWN OF RIPTON
RIPTON, VT., *March 11, 1981.*

Hon. PATRICK J. LEAHY,
U.S. Senator, Russell Senate Office Building,
Washington, D.C.

DEAR SENATOR LEAHY: On March 2, 1981 at the Annual Town Meeting of Ripton, Vermont those present and voting carried a non-binding resolution by a vote of 27 to 18 instructing the Vermont Congressional Delegation that the Town favors a Congressional Resolution requiring the President of the United States to propose to the Soviet Union a mutual * * *, immediately halting the testing, production and deployment of all nuclear warheads, missiles and delivery systems; and requesting Congress to transfer the funds that would have been used for those purposes to civilian use.

Sincerely,

DOROTHY S. GELINAS,
Town Clerk.

CITY OF ST. ALBANS, VT.

Article 2: Special city tax.—Shall the voters of the City of St. Albans approve the operational budget for Municipal expenses for the calendar year 1981? Said Special City Tax being 43¢ (forty-three cents) ($264,450.) upon the dollar of the Grand List.

Article 3: Special city school tax.—Shall the voters of the City of St. Albans approve the operational budget for the City School for the year 1981–1982 School Year? Said tax being $1.21 (one hundred twenty-one cents) ($744,150.) upon the dollar of the Grand List.

Article 4: Grants.—Will the legal voters of the City of St. Albans approve in total a tax of 4¢ (four cents) ($23,230) for the purpose of issuing Grants: the Senior Citizens Center, Mental Health Service, Historical Museum, Franklin County Home Health Agency, Target Area Development Corporation, Youth Diversion, Franklin County Citizens Association of Retarded Citizens and Christmas Decorations?

Article 5: Recreation.—Will the legal voters of the City of St. Albans approve a tax for Recreation purposes? Said tax being 8¢ (eight cents) ($51,608.) upon the dollar of the Grand List.

Article 6: Mayor and alderman expenses.—Will the legal voters of the City of St. Albans amend Section 8, of the Act No. 229, of the Act of 1965, relative to the Charter of the City of St. Albans, to allow the Mayor and each Alderman to receive compensation for expenses incurred to an amount not to exceed $25.00 per month?

Article 7: Bond issue.—Shall a General Obligation Bond for the City of St. Albans be issued for the purchase of Capital Equipment, ie: a Fire Department Ladder Truck at a cost of $170,000.00; and the purchase of a Sewer and Catch Basin Cleaner at a cost of $90,000.00; the aggregate sum of $260,000.00 which Bond Issue will amortize over a period of Fifteen (15) years?

Article 8: Nuclear arms moratorium.—Shall the State Senators from this district be advised to introduce a resolution in the Vermont State Legislature, advising the Vermont Congressional Delegates to the United States Congress to:

Request the President of the United States to propose to the Soviet Union a mutual nuclear weapons moratorium by which the United States and the Soviet Union agree to halt the testing, production and deployment of all nuclear warheads, missiles and delivery systems with certification safeguards satisfactory to both Countries?

TOWN OF THETFORD,
THETFORD CENTER, VT.,
April 7, 1981.

Senator PATRICK LEAHY,
U.S. Senate,
Washington, D.C.

DEAR SENATOR LEAHY: Enclosed please find a copy of the Warning for Thetford's Annual Town and School District Meeting. Also enclosed is a copy of the Minutes of said meeting in regard to Articles Fifteen and Sixteen.

Sincerely,

EMILY E. HOOD, TC.

MINUTES OF THE THETFORD, VT.—MARCH 3, 1981

Article XV. Motion made on the referendum by petition that the Town of Thetford direct the Representative from District Number Orange—3 and the Senator from Orange County to introduce resolutions in the Vermont State House of Representatives and Senate to:

(1) Request the President of the United States to propose to the Soviet Union a mutual nuclear weapons moratorium by which the United States and the Soviet Union agree to halt immediately the testing, production and deployment of all nuclear warheads, missiles, and delivery systems, and

(2) Request Congress to transfer the funds saved to civilian use.

Seconded. Peter Blogett spoke to this article.

Notion to amend the article by striking out all reference to the Soviet Union and substituting other members of the world nuclear community. Seconded. Motion was lost.

Article XV was carried.

TOWN OF WATERBURY

Article 24: The Moderator read the article. Robert Curtis moved that we pass over this article. There were several seconds. After debate Erwin Severance moved the question. There were several seconds and the motion to move the question was put to a voice vote and carried unanimously.

A voice vote was then taken on the motion to pass the article. The chair was in doubt as to the result and called for a show of hands. The motion to pass over did not carry.

The motion was made and seconded that the Town vote to instruct the State Senators from Washington County, to introduce a resolution in the State Senate requesting the President of the United States to propose to the Soviet Union a mutual nuclear weapons moratorium by which the United States and the Soviet Union agree to halt immediately the testing, production and development of all nuclear warheads, missiles and delivery systems and to request Congress to transfer the funds saved, to civilian use.

Gleason Ayers moved to amend the motion to have the vote be by ballot and that the results of the ballot be transmitted to the State Senators. The amendment was seconded by Robert Curtis. The amendment was put to a voice vote and the Chair was in doubt as to the result. A show of hands was called for and again the Chair was in doubt. A second show of hands was called for with the following result: Aye 68, No. 52. The amendment was declared to have carried.

Robert Curtis moved to amend the motion by striking the words "to transfer the funds saved to civilian use" and substitute for them the words "that the savings be used to reduce the income tax". The amendment was seconded by Brian Garland, put to a voice vote and carried on a split vote.

Charles Adams moved to amend the motion by adding after "Soviet Union" the words "and all other nations with nuclear

weapons capabilities". The motion was seconded by Robert Curtis, put to a voice vote and carried unanimously.

The main motion as amended was then put to a ballot vote with the following results: Total vote cast: 162. Necessary for choice: 82. Aye 113, No. 49. The motion as amended carried.

TROY STATE UNIVERSITY

Mr. HEFLIN. Mr. President, as our school year comes to a close across the country so do we close the curtain on extracurricular activities in our schools. The end of the school year brings with it a time for rejoicing over deserving recognition for outstanding achievement.

I want to call to my colleagues attention the outstanding athletic achievements of Troy State University of Troy, Ala.

I ask unanimous consent that the Troy State University "Sport News" be printed in the RECORD.

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

TROY STATE UNIVERSITY SPORTS NEWS

The year 1981 was one of extraordinary success for the athletic teams of Troy State University. The school's women's basketball team won their first state championship; its track team won the Gulf South Conference title; its baseball team won both the GSC championship and the NCAA Central Region tournament for the second consecutive year and went on to a fourth place finish in the national tournament; and the golf team won the Gulf South Conference tournament by 35 strokes and finishd third in the national tournament.

Women's basketball coach Joyce Sorrell, baseball coach Chase Riddle, track coach Rick Stetson, golf coach Milke Griffin and the young people who played under them this year are all worthy of commendation and congratulations for their championship performances this season.

Troy State won the Gulf South Conference All-Sports Trophy this year for the second straight time, an unprecedented achievement. The league's highest honor, representative of the best overall athletic program in the conference, had never been won two years in a row by any other league member. Troy State has won the trophy four times in the last seven years, more than any other GSC school.

For that, athletic director Robert Stewart and University President Ralph W. Adams receive our congratulations.

Understandably, Troy State placed a number of student athletes on all-America teams. Willie Tullis, the quarterback of the TSU football team, was a first-team all-America selection. Denise Monroe, a forward on the basketball team; pitcher Danny Cox, shortstop Kevin McDaniel and designated hitter John Brower of the baseball squad; Selby Andrews, a high jumper, and Steve Venable, a 1500 meter man, all took all-America honors; and golfer Paul Perini (Pe-REE-Nee), the national individual champion in 1980, made the all-America squad for the second straight year playing in the national tournament while severely injured. His teammates Mark Stiggleman and Robb Mihelic (Mi-HAY-lick) joined him in this honor.

Championship performances by these young people and their teammates bring great pride to the people of Alabama. The competition among our state schools is fierce at all levels, but when one school rises above the others and goes on to national competition, everyone becomes a fan of that school. We are proud of the achievements of Troy State University, we salute the school for its past success and wish its teams the best of luck in the upcoming 1981–82 year.

THE TULE ELK IN CALIFORNIA

Mr. CRANSTON. Mr. President, the Bureau of Land Management's fifth annual report to the Congress on the Tule elk in California reached me recently, and I call it to the attention of my colleagues and all who are interested in the conservation of wildlife. It is a remarkable document about a remarkable and rare animal. The story it tells is of a rare dwarf elk on the verge of extinction at the hands of man, but now prospering through one of the finest Federal-State wildlife management efforts we have yet seen.

As author of legislation that formed the basis for this partnership effort in wildlife conservation. I am pleased at the news the BLM report brings. And I am more hopeful than ever that similar actions can be undertaken successfully for other species.

About this time in 1969—my first term in the U.S. Senate—I received a call from my friend Buela Edmiston, a renowned wildlife advocate and Californian, alerting me to an impending hunt of Tule elk in the Owens Valley. Less than 300 animals then roamed the valley, the only free roaming, unfenced survivors—unhybridized—of a species formerly common to the Sacramento and San Joaquin Valleys. There were those who liked the little elk—and those who did not, including ranchers who suffered crop and fence damage. Public hunts became both a means of controlling the elk population and, coincidentally, an outlet for hostilities.

Buela, citing wide public opposition to the hunts, asked me what at the Federal level could be done. In October of 1969 I introduced legislation to authorize a feasibility study of the desirability of establishing a national wildlife refuge for the elk. In succeeding Congresses similar legislation was introduced in both Houses of the Congress. In the meantime, the California State Legislature enacted a prohibition on the taking of tule elk—thus ending the hunts—until the total statewide population exceed 2,000 animals and unless suitable habitat could not be found. Five years later, urged on by the caring and persistence of citizens and officials of Government, the Congress enacted legislation providing Federal participation in preserving tule elk populations in California.

Through this 1976 statute, we have a a Tule Elk Interagency Task Force—comprising eight Federal and State agencies—working with seven private organizations concerned with wildlife. to analyze a management proposal for each tule elk herd in California, list priority projects to preserve and enhance tule elk herds, evaluate suitable habitat, look toward the potential and feasibility of achieving and maintaining 2,000 tule elk in California, and prepare a statewide management plan for the elk and its habitat.

The success of this cooperative effort is evidenced through the BLM's thorough report, to which I refer, which details the health and habitat condition of 14 tule elk herds, 13 of them now outside the Owens Valley. The total population of all herds is approximately 893 animals—well below the 2,000-statewide mandated level, but up some 200 percent over the herd figure when I introduced my bill in 1971.

The BLM report, Mr. President, is not simply a compilation of statistics. It is a caring, compassionate blueprint for the recovery of the tule elk. The condition and status of each herd is delineated as to nature and condition of the habitat, number and condition of the elk, effects of actual or proposed land-use practices, status of the management plan, and recommendations to preserve the elk.

The report summarizes several relocation proposals, based upon the criterion that tule elk—

Will continue to be relocated to diverse habitat types within their historic range under conditions that call for their continued adaptation to environmental factors.

Site criteria include geographic range, vegetation, climate, water, the potential for conflicts with man, range interaction with deer, potential for maintenance of natural populations, and an emphasis on the ability to maintain pure stock.

I am deeply pleased, Mr. President, to have played a role in the legislative effort that has led to the tule elk conservation program. To my mind, the survival of animal and plant species is of paramount importance to the survival of us all. I compliment the Bureau of Land Management, and the many citizens and organizations involved in the tule elk effort, for the enthusiasm and determination that has made this a success story in wildlife conservation.

OKLAHOMA HOUSE URGES RENEWED RECOGNITION OF REPUBLIC OF CHINA

Mr. THURMOND. Mr. President, I ask unanimous consent that the following Resolution No. 1017 that was adopted by the Oklahoma House of Representatives be made a part of the RECORD.

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

RESOLUTION No. 1017

"Whereas, the Republic of China and the United States have been close friends and allies for thirty-five years; and

"Whereas, both the Republic of China and the United States have representative forms of government; and

"Whereas, former President Carter withdrew recognition of the Republic of China; and

"Whereas, President Reagan, during his campaign, expressed a desire to renew our recognition of the Republic of China; and

"Whereas, President Reagan has not yet taken steps toward renewing our recognition of the Republic of China.

"Now, therefore, be it resolved by the House of Representatives of the 1st session of the 38th Oklahoma Legislature:

"Section 1. The Oklahoma House of Representatives memorializes the President of the United States and the Congress of the United States to renew recognition of the Republic of China.

"Section 2. Copies of this Resolution shall be dispatched to the President of the United States, the Speaker of the House of Representatives and the President Pro Tempore of the Senate of the United States, and the Oklahoma Congressional Delegation."

INCENTIVE STOCK OPTIONS BILL

Mr. CRANSTON. Mr. President, I am pleased to join in cosponsoring S. 639, the Incentive Stock Option bill. This legislation, introduced by my colleagues Senator BENTSEN and Senator PACKWOOD, would restore the stock option as a viable form of employee compensation. I believe this bill can play a critical role in our efforts to improve productivity by providing the means for young companies to attract and retain the human capital necessary to succeed in today's highly competitive economy.

As you are aware, Mr. President, new, small and independent businesses must provide significant incentives to attract talented managers and employees from the larger and more secure corporations. Founders of a new enterprise have often found that offering a share of ownership, in the form of stock options, can be a successful inducement. But changes in tax laws have had a severe negative impact on the ability of growing companies to take advantage of the stock option.

The tax obstacles to stock options result from the fact that employees are now required to pay ordinary income taxes on the paper profit or spread between the option price and the market price at the time they purchase the stock.

An employee often is forced to sell some of the stock in order to pay the taxes, thus reducing his share of the company ownership and defeating the very purpose of the stock option plan.

Moreover, if the market value at the time of sale has fallen since the time of purchase, the employee ends up paying a tax based on a paper profit which is never actually realized.

As a result of these drawbacks, prospective employees are not interested in stock options and can only be attracted by higher salaries or other cash incentives which small businesses and new enterprises are less able to offer than larger, established corporations.

Incentive stock options have fallen into disuse and our whole economy, not just innovative companies, has suffered as a result. The legislation I have cosponsored will correct this adverse situation. Under the bill, an employee pays only capital gains taxes on the difference between the option price and the price he receives at the time he sells the stock. No tax would be paid when the employee exercises his option to purchase the stock.

Restoring the favorable tax treatment of incentive stock options will provide important productivity incentives. A stock option only has value to the employee if the price of the company's stock increases through increased sales and profits. Thus, the employee has a vested interest to conduct the enterprise efficiently and to seek out opportunities for business expansion. These combined actions will result in greater productivity and the creation of new jobs.

While the benefits of incentive stock options are most frequently discussed in relation to small, expanding enterprises, these options also promise to revive older businesses and industries whose opportunities are being ignored in favor of more glamorous "growth" industries. As the older industries and businesses level off and decline, the communities in which they are located also suffer. The problem often is not one of economics but of disinterested and, perhaps, inept management. Incentive stock options can stimulate a revival by recruiting dynamic and capable employees to help run the enterprise.

The substantial economic benefits of the incentive stock option proposal were recognized last year by the delegates of the White House Conference on Small Business who endorsed the concept and by the members of the Senate Finance Committee who included the provision in the Tax Reduction Act of 1980 (H.R. 5829). I was an original cosponsor of the stock options bill in the 96th Congress.

Finally, I would like to point out that after modest revenue losses in the first years of enactment, the incentive stock option will actually increase revenues to the Treasury.

Under present tax law, businesses can deduct nonqualified stock options as a business expense. On the other hand, employee income from incentive stock options is not deductible to the corporation. Therefore, substituting incentive stock options for nonqualified options will result in increased revenue to the Treasury from increased business taxes.

Mr. President, I am convinced that S. 639 is a good bill which will help to promote efficiency and innovation in our economy. I urge my colleagues to consider it favorably.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

OMNIBUS RECONCILIATION ACT OF 1981

The PRESIDING OFFICER. Under the previous order, the Senate will now resume consideration of S. 1377, which the clerk will state by title.

The assistant legislative clerk read as follows:

A bill (S. 1377) to provide for reconciliation pursuant to title III of the First Concurrent Resolution on the budget for fiscal year 1982 (H. Con. Res. 115, Ninety-seventh Congress).

Mr. BAKER. Mr. President, for the time being, I designate the distinguished chairman of the Budget Committee as the manager of this bill to control the time under the act on this side.

Mr. ROBERT C. BYRD. Mr. President, will the distinguished majority leader yield?

Mr. BAKER. I yield.

Mr. ROBERT C. BYRD. Mr President, I do likewise with respect to Mr. HOLLINGS, the ranking member of the Budget Committee. I yield time under my control to him for the time being.

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

Mr. DOMENICI. Mr. President, I am very proud to have the opportunity to present to the Senate S. 1377, the Omnibus Reconciliation Act of 1981. This bill will cause us to save over $190 billion in budget authority and over $141 billion in outlays in fiscal years 1981 through 1984.

That is over 60 percent of total Federal spending in 1972—the year I was elected to the U.S. Senate.

S. 1377 is the culmination of one of the most extraordinary undertakings in Senate history. On March 10, President Reagan sent to Congress his plan for economic revitalization. We are here, barely 3 months later, to consider a massive bill in direct response to that plan.

In the intervening 3 months, Congress has had first to agree on a budget resolution which included reconciliation instructions to 14 committees of the Senate. Then the instructed committees met to respond to their instructions.

To give you an idea of the responsiveness of the committees which were instructed, they have submitted recommendations that are before the Senate today, which would save more than the amounts contained in the Senate's instructions.

Each committee had to draft actual legislative language to achieve these savings. Just look at the bill before us, Mr. President. It speaks eloquently to the monumental undertaking involved in the writing and compilation of this massive rewrite of existing law.

Once the legislation was drafted, and the report language written, each of the instructed committees submitted its recommendations to the Budget Committee. Every Senate committee met the June 12 deadline for those submissions.

The role of the Budget Committee—at this point in the reconciliation process—is ministerial in nature. We made no substantive change in the legislation, nor in the report language. Indeed, the law prohibits our making any substantive revision to the submission of any Senate committee.

This bill is the product of the committees of jurisdiction—of those who are the institutional experts of all of the laws which will be changed by this legislation.

There are those who have said, Mr. President, that Senate committees could not produce a worthy product in so short a time. I challenge that assertion, Mr. President. As chairman of the Budget Committee I have had the benefit and the time, short as it was, to thoroughly analyze most of this bill, and I commend

to the Senate the work of all our committees.

Any Senator may find fault with some of the recommendations of some committees. Whatever minor shortcomings anyone may identify in this bill, however, it is clearly and overwhelmingly an affirmative response to the instructions Congress gave to make unprecedented reductions in current spending.

To those who say that this bill contains extraneous matter, or that the bill has been abused by some committees by the insertion of nonreconciliation material, I must point out four facts: First, of the programmatic changes in this bill as reported, more than 94 percent of the changes produce savings, while only 6 percent produce spending increases of any magnitude; second, every single title in this bill produces savings of a huge amount; third, of the sections in the reported bill, 86 percent produce, or are necessary to the production of, savings in spending; and fourth, and finally, as instructed by the Budget Committee, Senator HOLLINGS and I met with the chairmen and ranking members of other committees and with the leadership, and agreed on an amendment which struck the matter we all agreed was purely extraneous to budgetary savings; and the Senate agreed to an amendment by voice vote last night to that account.

Any Senator may still offer an amendment to strike any provision which he or she finds offensive, of course, and the Senate will decide if our amendment overlooked any material it should have struck. But I must say again, Mr. President, by any measure, the committees of the Senate have made the massive savings we asked them to make—and this bill is clearly what it purports to be: a reconciliation measure.

On March 23 the Senate Budget Committee unanimously ordered reported Senate Concurrent Resolution 9, which revised the second concurrent resolution on the budget for fiscal year 1981, to provide for reconciliation to achieve the savings proposed in the President's plan for economic recovery. The Senate passed Senate Concurrent Resolution 9 on April 2, by a vote of 88 to 10.

On April 29, by a bipartisan vote of 15 to 6, the Budget Committee ordered reported Senate Concurrent Resolution 19, the first concurrent resolution on the budget for fiscal year 1982. The Senate passed that resolution on May 12, by a vote of 78 to 20. We adopted the conference report on the first budget resolution on May 21, by a vote of 76 to 20. It is that conference report which contains the reconciliation instructions pursuant to which the bill before us was reported.

Clearly, the Senate has had several opportunities this year to express its views on the spending reductions proposed by the President—and in each case the Senate has responded by endorsing those spending cuts by overwhelming, bipartisan, majorities.

The question before the Senate today is: Are we committed to the fiscal policy reforms necessary to cure our economy of the stranglehold of stagflation—high unemployment, high inflation, high interest rates—which will otherwise sap us, as a nation, of our basic vitality?

I know many of our colleagues fought for reconciliation in the individual authorizing committees on which they serve, Mr. President. To all of those and the chairman and ranking members who worked so hard on it, obviously, I, as chairman of the Budget Committee, extend my congratulations and compliments. I know that many of those on the authorizing committees will discuss today, and tomorrow, and perhaps for the rest of the week, some of the problems that portions of this bill present to them. We will discuss some problems that they present to us. But these discussions and our criticisms of minor portions of this bill should not obscure the essential nature of the bill—a historic savings measure produced by the individual committees of the Senate, using their best judgment and their oversight responsibilities to the fullest. This bill will, when enacted, drastically reverse a 25-year trend in the growth of Federal spending. This reversal is absolutely necessary to the health of the Nation's economy.

I will not repeat the scenario of votes that have already occurred here in the Senate, bipartisan in nature, overwhelming majorities, wherein this Senate agreed with that premise. It could not have been produced without the reconciliation process; and, for that reason, I am pleased to be able to put this landmark legislation before the Senate in my role as chairman of the Budget Committee.

Let me take a moment in closing, Mr. President, to say a word about Senator HOLLINGS and to extend to him my thanks.

Senator HOLLINGS is the ranking member of the Budget Committee. He managed the first reconciliation bill ever signed into law last year. The Senate Budget Committee tried reconciliation the year before that, as I remember, I say to my good friend from Florida who is now managing the bill on the minority side, and we even proposed it 2 years ago, the process of reconciliation. At that point, the House was not interested. But last year, as it became more and more obvious that we would not control spending without the kind of congressional instruction to the committees that comes and culminates with reconciliation, we tried it, and it worked.

Senator HOLLINGS managed that bill. Few, if any, Members of this great body have proved themselves more steadfast advocates of responsible Federal spending and responsible Federal spending decisions than Senator HOLLINGS. Senator HOLLINGS' support has been essential to our committee's ability to bring this measure to the Senate floor.

Let me also extend my thanks to the distinguished majority leader. He has worked long and hard with us and with other Senate committee chairmen and ranking members and with the minority leader. Without his staunch support and his wise counsel we could never have produced the reconciliation instruction, let alone this incredible piece of legislation that is before us because the Congress of the United States instructed its committees, individually as committees, to report their parts of this bill.

With the support of those I have just mentioned, and many others in this body who have become convinced that some dramatic process is necessary if we are going to bring fiscal irresponsibility back to the level of responsibility, and if we are going to change 25 years of spending patterns in this country, to all of those I give my thanks but, more importantly, I think the American people will know where this effort came from and they will be watching the votes in the days that ensue to see if we are really ready now to do what we have been urging on ourselves, what we have almost ordered ourselves to do.

I have every reason to expect that the Senate will complete work on S. 1377. I have every reason to hope we will finish our conference, as the President has asked, before the August recess. Then we can go home knowing we have delivered this first critical installment of the President's economic plan and our promises to the people of this country. This bill deserves our support, Mr. President, and I urge all my colleagues to vote for it and to be careful and cautious before they attempt to dramatically alter the pattern of savings that is so distinctly and so obviously brought in this bill, brought forth by the respective committees of this Congress within the areas of their jurisdiction and in ways and means that they found acceptable to a majority on each committee to accomplish the instructions that were given to them.

Mr. CHILES addressed the Chair.

The PRESIDING OFFICER. The Senator from Florida.

Mr. CHILES. Mr. President, I thank the distinguished chairman of the committee, the Senator from New Mexico, for his very fine statement. My understanding is that the Senator from South Carolina, the ranking member, is on his way to the Chamber, and I am sure that he will have some opening remarks he would wish to make.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Who yields time?

Mr. DOMENICI. How much time does the distinguished Senator desire?

Mr. ANDREWS. Two minutes.

Mr. DOMENICI. I yield such to the Senator.

Mr. ANDREWS. Mr. President, today, we begin another important step in the budget process, the consideration of the Omnibus Reconciliation Act of 1981. This act, comprised of the work of the 13 authorizing committees, illustrates the real progress being made toward solving the economic problems facing our country.

The demands of the American people

have been heard and acted upon. While some committees still may have further cuts to make, for the most part, the paring down of the Federal budget is moving forward according to the instructions of this Congress. Where sacrifices have been asked of the American people, they are the result of careful consideration and will not, I hope, place an undue burden on any segment of the population.

Many longstanding and essential rural programs such as Farmers Home Administration's limited resource loans for farm ownership and operation, subsidized water and waste disposal loans, and access by REA to the Federal Financing Bank have been retained. In the areas of health care and medical research, vital programs have been retained. All this has been accomplished while still meeting spending goals of the Budget Committee.

I believe the Senate is giving an important message to the American people. In the wake of these cuts, important programs they depend on are not being abandoned. Rather, we are trying, and I believe successfully, to answer the real needs of the people while relieving them of the tax and regulatory burdens previously thrust upon them.

Mr. President, I congratulate my colleagues on a job well done and hope the budget process will continue to move forward swiftly, thoughtfully, and profitably.

● Mr. GRASSLEY. Mr. President, today we will begin consideration of a bill that will enable the Congress of the United States of America to achieve savings of $40 billion in outlays for fiscal year 1982. This bill, the omnibus reconciliation bill of 1981, is the first of its kind, for it is the first concerted effort by all the committees in Congress to review and set their spending priorities for this and the next few budget years.

This bill is the Senate's report of spending priorities that are the result of months of effort by all the committees involved. A similar study of Federal spending programs has also been underway in the House. With a few exceptions, this Senate version contains most of the spending and policy changes that were recommended by President Reagan in March. These recommendations have received a thorough review by all members of this legislative branch, and it is in this bill that we will report our judgment of these proposals.

With all due respect to the efforts of our colleagues in the other body, I believe that we in the Senate have managed to formulate a bill that achieves real savings for fiscal year 1982 and the outyears. We have accepted the President's recommendations wherever they were feasible, and in instances where we have felt that alternatives were necessary we have found alternative provisions that provide real savings in Federal spending. We did not report measures that would merely provide false savings, such as an authorizing cap on entitlement programs without corresponding changes in the eligibility structure which actually determines the program costs. We all know that such false economies are only in the short run. In no time at all these programs would require legislative changes to lift the cap and provide more spending authority.

The Senate reconciliation bill has also been carefully constructed so as to not impose budget cuts that would tear the safety net and harm the truly needy. In their zeal to fulfill their reconciliation instructions, some authorizing committees in the other body have managed to cut 30 million hot meals for the elderly, cut 4,000 Head Start classrooms and 68,000 Head Start students, and reduce the funds for administration in the Treasury so that monthly benefit checks could only go out once every quarter. Surely our respected colleagues in the House cannot expect us to seriously consider these drastic cuts. These reductions were not recommended by the President, nor are these cuts included in this bill.

Because this reconciliation bill is unprecedented in its scope, it has been the target of much criticism and controversy. There are those critics that insist that the Budget and Impoundment Control Act of 1974 never intended for reconciliation to be used on such a grand scale. The act, however, clearly intended to shift the budgetary "power of the purse" from the executive to the legislative branch. Reconciliation is the only enforcement mechanism in the budget process that Congress has to maintain its fiscal spending policies. The President has the power of veto over Federal spending bills, and his executive agencies determine the rate at which programs will spend out.

Congress, however, has no formal control over outlays. By practice, spending had increased at the whims of both branches without any restraint. As I have discussed earlier, however, it is from the cumulative efforts of all committees in Congress and Congress as a whole that we are able to bring about this reconciliation bill, which will provide large-scale spending restraint that this economy so badly needs. The President certainly recommended that Congress pursue a course of action that would lead to these savings, but it is only through the actions of all congressional committees—from the Budget Committee, the individual authorizing committees, and the appropriations committees—that these savings will actually be achieved. Reconciliation bills such as this one can only be initiated, approved, and enacted by the Congress. As such, this bill is the will of Congress and the American people.

Though this bill and the purpose it attempts to achieve have my full support, there are a few items that I do not find acceptable. Some committees have found themselves above the will of Congress, and have not found ways to achieve the savings required of them. In this Chamber in the next few days, I do not doubt that we will be able to help them do so. Other committees have found it difficult to enact the specific policy reforms that both the President and the Congress found necessary to recommend. Though these recommendations were not binding on the authorizing committees—and indeed, these committees were encouraged to evaluate their own spending priorities—several of my colleagues and I think that omission of these policy reforms should be avoided.

In this regard, I am particularly concerned that the original block grant proposals have not survived the reviewing process of the authorizing committees. Through these block grants, State and local governments would have added authority and discretion to set their own priorities with regard to Federal programs. This would have provided long-term savings to the Federal Government, and in turn to the American people, since local governments could have chosen to administer only those programs that truly benefited their constituencies. Over the past months, my constituencies have informed me that this is the preferred method over the one that is contained in this bill.

During the next 20 hours of debate on this reconciliation bill of 1981, I will join the efforts of my colleagues to provide alternatives and solutions to the rough spots in this piece of legislation. The reconciliation process has been criticized as one that gives to large a concentration of power to the Budget Committees and provides a route to short circuit substantive policy debate on the issues involved. The next 20 hours will show that this is nonsense. The Congress as a whole and as individual authorizing committees has had 4 months to deliberate and debate the specific issues involved in this bill.

Now, in our consideration of this bill, Congress will once again discuss the pertinent facts and relative merits of all provisions in this reconciliation measure. As a member of the Senate Budget Committee and a member of two authorizing committees, I have participated in all these deliberations, and look forward to this next step in the process. In this bill we are seriously addressing the problem of fiscal restraint. In this bill we have the opportunity to achieve real savings and to stem the booming growth in Federal spending. I for one, intend to pursue this goal, and I urge you, my colleagues, to do the same.●

Mr. McCLURE. Mr. President, on Thursday it will have been 4 months since President Reagan came to Capitol Hill and spoke to a joint session of the Congress about the economic crisis facing America. I am again reminded of the truth in his words that:

> We can no longer procrastinate and hope things will get better. They will not. If we do not act forcefully, and now, the economy will get worse.

What followed was a bold new course of action by the Congress to rescue our Nation from economic and social ruin within 12 weeks of initial Senate approval of the reconciliation instructions in Senate Concurrent Resolution 9. On an unexcelled, expedited schedule the authorizing committees have brought to the Senate floor the necessary legislation to achieve the objectives of President Reagan's program for economic recovery. In the process the Senate has met its constitutional responsibilities for the formulation of national policy.

The legislation before us takes the ini-

tial steps toward revitalizing our Nation's energies and bringing efficiency to Government. We have the opportunity to achieve, once again, a healthy, growing economy with full employment and without inflation.

The issue before us is getting this country moving again—restoring the American dream—not just for a select few but for all Americans. We must not think of this exercise in terms of individual hardships and losses; rather we must think of it as taking the necessary forceful steps to foster economic growth and full employment.

All of us are aware of the punishing consequences of inflation. All of us are aware of the need to promote economic recovery at substantially reduced inflation rates. And all of us are aware of the need to reverse the cancerous combination of sustained inflation and economic distress which continues to drain the vitality out of the American economy.

We must capture control over the Federal budget. We must take the necessary steps to reduce the Federal budget that have plagued us for years. The Omnibus Reconciliation Act of 1981 represents the initial legislative initiative in this effort.

Throughout this process it has been my judgment that it would be possible to ultimately fashion a package of budget changes that would achieve the goals and objectives of President Reagan's program for economic recovery, although not necessarily an identical package to that proposed by the President. Some of the required changes have been painful and we therefore have had to assure equity in the distribution of consequences of the necessary change. The Committee on Energy and Natural Resources therefore undertook a detailed review of the administration's budget proposals. The recommendations of the committee, in some instances represent a redirection of energy and natural resource programs within its jurisdiction.

Mr. President, section 304 of House Concurrent Resolution 115 required that:

The Senate Committee on Energy and Natural Resources shall report changes in laws within the jurisdiction of the committee sufficient to require reductions in appropriations for programs authorized by that committee so as to achieve savings in budget authority and outlays as follows: $1,331,000,000 in budget authority and $94,000,000 in outlays for fiscal year 1981; $3,714,000,000 in budget authority and $3,398,000,000 in outlays for fiscal year 1982; $3,660,000,000 in budget authority and $3,627,000,000 in outlays for fiscal year 1983; and $3,604,000,000 in budget authority and $3,711,000,000 in outlays for fiscal year 1984.

Section 304 of the resolution further require first that the Committee on Energy and Natural Resources, no later than June 12, 1981, submit its recommendations to the Committee on the Budget and second, that those recommendations be sufficient to accomplish the savings required by section 302(5) of the resolution.

On May 13, 1981, the Committee on Energy and Natural Resources approved its recommendations to the Senate Budget Committee.

The committee's recommendations in the aggregate, satisfy these requirements through the combination of three separate and distinct legislative actions: First, in the energy function, the committee recommends removing the strategic petroleum reserve (SPR) program, with the exception of facilities acquisition and construction, permanently from the Federal budget. Such an action was assumed in the formulation of the committee's reconciliation instruction.

Second, also in the energy function—as well as other functions affected by Department of Energy civilian programs—the committee recommends pursuant to section 660 of the Department of Energy Organization Act the establishment of authorization ceilings by appropriations accounts for programs and projects within the Department of Energy—except for the portions of the SPR program taken off-budget—for fiscal years 1982, 1983, and 1984.

Third, in the natural resources areas, for the first time, the committee recommends ceilings on the aggregate appropriations for each department or agency limiting the total amount which may be appropriated for programs within the committee's jurisdiction. This approach was adopted because many of the natural resource programs have no express funding authorization or authorities based on such sums as are necessary. The committee did not allocate these ceilings among individual programs or organizational elements within the departments or agencies, although the committee's report includes recommendations regarding priorities in certain specific instances.

Several comments relating to these individual actions are pertinent to consideration of these recommendations. Specifically, the combination of these three actions in the aggregate would require savings and reductions which fully satisfy the instructions of the House Concurrent Resolution 115. These savings are discussed in the committee's letter of transmittal and report language.

I ask unanimous consent that the letter of transmittal appear at this point in my remarks:

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

U.S. SENATE, COMMITTEE ON
ENERGY AND NATURAL RESOURCES,
Washington, D.C., June 10, 1981.

Hon. PETE V. DOMENICI,
Chairman, Committee on Budget,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: The Committee on Energy and Natural Resources, pursuant to section 304 of House Concurrent Resolution 115, the First Concurrent Resolution on the Budget—Fiscal Year 1982, transmits herewith its recommendations to achieve specified savings in budget authority and outlays compared to "current policy" in fiscal years 1981, 1982, 1983 and 1984. The recommendations of the Committee were approved with a quorum present in a business meeting on May 13, 1981.

Section 302(5) of H. Con. Res. 115 requires that:

The Senate Committee on Energy and Natural Resources shall report changes in laws within the jurisdiction of that committee sufficient to require reductions in appropriations for programs authorized by that committee so as to achieve savings in budget authority and outlays as follows: $1,331,000,000 in budget authority and $94,000,000 in outlays for fiscal year 1981; $3,714,000,000 in budget authority and $3,398,000,000 in outlays for fiscal year 1982; $3,660,000,000 in budget authority and $3,627,000,000 in outlays for fiscal year 1983; and $3,604,000,000 in budget authority and $3,711,000,000 in outlays for fiscal year 1984.

Section 304 of the Resolution further requires (1) that the Committee, no later than June 12, 1981, submit its recommendations to the Committee on the Budget and (2) that those recommendations shall be sufficient to accomplish the savings required by section 302(5) of the Resolution. On behalf of the Committee, we submit that this transmittal, and the Committee's recommendations included in it, satisfy fully the requirements of sections 302(5) and 304 of the Resolution by accomplishing the specified savings and reductions by the changes in law within the Committee's jurisdiction included in the recommendations. The resultant savings, compared to the "current policy" base provided by your Committee by letter dated April 30, 1981, are as follows:

For fiscal year 1981 the recommendations of the Committee would achieve savings of $2,100,725,000 in budget authority and $250,888,000 in outlays compared to "current policy" for programs wholly or partially within the jurisdiction of the Committee;

For fiscal year 1982 the recommendations of the Committee would achieve savings of $6,624,716,000 in budget authority and $5,305,695,000 in outlays compared to "current policy" for programs wholly or partially within the jurisdiction of the Committee.

For fiscal year 1983 the recommendations of the Committee would achieve savings of $5,799,301,000 in budget authority and $5,220,473,000 in outlays compared to "current policy" for program wholly or partially within the jurisdiction of the Committee; and

For fiscal year 1984 the recommendations of the Committee would achieve savings of $3,887,568,000 in budget authority and $4,303,473,000 in outlays compared to "current policy" for programs wholly or partially within the jurisdiction of the Committee.

The Committee's recommendations in the aggregate, satisfy those requirements through the combination of three separate and distinct legislative actions: First, in the energy function, the Committee recommends removing the Strategic Petroleum Reserve (SPR) program, with the exception of facilities acquisition and construction, permanently from the Federal budget. The Committee's legislative proposal for this action would amend the Energy and Policy Conservation Act to accomplish that objective. The SPR legislative proposal included in the recommendation, is identical to the provisions of S. 998, as reported by the Committee on May 13, 1981 (S. Rept. 97-82, Calendar 107).

Second, also in the energy function (as well as other functions affected by Department of Energy civilian programs), the Committee recommends pursuant to section 600 of the Department of Energy Organization Act the establishment of authorization ceilings by appropriations accounts for programs and projects within the Department of Energy (except for portions of the SPR program taken off budget) for fiscal years 1981, 1982, 1983, and 1984. The Committee's recommended DOE authorization provisions would adopt a new streamlined procedure for the DOE annual authorizations in the outyears, which are modeled after S. 2332, 96th Congress, as passed by the Senate last year. The DOE authorization in the recommendation is identical to that contained in S. 1021, as reported by the Committee on May 13, 1981 (S. Rept. 97-81, Calendar No. 106).

Third, in the natural resources area, for the first time, the Committee recommends ceilings on the aggregate appropriations for

each Department or agency limiting the total amount which may be appropriated for programs within this Committee's jurisdiction. The Committee adopted this approach because many of the programs in this area have no express funding authorization or authorize "such sums as are necessary." The Committee did not allocate these ceiling amounts among individual programs or organizational elements within the Departments or agencies, although the Committee's report includes recommendations regarding priorities in certain specific instances.

As noted, the combination of these three actions in the aggregate would require savings and reductions which satisfy fully the instructions of the H. Con. Res. 115. These savings are discussed in the Committee's transmitted materials. Generally, the recommended SPR action would result in savings which exceed significantly the Budget Committee's assumption for that program. Taking into consideration the action on SPR, the recommended DOE authorization action would result in savings greater than those assumed under the instruction. The recommended natural resources action also would result in savings slightly greater than those under the Budget Committee's assumptions but the aggregate recommendation would equal the Reagan Budget in fiscal year 1982. The three actions would have approximately the same budget effects in fiscal years 1983 and 1984, based on extrapolations of the Committee's fiscal year 1982 recommendations.

Several comments relating to these individual actions are pertinent in the further consideration of these recommendations. In the SPR program, the Committee in its recommendations adopted a proposal authorizing direct Treasury Department financing for the SPR off-budget to satisfy the reconciliation instructions. As you undoubtedly recall, the Committee in its March 1981 report to the Budget Committee recommended that, "in the case of funding for the Strategic Petroleum Reserve, that the committee will move expeditiously to consider and report an alternative off-budget funding mechanism. When such an alternative mechanism is developed by the Committee on Energy and Natural Resources, or any other Committee, and is enacted into law, we will support an appropriate reduction in authorizations and appropriations for the Strategic Petroleum Reserve." The Budget Committee and the Senate, as discussed in the transmitted materials, rejected that approach on several occasions in actions leading to final adoption of the instruction in H. Con. Res. 115. The Committee responded to the instruction by holding a total of four days of hearings, with almost 1,000 pages of testimony and 30 witnesses, including the Secretary of the Treasury, the Secretary of Energy and the Director of the Office of Management and Budget. In the hearings and in three days of business meetings devoted to this agenda item, the Committee thoroughly reviewed nine major options, with multiple sub-options, for removing the SPR program from the Federal budget and satisfying the reconciliation instruction.

It is the considered judgment of the Committee that the transmitted recommendation accomplishes, in the best possible manner, the dual objectives of (1) continued, predictable implementation of this critical program and (2) off-budget financing. Costs of the program for the economy and the American taxpayer are minimized, while necessary funding for the program is provided in an assured and timely fashion. A copy of the Committee's hearing record, which supports these conclusions overwhelmingly, is enclosed for the information and review of the Budget Committee.

With regard to the DOE authorization, the Committee allocated a small portion of the SPR savings to several program areas, such as energy supply R&D, energy conservation, and energy regulation, which were the subject of severe budget reductions or terminations in the fiscal year 1981 and 1982 DOE request in the Reagan Budget. This reallocation reflects the Committee's views with regard to priorities related to those programs and will provide the Appropriations Committees the latitude to consider funding for those specified priorities.

It also is important to note that, while the Committee generally recommends the Reagan Budget totals for DOE appropriations accounts, the Committee did not terminate certain programs proposed for termination in the Reagan Budget. In the case of the Alcohol Fuels program the Committee recommendation assumes zero funding in fiscal years 1982 through 1984. In the case of the Solar Energy and Energy Conservation Bank, the Committee recommendation supports reduced funding in fiscal year 1982 and does not authorize funding in fiscal years 1983 and 1984. In large measure, then, the Committee's limitations on authorization provide latitude to the Appropriations Committees, within appropriations accounts limits for DOE, to make final decisions on competing priorities for programs and projects.

In the natural resources area, the Committee's recommendations in the aggregate equal the Reagan Budget for programs within the jurisdiction of the Committee. The recommended individual limitations on appropriations for each Department and agency differ from the Reagan Budget. The Committee recommends restructuring natural resource priorities by the reallocation of $210 million of savings as increases in the Land and Water Conservation Fund (LWCF), the Historic Preservation Fund (HPF), and the Youth Conservation Corps (YCC), and corresponding reductions elsewhere, such as in the Forest Service and certain DOI programs. Also, the Committee's legislative recommendation does not include the proposals of the Administration which were assumed by the Reagan Budget for programs such as the LWCF and Payments in Lieu of Taxes (PILT). The report language accompanying the legislative recommendation expresses the Committee's views on the allocation of available funds among certain programs in DOI. Consequently, final decisions on the allocations within the totals, as in DOE, are left to the Appropriations Committee.

The Administration's legislative proposal for LWCF was received and was the subject of initial hearings prior to the Committee's action on these recommendations. The Administration's legislative proposal for PILT was received after the Committee's action and is still pending hearings. These Administration proposals may be the subject of further legislative consideration and action by this Committee. In any event, the Committee recommends aggregate limitations on appropriations consistent with the Reagan Budget, despite the differences in the apportionment of funds among Departments and agencies whose programs are within the jurisdiction of the Committee.

In summary, the Committee's recommendations satisfy fully and exceed the instructions contained in H. Con. Res. 115. The recommendations reflect an extensive and thorough consideration by this Committee of the Reagan Budget, the Budget Committee's reconciliation assumptions and other identified alternatives for achieving the required savings. We therefore urge the full support of the Budget Committee and the Senate for the legislative actions and related report items included in the enclosed recommendations.

Sincerely yours,

HENRY M. JACKSON,
Ranking Minority Member.
JAMES A. MCCLURE,
Chairman.

Mr. McCLURE. Mr. President, our goal must be to direct Federal energy and natural resource programs to release the creativity and individual initiative of the American people to sustain economic growth. In examining the proposed budget for programs within the Department of Energy, we paid close attention to pursuing a course that assures our national security.

We must remove the uncertainty that has plagued private energy investments. We must formulate long-term solutions to our current energy problem that rely on expansion of domestic supplies. We also must steadily reduce our oil import dependence.

The recommended SPR action would result in savings which significantly exceed the Budget Committee's assumption for that program. The recommended action on SPR, along with the recommended action on DOE authorization, would result in savings greater than those assumed under the reconciliation instructions.

For the SPR program, the committee recommendation adopts a proposal authorizing direct Treasury Department financing for the SPR off-budget to satisfy the reconciliation instructions.

As you will undoubtedly recall, Mr. President, when the budget reconciliation resolution for fiscal year 1981 was approved by the Senate, the instruction to the Committee on Energy and Natural Resources assumed an off-budget mechanism would be enacted for financing at least $3 billion of SPR funding for each of fiscal years 1982, 1983, and 1984.

I, as does the committee, support the objective of finding an off-budget funding mechanism. In our March 20 report to the Senate Budget Committee, the Energy and Natural Resources Committee stated:

> The committee supports President Reagan's budgetary totals for programs within the jurisdiction as contained in the administration proposed budget for fiscal year 1982. Further it is the sense of the committee, in the case of funding for the strategic petroleum reserve, that the committee will move expeditiously to consider and report an alternative off-budget funding mechanism. When such an alternative mechanism is developed by the Committee on Energy and Natural Resources, or any other committee, and is enacted into law, we will support an appropriate reduction in authorizations and appropriations for the strategic petroleum reserve.

However, during consideration of the SPR by the Budget Committee and the Senate, this approach was rejected, leading to final adoption of the instruction in House Concurrent Resolution 115.

Importantly, the Budget Committee supported the objective of the SPR on economic as well as national security grounds. The Budget Committee did not dispute the fact that the SPR can provide insurance against the economic dislocations, protection against international blackmail, and a source of fuel supplies for our military in the event of wartime mobilization. On these points we are in agreement. Where we were in disagreement was whether an off-budget financing mechanism to raise the necessary funds to purchase petroleum was already known.

The Committee on Energy and Natural Resources was concerned that prolonged congressional considerations of alternative SPR funding mechanism must not jeopardize the objective of assuring that the fill rate of at least 230,000 barrels per day as proposed by the President is guaranteed.

However, the committee also was concerned that if achievement of this goal was to be successful a safety net would be required that insured that the current SPR concept would be maintained and the reserve would be filled in fiscal years 1981 and 1982 to the levels supported by the President. For this reason Senator WARNER and I introduced S. 998 which supported a combination of measures to assure these dual objectives. At the time S. 998 was introduced we were aware that it might not be the ultimate solution for accomplishing the instruction in the reconciliation resolution. Nevertheless, the bill served to focus the committee's deliberations on alternative SPR funding mechanisms.

The committee responded to the instructions by holding a total of 4 days of hearings, with almost 1,000 pages of testimony and 30 witnesses, including the Secretary of the Treasury, the Secretary of Energy, and the Director of the Office of Management and Budget.

Mr. President, I ask unanimous consent that a summary of those hearings appear at this point in my remarks.

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

SUMMARY OF WITNESSES' TESTIMONY

GENERAL OBSERVATIONS

The great majority of all witnesses who appeared before the Subcommittee testified that in their opinion the most preferable way to finance the SPR would be to have the Reserve funded by the Government on-budget in accordance with past practice.

It was also the opinion of a majority of the witnesses, political realities being what they are, that if the Senate did not reverse its prior decision to not fund the SPR on-budget then the next least costly method for the Reserve to be financed would be by the Government issuing securities in its regular financing activities off-budget. Witnesses agree that such financing could be accomplished by the Federal Government in an off-budget manner under current statutory law and normal financing practices by the Department of Treasury.

Most witnesses were favorable to S. 998 only to the extent that the bill provided for an orderly transition to off-budget financing for the Strategic Petroleum Reserve by authorizing interim financing which allowed the SPR to be continued to be filled in an uninterrupted fashion.

Many witnesses took the position that any alternative financing mechanism should provide that the fill rate for the SPR be very flexible to allow the administrators of the program to be able to adjust their purchases of oil for the Reserve as market conditions dictate.

Most witnesses agreed that the SPR program should continue unabated while an alternative financing mechanism was implemented. It was agreed that the most desirable method was that which was easiest to implement, provided the sums needed to fill the SPR. allowed for an uninterrupted continuation of the program, did not differ radically from the present funding methods of the SPR, and filled the SPR at the lowest possible cost to the Government and the public.

Many of the witnesses believed that a "safety-net" was necessary—a large amount of funds to be available in reserve to be used to purchase oil when the market conditions dictate. However there was disagreement as to what would be the most effective safety net concept.

Where the witnesses disagreed was in the type of mechanism and security to be utilized to accomplish what most thought necessary.

A few witnesses agreed that a security backed by the appreciation in the price of oil ("oil bond") could be used, however most witnesses argued that an oil bond established new precedent, possibly would not receive sufficient funds to fill the Strategic Petroleum Reserve, created a conflict of interest with the program, fueled inflation as it was premised on the rise in the price of oil and presented an enormous contingent liability to the Federal Government as the securities redemption price may be based on the increased world oil price.

Some witnesses argued that a direct tax on petroleum products was the most direct, effective way to finance the Strategic Petroleum Reserve. Later testimony by Treasury Secretary Regan called into question the ability of a tax to provide "a steady source of income, a ready source of income" for the program. Also, Administration testimony questioned the economics of adding another tax into the burden of what they viewed as an already over-taxed public.

Some witnesses argued for the creation of either a private petroleum reserve or that private industry should voluntarily contribute its stocks to the reserve with appropriate financial incentive being offered to industry. There was conflicting testimony argued that voluntary contribution may not provide needed petroleum products when needed and in amounts necessary to relieve the economic burden in all parts of the United States.

Based upon these witnesses statements, the Committee staff prepared an option paper for its May 8 hearing with Administration officials which listed all of the options in narrative form which the staff was aware of was outlined.

The options for the alternative funding of the filling of the SPR before the Subcommittee were:

1. Full, on-budget financing of the SPR.
2. Declare the SPR to be off-budget.
3. Private Strategic Petroleum Reserve.
4. Regulatory approaches.
5. U.S. Government issues bonds to fund the SPR.
a. Sale of bonds to the public.
b. Borrowing from the Federal Financing Bank.
6. Dedicate Federal revenues.
7. Access to previously appropriated funding authority.
8. Taxes dedicated to SPR oil purchase.
a. Refinery tax.
b. Consumer tax.
c. Btu energy tax.
d. Import fee on all crude oil and petroleum products.
e. Wellhead and mine tax.
9. Supplemental sources of SPR oil acquisition.
a. Storage of State Royalty Oil.
b. Modification of the tax accounting basis for existing private firm inventories.
c. Voluntary contributions to the SPR.
d. Other Federal policies, including tax incentives.

On May 8th the Administration, represented by the Secretary of the Treasury, Donald T. Regan, Secretary of Energy James Edwards and Director of the Office of Management and Budget David Stockman appeared before the Subcommittee to present its position on S. 998 and other alternative financing mechanisms for the funding of the SPR.

The Administration disapproved of any alternative proposals for private financing of the Strategic Petroleum Reserve which would require the private sector to build up petroleum stocks as such measures are of dubious legality and are out of step with the free market approach of the Administration and the traditional notions of Federal responsibility.

Government financing of the Strategic Petroleum Reserve with conventional debt instruments, according to the Administration must be accomplished in a way that minimizes the impact on financial markets and on the economy.

Nor programs financed either on or- off-budget it is essential that the most efficient and orderly debt management practices be adopted.

Secretary Regan in closing stressed the position of the Administration in debt financing for the filling of the SPR, "[A]ny legislation to authorize debt financing of the SPR should provide for a back-up source of funds such as authority to borrow from the Treasury to insure the Government's ability to make good on its debt and thus to insure the lowest possible financing costs for the taxpayer."

OMB Director Stockman in his prepared remarks indicated that the Administration believed that any alternative funding mechanism which used royalty oil and NPR receipts to finance the SPR would violate the Budget Resolution totals.

The Administration in its testimony repeatedly stressed the point that the impact on the financial market of bonds issued by the Treasury to finance on-budget deficits was absolutely no different than the impact on the financial market of bonds issued to finance off-budget expenditures.

Moreover, the Administration indicated that the funding method for off-budget financing of the SPR would not be any different than that which exists for several programs currently being financed off-budget by the Federal Financing Bank.

The Administration in its testimony indicated that it was committed to insure a fill rate for the SPR of at least 230,000 barrels per day, however, that commitment can be met only if Congress adopts a funding mechanism which allows for a safety net of ready funds to be available to insure the uninterrupted contination of the SPR.

Testimony by the Secretary of Energy noted that the Strategic Petroleum Reserve provides America with many safeguards and benefits as it:

Prevents minor interruptions from causing economic dislocations;

Maintains market supply at a level sufficient to prevent excessive upward price pressure;

Enables us to meet critical defense, health and safety needs;

Mitigates regional shortfalls;

Allows us to meet IEP commitments;

Provides us a more negotiating position in dealing with producer countries.

The Administration, in Secretary Regan's testimony, took the position that if the SPR was to be funded by an off-budget mechanism such mechanism must be developed to provide the most efficient and assured method of financing at the lowest possible cost to the taxpayer.

In Secretary Regan's opinion, "any Strategic Petroleum Reserve financing should be accomplished through the use of conventional debt instruments fully backed by the credit of the United States."

It was the Administration's position that "oil bonds" with maturity values indexed to the price of oil were simply not feasible for a multi-billion-dollar program such as the Strategic Petroleum Reserve as such highly speculative securities could not be sold in sufficient quantities at reasonable costs to raise the sums needed for the Strategic Petroleum Reserve within the required timeframe.

The Administration opposed an alternative funding mechanism like that set forth under S. 707 as it would—

Only provide an annual fill rate of 25 million barrels;

Be an inflexible mechanism incapable of taking advantage of changing market conditions;

Create a new regulatory program for industry;

Be discriminatory in nature as it would impose a mandatory requirement only on importers of oil;

Constitute a hidden tax.

The Administration proposed a solution to the funding problem of the SPR program when OMB Director Stockman before the Subcommittee said: ". . . simply pass a law that does not count the money. Make it off-budget. Create an off-budget account with the financing authority that would have the power to go directly to the market, or the Secretary has indicated, to use debt in order to finance these purchases."

While the Administration stated that while they desired the entire budget should be on-budget, they recognized that there were three very good reasons that justified the funding of the SPR in an off-budget manner:

(1) The world Petroleum market is highly volatile in nature, subject to rapid changes in petroleum supply and price, and therefore difficult to project and budget for the requirements of the Strategic Petroleum Reserve.

(2) Unlike a normal budget expenditure for goods and services which are depreciating in value the purchase of oil for the SPR is the purchase of an appreciating asset—a swap of assets, dollars for oil not unlike the U.S. purchases of gold in the past. Moreover this asset will eventually be converted back to dollars when the Strategic Petroleum Reserve is ultimately sold and thus the purchase of oil for the Strategic Petroleum Reserve is a temporary conversion of one asset to another.

(3) If there was a drawdown of the Strategic Petroleum Reserve it would create an enormous but deceptive receipt into the budget which would soon be followed by an outlay to purchase oil to rebuild the Reserve resulting in an enormous outlay.

The Administration in closing indicated that it would be happy to work with the Committee and its staff to develop appropriate legislation for creating an alternative off-budget funding mechanism for the filling of the Strategic Petroleum Reserve.

The Committee availed itself of the Administration's offer during the marking-up of S. 998 and received suggested amendments to the bill along with very helpful technical support and assistance from the Administration.

After reaching agreement with the Administration on the new provisions of the amendment to S. 998 the Committee reported S. 998 as amended.

Mr. McCLURE. Mr. President, in addition to the hearings, 3 days of business meetings were devoted to this matter. The committee thoroughly reviewed nine major options, with multiple suboptions, for removing the SPR program from the Federal budget and satisfying the reconcilation instruction.

It is the considered judgment of the committee that the transmitted recommendation accomplishes, in the best possible manner, the dual objectives, first, continued, predictable implementation of this critical program, and second, off-budget financing. Costs of the program for the economy and the American taxpayer are minimized, while necessary funding for the program is provided in an assured and timely fashion. A copy of the committee's hearing record, which supports these conclusions overwhelmingly, has been made available today.

With regard to the DOE authorization, the committee allocated a small portion of the SPR savings to several program areas, such as energy supply R. & D., energy conservation, and energy regulation, which were the subject of severe budget reductions or terminations in the fiscal years 1981 and 1982 DOE request in the Reagan budget. This reallocation reflects the committee's views with regard to priorities related to those programs and will provide the Appropriations Committee the latitude to consider funding for those specified priorities.

It is important to note, Mr. President, that, while the committee generally recommends the Reagan budget totals for DOE appropriations accounts the committee did not terminate certain programs proposed for termination in the Reagan budget. In the case of the alcohol fuels program the committee recommendation assumes zero funding in fiscal year 1982 through 1984. In the case of the solar energy and energy conservation bank, the committee recommendation supports reduced funding for fiscal year 1982 and does not authorize funding in fiscal years 1983 and 1984. In large measure, then, the committee's limitations on DOE authorization provide latitude to the Appropriations Committees, within appropriations accounts limits, to make final decisions on competing priorities for programs and projects.

Similarly, in the area of production and use of our natural resources, we must set a path which reduces our energy and mineral dependence. We must focus on the critical questions of strategic and critical mineral supplies so as to avoid a minerals crisis which would threaten our national security.

In this regard, the Committee on Energy and Natural Resources has the responsibility to insure that the Congress in making public land allocation decisions also supports the land managing agencies with the proper insulation for their decisions.

The lands in limbo era must come to an end. Proper planning within reasonable time limits and with foreseeable results is OK. But endless planning and futile EIS exercises that result in 30-pound documents that sit on a shelf are meaningless exercises that must be ended.

The Department of the Interior and the Department of Agriculture have not only land managing responsibilities but they also have policy responsibilities nationwide. However, in many cases, it is budget decisions that are the primary drivers in land management and land use policy decisions. The committee thus looked carefully at established funds, their program uses, and possible new uses and reductions.

The committee's recommendations in the aggregate in the natural resources area equal the Reagan budget for programs within the jurisdiction of the committee. The recommended individual limitations on appropriations for each Department and agency differ from the Reagan budget, however. The committee recommends restructuring natural resource priorities by the reallocation of $210 million of savings as increases in the land and water conservation fund (LWCF), Youth Conservation Corps (YCC), and historic preservation fund, with corresponding reductions elsewhere, such as in the Forest Service and certain DOI programs. Also, the committee's legislative recommendation does not include the proposals of the administration which were assumed by the Reagan budget for programs such as the LWCF and payments in lieu of taxes (PILT). Our report language accompanying the legislative recommendation expresses the committee's views on the allocation of available funds among certain programs in DOI. The final decision on the allocations of funds within the totals is left to the Appropriations Committee, as for DOE.

But more importantly, the committee's natural resources recommendation would result in savings slightly greater than those under the Budget Committee's assumptions; nevertheless the recommendation in the aggregate would equal the Reagan budget in fiscal year 1982. The recommendations also would have approximately the same budget effects in fiscal years 1983 and 1984, based on extrapolation of the committee's fiscal year 1982 recommendations.

In other words, the committee's recommended limitations on aggregate appropriations are consistent with the Reagan budget, despite the differences in the apportionment of funds among departments and agencies whose programs are within the jurisdiction of the committee.

Mr. President, I ask unanimous consent that a summary of the recommendations of the Committee on Energy and Natural Resources appear at this point in my remarks.

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

SUMMARY OF RECOMMENDATIONS

The recommendations of the Committee on Energy and Natural Resources encompass programs and activities of the following Departments and agencies either wholly or partially within the jurisdiction of the Committee.

Funds appropriated to the President.

Advisory Council on Historic Preservation.

Alaska Land Use Planning Commission (Inactive).

Department of Agriculture, including the U.S. Forest Service and the Alcohol Fuels and Biomass Energy Program.

Department of Commerce (certain National Oceanic and Atmospheric Administration activities).

Department of Defense (certain Recreational Resources activities).

Department of Energy civilian programs.

Department of Housing and Urban Development (the Solar Energy and Energy Conservation Bank and certain community development programs).

Department of the Interior.

Department of Transportation (certain U.S. Coast Guard Programs).

Department of Treasury, including the Energy Security Reserve (certain Alcohol Fuels and Biomass Energy Programs and the U.S.

Synthetic Fuels Corporation), and certain U.S. Customs Service Programs.

General Service Administration.

National Science Foundation (Shared).

Office of the Federal Inspector for the Alaskan Natural Gas Transportation System (Shared).

Pennsylvania Avenue Development Corporation.

United States Holocaust Memorial Council.

These programs encompass 16 of the broad functional areas utilized by the Congressional budget process. The principal functional areas of concern to the Committee are:

250—General Science, Space and Technology;

270—Energy; and

300—Natural Resources and Environment.

Other areas of partial concern are:

053—Atomic Energy Defense Activities;

400—Transportation;

450—Community and Regional Development;

800—General Government; and

850—Revenue Sharing and General Purpose Fiscal Assistance.

The recommendations of the Commitee on Energy and Natural Resources would—

(1) for fiscal year 1981, establish limitations of the aforementioned Departments and agencies on the aggregate obligation of budget authority and expenditure of budget outlays for programs wholly or partially within the jurisdiction of the Committee: the exceptions are the Department of Commerce and the National Science Foundation because in these two instances the jurisdiction of the Committee encompasses only a minor portion of the programs or activities (See discussion below);

(2) for fiscal year 1982 through 1984, establish limitations on the aggregate appropriations for Departments and agencies whose programs are wholly or partially within the jurisdiction of the Committee (See discussion below);

(3) beginning with fiscal year 1982, support additional funding for (a) the Land and Water Conservation Fund for Federal programs and assistance to States; (b) the Historic Preservation Fund, and (c) the Youth Conservation Corps, by the reallocation of funds from within the aggregate Environment and Natural Resources functional total for programs within the jurisdiction of the Committee on Energy and Natural Resources (See discussion below);

(4)(a) authorize appropriations to the Department of Energy for fiscal year 1982 for certain of its civilian programs and activities and (b) establish a basis for simplifying and improving the annual authorization process for fiscal year 1983 and subsequent fiscal years, pursuant to the Department of Energy Organization Act (See discussion below);

(5) establish an off-budget mechanism for financing certain Strategic Petroleum Reserve activities; the exception being construction or acquisition of facilities which would be separately authorized under the aforementioned DOE authorization; and

(6) consistent with the President's proposed budgets, reduce the authorizations for (a) the biomass energy and alcohol fuels programs of the Department of Energy and the Department of Agriculture pursuant to Title II of the Energy Security Act and (b) the Solar Energy and Energy Conservation Bank pursuant to Title V of the Energy Security Act, except for $50 million in fiscal years 1982.

These recommendations are reflected in the accompanying statutory language in the judgment of the Committee on Energy and Natural Resources, adoption of these recommendations would satisfy the instruction to the Committee as set-forth in sections 302 (5) of the conference agreement on (H. Con. Res. 115).

FISCAL YEAR 1981

The instruction to the Committee on Energy and Natural Resources for fiscal year 1981 contained in House Concurrent Resolution 115 (sec. 203 (5)) is that the Committee shall report changes in laws within its jurisdiction sufficient to require reductions in appropriations for programs authorized by the Committee so as to achieve savings of $1.331 million in budget authority and $91 million in outlays for fiscal year 1981.

The recommendations of the Committee for fiscal year 1981 would achieve savings of $2,100,725,000 in budget authority and $250,888,000 in outlays compared to "current policy" for programs wholly or partially within the jurisdiction of the Committee. The recommendation of the Committee thus encompass the supplemental budget requests, rescissions, and deferrals for fiscal year 1981 as transmitted to the Congress by the President. The resultant savings from the Committee's recommendations consist of these components (1) general program reductions from "current policy" as proposed by President Reagan in the amount of $1,100,725,000 in budget authority and $240,288,000 in outlays; (2) reduction in the authorization for the Solar Energy and Energy Conservation Bank pursuant to Title V of the Energy Security Act to support the rescission of $1,000,000,000 in budget authority and $10,000,000 in outlays; and (3) reductions in the authorizations for biomass energy and alcohol fuels programs pursuant to Title II of the Energy Security Act to support the rescission of $740,500,000 in budget authority and $17,500,000 in outlays to the Department of Energy and $505,000,000 in budget authority and $3,000,000 in outlays to the Department of Agriculture.

FISCAL YEAR 1982

The instruction to the Committee on Energy and Natural Resources for fiscal year 1982 contained in House Concurrent Resolution 115 is that the Committee shall report changes in laws within its jurisdiction sufficient to require reductions in appropriations for programs authorized by the Committee so as to achieve savings of $3,714 million in budget authority and $3,398 million in outlays.

The recommendations of the Committee for fiscal year 1982 would achieve savings of $6,624,716,000 in budget authority and $5,305,695,000 in outlays compared to "current policy" for programs wholly or partially within the jurisdiction of the Committee. The resultant savings from the Committee's recommendation consist of four components: (1) general budget reductions from "current policy" as proposed by President Reagan in the amount of $2,401,804,000, in budget authority and $1,313,576,000 in outlays; (2) an adjustment in President Reagan's proposed budget in the amendment of $36 million in payment in lieu of taxes by the Bureau of Land Management which was not assumed by the Budget Committee for the formulation of the reconciliation instruction (S. Con. Res. 9); (3) a reduction in the authorization for the Strategic Petroleum Reserve in the amount of $3,704,912,000 in budget authority and $3,473,619,000 in outlays due to the establishment of an off-budget financing mechanism for certain Strategic Petroleum Reserve activities; and (4) the reallocation of $568.5 million of the savings resulting from the action of the Committee on the Strategic Petroleum Reserve (a) in the amount $518.5 million among various other Department of Energy programs and activities as an indication of areas which the Committee believes should receive greater emphasis and (b) in the amount of $50 million in budgt authority and outlay for the Solar Energy and Energy Conservation Bank pursuant to Title V of the Energy Security Act (See discussion below).

In addition the Committee recommendations supports the reallocation of funds from within the aggregate Environmental and Natural Resources functional total for programs within the jurisdiction of the Committee on Energy and Natural Resources to support additional funding for (a) the Land and Water Conservation Fund for Federal programs and assistance to States; (b) the Historic Preservation Fund; and (c) the Youth Conservation Corps (See discussion below).

Environmental and natural resources (function 300)

The recommendations of the Committee include a reallocation of funds within the aggregate Environment and Natural Resources functional total proposed by President Reagan for programs wholly or partially within the jurisdiction of the Committee in the amount of $210 million in budget authority and outlays during fiscal year 1982.

The resultant total fiscal year 1982 authorizations for the effected Department and agency programs were then projected on the basis of the same assumptions in arriving at the recommendations of the Committee for fiscal years 1983 and 1984.

The recommendation of the Committee supports additional funding for (a) the Land and Water Conservation fund for Federal programs and assistance to States; (b) the Historic Preservation Fund; and (c) the Youth Conservation Corps, as set forth in Table 5A.

The corresponding offsetting reductions ($210 million) within the jurisdiction of the Committee would effect programs of the Advisory Council on Historic Preservation, the U.S. Forest Service, and certain activities of the Department of the Interior which fall within the budgetary function. The final judgment on such offsetting reductions will be made by the Appropriations Committee; however, the Committee on Energy and Natural Resources recommends that such reductions not occur in the following appropriations accounts: the Water and Power Resources Services Water Reclamation Trust Fund, the Bureau of Land Management's Oregon and California Grant Lands and Range Improvement Funds, the Office of Surface Mining Reclamation and Enforcement's Abandoned Mine Reclamation Fund, the National Parks Service's Permanent Appropriations, the Bureau of Mines' Contributed Funds, the U.S. Forest Service's Permanent Appropriations and Trust Funds and Recreation User Fee program of the Department of Defense. Moreover, in arriving at its recommendation, the Committee on Energy and Natural Resources assumed that such appropriations accounts would not be affected when calculating the offsetting reductions.

The Committee agreed to make these reallocations in an effort to insure that additional funds would be made available for certain programs not recommended for funding (or recommended for limited funding) in President Reagan's proposed budget.

The Committee notes that President Reagan's fiscal year 1982 budget request includes a $105 million for badly needed rehabilitation and restoration projects within units of the National Park System. Under the budget request, this money is to come from the Land and Water Conservation Fund. To use LWCF funds for this purpose will require that the LWCF Act be amended. This amendatory legislation (S. 910) has been transmitted to the Committee and a hearing has been held. A final decision on this amendment may not be made by the Committee or the Congress prior to the action of the Appropriations Committees.

Although no final action has been taken on the Administration's proposal to amend the LWCF, the Committee expects this $105 million to be retained in the functional total and assumes that it will be made available for traditional LWCF projects or, alter-

natively, made available through the appropriations process to the appropriate Park Service budget account specifically to carry out rehabilitation, renovation, and maintenance projects. Neither of these actions requires an amendment to existing law.

TABLE 5A

	1982 administration budget request as amended	Increased as proposed by Senator Heinz and adopted	Aggregate amount recommended by the Senate E. & N.R. Committee in 1982
Land and water conservation fund:			
Federal programs	$150,000,000	$55,000,000	$205,000,000
Assistance to States	0	100,000,000	100,000,000
Historic preservation fund	4,700,000	25,000,000	29,700,000
Youth Conservation Corps	0	30,000,000	30,000,000
Total	154,700,000	210,000,000	364,700,000

Department of Energy authorizations for fiscal years 1982, 1983, and 1984 (subtitle D, part 2)

The recommendations of the Committee on Energy and Natural Resources include as Subtitle D, Part 2, the text of S. 1021, the Department of Energy Authorization Act for fiscal year 1982—Civilian Application, as reported by the Committee on May 15, 1981 (Senate Report No. 97-91). As stated in said report:

"The Committee believes that the approval of this measure will provide adequate authority for the operations of the Department and will establish a basis for more effective oversight of the Department in subsequent years."

The recommendation of the Committee would establish a new approach to annual authorizations of appropriations for the civilian programs of the Department of Energy. The bill as amended by the Committee has four titles.

Subpart A authorizes appropriations for fiscal year 1982. It also establishes a basis for authorizing the current total estimated costs for each construction project initiated in prior fiscal years and it authorizes several new construction projects which may be initiated in fiscal year 1982 or future years and establishes a total cost ceiling for such project. The major provisions of this subpart are as follows:

(1) Appropriations for fiscal year 1982 are authorized for Operating Expenses and for Plant and Capital Equipment for each of the appropriation accounts which involve civilian programs of the Department of Energy.

The authorized amounts are those requested by the Department of Energy except where noted herein.

(2) Construction projects initiated in prior years are continued with an authorization of the current total estimated cost. Appropriations for such project falls within the aggregate amounts authorized for the relevant appropriations accounts. A ceiling on the total authorization of appropriations for each project is established.

(3) New construction projects are authorized to be initiated in fiscal year 1982 within the aggregate amounts authorized for the relevant appropriations accounts. Authorization limitations are established at the total current estimated costs of such projects.

The fiscal year 1982 appropriations are authorized in sections 534A and 534B on the basis of the appropriation accounts which are utilized in appropriation Acts.

In each instance, the Appropriation Committee would be provided the latitude to fund line items within those appropriation accounts as they determine. The ceilings established by this measure apply only to the total for each such account.

The construction projects which are authorized by this measure in section 534C are thereby made eligible for funding in fiscal year 1982 (and subsequent fiscal years) within the aggregate amounts authorized for the relevant appropriation accounts. No additional appropriations are authorized by section 534C. However, the amounts specified in section 534C for each project are the maximum appropriation authorized for fiscal year 1982 out of the authorized total estimated cost. The total estimated costs indicated for each project in the DOE budget books establish ceilings on the total amount that may be appropriated for each such project over time. In the event that a project would require additional appropriations to complete that would exceed the authorized ceiling, such ceiling would have to be revised in future authorizing acts. Similar ceilings on the appropriations for total estimated Federal share of the costs are established for previously authorized projects by subsection 534B(c).

In the case of the Strategic Petroleum Reserve, the Committee action part 2, the Department of Energy Authorization Act of fiscal year 1982—Civilian Programs, reflects a reduction in the authorization based on the Committee action on part 3, Strategic Petroleum Reserve Amendments Act of 1981. Under certain activities of the Strategic Petroleum totaling $3,704,912,000 would be placed off-budget for the purpose of financing program activities including program direction, planning, and oil acquisition. This part authorizes $314,908,000 for the facilities acquisition and construction.

Within President Reagan's overall total for civilian programs of the Department of Energy, the Committee reallocated $518.5 million of savings resulting from part 3, among various other appropriations accounts as an indication of areas which the Committee believes should receive greater emphasis. The intent of the Committee was to indicate support for certain categories of programs that had been excised or drastically reduced in the proposed budget. For example, the Committee increased Energy Supply and Research Development by $60.8 million for potential allocation by the Senate Appropriations Committee in program categories such as Ocean Sciences, including OTEC and undersea cable: Geothermal, including Raft River and capital expenditures for the Herber Binary project; Electrical Energy Systems; Fusion; Solar, including advanced concepts. Also the Committee increased operating expenses for Fossil Energy Research and Development by $80 million for distribution in program categories such as MHD, H-coal, Oil Shale, Enhanced Gas Recovery and fuel cells. In addition, the Committee increased operating expenses for Energy Conservation by $350 million for such program categories as Building Sciences, including residential/commercial retrofit and urban waste; Industrial; Transportation; State and Local, including the weatherization program. The Committee also increased funds for the Energy Information Administration by $1.7 million for such programs as the Financial Reporting System as required by section 205(h) of the Department of Energy Organization Act. The Committee also increased Energy Regulation by $26 million for such programs as compliance, including the Office of Enforcement and Office of Special Counsel.

In addition the Committee allocated $50 million of the savings resulting from part 3 to the Solar Energy and Energy Conservation Bank; however, this action is reflected separately in the Committee's recommendation on reconciliation to the Senate Budget Committee.

The Committee provided within the Energy Conservation account up to $336 million for state and local programs. Within this $336 million there are authorized to be appropriated such funds as are necessary to implement S. 1166, the "National Home Weatherization Act" or comparable legislation. The Committee assumes the $336 million figure is a ceiling and expects that if not all the $336 million are appropriated for state and local programs, including S. 1166, then the funds will be available to other programs in the Energy Conservation account.

The total amount of the appropriations authorized by part 2 for fiscal year 1982 for the civilian programs of the Department of Energy would be $5,598,344,000.

Subpart B authorizes amounts to be appropriated for each appropriations account in fiscal year 1983 and subsequent fiscal years in the amount which has actually been appropriated for each account in the prior fiscal year plus 10 percent. It should be noted that this authorization is not an overall 10-percent inflator or index. In each fiscal year, 10 percent latitude to the Appropriations Committee would be provided over the prior year level of actual appropriations.

In fiscal year 1983 and subsequent years, the annual authorization measures would address only major departures from prior year levels of general activity, major new initiatives, new proposed construction projects starts and changes in estimated total costs for ongoing construction projects.

Strategic petroleum reserve (subtitle D, part 3)

The recommendations of the Committee on Energy and Natural Resources also include as Subtitle D, Part 3, the text of S. 998, the Strategic Petroleum Reserve Amendments Act of 1981, as reported by the Committee on May 15, 1981 (Senate Report No. 97-92). As stated in said report, "The objective of the amendment is to establish an off-budget financing mechanism for funding the Strategic Petroleum Reserve. The amendment creates a separate account in the Treasury for funding the Strategic Petroleum Reserve. A total of $21.9 billion would be authorized for financing the Strategic Petroleum Reserve through the account. The Treasury would fund the account by using the lowest cost financing available. Additional receipts for the sale of petroleum products in any drawdown and distribution of the Strategic Petroleum Reserve would be deposited into the account. It should be noted that the term 'petroleum products' used in this section and in later sections is a defined term under the Energy Policy and Conservation Act (Section 3(3)) and includes crude oil in the definition."

The Secretary of Energy would use the account to obligate funds in accordance with existing law to implement (with exception of the acquisition or construction of facilities) Strategic Petroleum Reserve program activities.

Section 538C(b) mandates the President to seek to fill the Reserve at an average rate of at least 300,000 barrels per day. On December 12, 1980, a similar mandate was enacted in Public Law 96-514. The Committee does not expect this requirement in and of itself to require the submission of a proposed amendment to the Strategic Petroleum Reserve Plan. However, as the Administration alters its plans for the Strategic Petroleum Reserve program so as to accommodate the 300,000 barrel-per-day mandate of part 3, the provisions of EPCA which address the content of the Strategic Reserve Plan and amendments to the plan may well require the submission of amendments to the plan. Existing law provides that the Secretary of Energy shall to the greatest extent practicable acquire crude oil for the Reserve in a

manner consonant with the objectives set out in law. The Committee believes that their objective interpreted as a whole, do not prevent the Secretary from filling the Reserve at a rate of 300,000 barrels per day.

Section 538G requires a quarterly report on Strategic Petroleum Reserve.

In adopting the off-budget financing approach under S. 998, the Committee intends that oversight of the Strategic Petroleum Reserve program will be accomplished through the review mechanisms of existing law and facilitated by the quarterly reports to Congress required by section 538G. Section 159 of the Energy Policy and Conservation Act also provides for congressional review of a Strategic Petroleum Reserve Plan and amendments to that plan, which are subject to disapproval by either House of Congress under the procedures of section 551 of the Energy Policy and Conservation Act. The Committee expects that prior to taking any significant actions not contemplated in the existing approved Strategic Petroleum Reserve Plan in "designing, constructing, and filling the storage and related facilities of the Reserve" the Secretary will submit proposed changes to the Congress as amendments to the Strategic Petroleum Reserve Plan. The Committee further expects that in submitting any proposed amendment to the Strategic Petroleum Reserve Plan, the Secretary will include in the submittal a statement containing the information described in section 159(d), but this statement need not include matters outside the scope of the proposed amendment. Through this amendment process the Congress can exercise timely oversight over the Strategic Petroleum Reserve Program, despite the use of off-budget financing.

It is clear that the 300,000 barrel-per-day mandate included in part 3 will necessitate changes in the Administration's plans for acquisition of storage capacity for the Reserve. The Committee suggests that the Administration consider, among other approaches, the possibility of leasing storage capacity, so as to permit a rapid increase in capacity. Existing law already provides clear authority to lease facilities, and the creation of the Strategic Petroleum Reserve Account in part 3 should facilitate from a budgetary standpoint the use of long-term as well as short-term leases of facilities.

The Committee in adopting section 538H did not intend any implication that existing law is insufficient to support an arrangement between a State and Federal Government for the storage of petroleum products in the Strategic Petroleum Reserve. Rather, the provisions adopted in this section would facilitate such an arrangement by waiving the normal procurement laws and regulations and, by providing other supplemental authorities to the Secretary.

In adopting section 168(c), the Committee recognized that some unexpended, obligated balances of fiscal year 1981 appropriations might carry over and appear as outlays in fiscal year 1982. To avoid this result, section 168(c) operates so as to place such carryovers off-budget by using the Strategic Petroleum Reserve account for these outlays.

FISCAL YEAR 1983

The instruction to the Committee on Energy and Natural Resources for fiscal year 1983 contained in House Concurrent Resolution 115 is that the Committee shall report changes in laws within its jurisdiction sufficient to require reductions in appropriations for programs authorized by the Committee so as to achieve savings of $3.660 million in budget authority and $3.627 million in outlays for fiscal year 1981.

The recommendation of the Committee for fiscal year 1983 would achieve savings of $5,799,301,000 in budget authority and $5,220,473,000 in outlays compared to "current policy" for programs wholly or partially within the jurisdiction of the Committee on Energy and Natural Resources.

The resultant savings from the Committee's recommendation for fiscal year 1983 are based upon these three components: (1) projection of the general program reductions from "current policy" as proposed by President Reagan; (2) projection of the fiscal year 1982 recommendation of the Committee regarding Environment and Natural Resources programs; and (3) reductions in the on-budget authorization for the Strategic Petroleum Reserve in the amount of $3,187,723,000 in budget authority and $3,644,996,000 in outlays due to the establishment in fiscal year 1982 of an off-budget financing mechanism for certain Strategic Petroleum Reserve activities.

FISCAL YEAR 1984

The instruction to the Committee on Energy and Natural Resources for fiscal year 1984 contained in House Concurrent Resolution 115 is that the Committee shall report changes in laws within its jurisdiction sufficient to require reductions in appropriations for programs authorized by the Committee so as to achieve savings of $3,604 million in budget and $3,711 million in outlays.

The recommendations of the Committee for fiscal year 1984 would achieve savings of $3,887,568,000 in budget authority and $4,303,473,000 in outlays compared to "current policy" for programs wholly or partially within the jurisdiction of the Committee.

The resultant savings from the Committee's recommendation for fiscal year 1984 are based upon three components: (1) projection of the general program reductions from "current policy" as set forth in fiscal year 1983 recommendation of the Committee; (2) projection of the fiscal year 1982 recommendation of the Committee regarding environment and natural resources programs; and (3) reductions in the authorization for the Strategic Petroleum Reserve in the amount of $2,046,405,000 in budget authority and $2,264,480,000 in outlays due to the establishment in fiscal year 1982 of an off-budget financing mechanism for certain Strategic Petroleum Reserve Activities.

Mr. McCLURE. I must emphasize, Mr. President, that the Committee on Energy and Natural Resources has recommended the establishment of limitations on the aggregate appropriations for those departments or agencies whose programs are within the jurisdiction of the committee. In some instances, however, jurisdiction over the affected programs is shared with other committees.

For example, in the case of Forest Service programs, the recommended limitation would apply to several appropriation accounts which have been aggregated only for the purpose of this reconciliation measure. The underlying authorizations are provided for in numerous individual statutes which have been enacted over many years. Some of them have originated with the Committee on Energy and Natural Resources; others have originated with the Committee on Agriculture, Nutrition, and Forestry; and still others reflect a joint effort of both committees.

This is particularly the case for programs funded from the forest management, protection, and utilization appropriations account under more than 20 separate statutory authorities. Consequently, the committee was unable to segregate or apportion the total funds within this account between the authorizing committees for budget reconciliation purposes. Instead the approach taken was to establish a limitation on aggregate appropriations wholly or partially within its jurisdiction recognizing that this particular account is shared with the Agriculture Committee.

The committee recognized that the actions it took as part of its recommendations for inclusion in the Omnibus Reconciliation Act of 1981 will not, and indeed should not, serve as a precedent for referral of any subsequent legislation that may be introduced affecting Forest Service programs. Rather the referral of individual bills will continue to be subject to the Standing Rules of the Senate or any agreement that may be reached on an ad hoc basis.

Mr. President, in summary, the committee's recommendations satisfy fully, and indeed exceed, the instructions contained in House Concurrent Resolution 115. The recommendations reflect an extensive and thorough consideration by the Committee on Energy and Natural Resources of the Reagan budget as well as the Budget Committee's reconciliation assumptions and other identified alternatives for achieving the required savings.

Mr. GORTON. Mr. President, it is a pleasure to join my colleagues in endorsing the Omnibus Reconciliation Act of 1981—S. 1377. On March 25, the Senate began its consideration of Senate Concurrent Resolution 9. Since then the Members of the Senate have been occupied with implementing a change of course for Federal spending which we chose overwhelmingly in adopting Senate Concurrent Resolution 9. The Omnibus Reconciliation Act accomplishes the purposes of our action of 3 months ago.

I am pleased that the process has not been an entirely partisan endeavor. On the contrary, Members from both sides of the aisle—recognizing the need to slow the growth of Federal spending in order to curb inflation and to restore productivity to the American economy—have joined to make certain that the goals we set for ourselves will be carried out. I commend my colleagues for their diligent work. Our efforts are in the best interests of our Nation and will benefit all Americans.

Mr. HELMS. Mr. President, the Energy and Natural Resources Committee has included in its budget reconciliation recommendations, provisions that would place a cap on certain Forest Service programs approximately 4.4 percent below the funding levels in President Reagan's proposed budget. As explained in the Budget Committee report, the Committee on Energy and Natural Resources adopted a broad approach in designing legislation to meet its reconciliation instructions and aggregated the total authorized appropriations in six accounts relating to the Forest Service that have been identified for budgetary purposes as either wholly or partially within the jurisdiction of the Energy Committee. The total amount in these accounts was then reduced by approximately $61 million in each of the fiscal years 1982, 1983, and 1984.

The identified accounts are: Forest management, protection and utilization, Youth Conservation Corps; timber sal-

vage sales; rangeland improvements; other general appropriations; and Forest Service permanent appropriations.

Although the specific allocation of the reductions on a program level will have to be made by the Appropriations Committee, the Energy Committee included in the report a recommendation that the reductions not be made in the Forest Service permanent appropriations account. The effect of this action, then, is to allocate the majority of the reductions to the forest management, protection, and utilization account, since the President's budget for the four other accounts includes only $6,500 for fiscal year 1982.

Mr. President, as chairman of the Committee on Agriculture, Nutrition, and Forestry, the action of the Energy Committee is of great interest to me because the forest management, protection, and utilization account is also within the jurisdiction of the Agriculture Committee. Furthermore, the list of authorizing statutes included by the Energy Committee in the definition of programs under this account includes many statutes that are within the jurisdiction of the Agriculture Committee, some of which have just recently been amended by my committee.

For instance, the list includes the cooperative Forestry Assistance Act of 1978, the Department of Agriculture Organic Act, the Forest and Rangeland Renewable Resources Research Act of 1978, and the Multiple Use, Sustained Yield Act of 1960, among others.

My concern is that this action by the Energy Committee may have a significant impact on Forest Service programs under the jurisdiction of the Agriculture Committee without the members of that committee being given an opportunity to first consider its merits. More importantly, I am concerned that this action by the Energy Committee not become a jurisdictional precedent for the future referral of bills to these two committees.

Mr. President, I welcome the statement of the distinguished chairman of the Committee on Energy and Natural Resources that the action of his committee is limited to serving the purposes of this budget reconciliation process and that it is not intended as a precedent for purposes of the referral of legislation to the two committees involved.

I thank the distinguished chairman of the Energy Committee for clarifying this matter.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

UP AMENDMENT NO. 172

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

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from New Mexico (Mr. DOMENICI) proposes an unprinted amendment numbered 172:

On page 169, on line 5, after "1981," insert "there is not authorized to be appropriated".

Mr. DOMENICI. Mr. President, this amendment corrects a drafting error in the leadership amendment which was passed last night. The intent of this amendment is simply to correct that error. I believe it has been cleared with the distinguished minority manager.

Mr. HOLLINGS. Mr. President, we have no objection.

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

The amendment (UP No. 172) was agreed to.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. HOLLINGS. 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. DOMENICI. I yield myself 1 minute.

Mr. President, I wish to acquaint Senator HOLLINGS with the fact that in his absence this morning, while he was attending a very important meeting with respect to better exchange of ideas between State and local governments and the National Government, I thanked him, in my opening remarks, for the tremendous effort he has put forth, from the first reconciliation bill that we brought here, all by itself, as he will recall, in response to the President's request that we expedite the budget cutting process.

I went through the history, so far as reconciliation was concerned, telling the Senate of the involvement of the Senator from South Carolina over the years and how proud I was to associate with him on this measure. I referred to the fact that he had had the privilege of trying it for the first time last year, against very difficult odds, and I recalled that he was one of those who tried to do it the year before.

As the Senator recalls, the Senate tried the year before last and, of course, the the House of Representatives would have nothing to do with it then, and then last year they finally agreed and we had the first in what I hope will culminate with this one in a series of efforts to use extraordinary ways to ask our committees, using their own jurisdiction, to help with this fiscal responsibility process. I wanted the Senator from South Carolina to know that I said that in his absence.

Mr. HOLLINGS. Mr. President, I thank the distinguished chairman of our Budget Committee.

Senator DOMENICI is my friend and it seemed wrong on yesterday, having worked as hard, as diligently, and as effectively as he has to identify all the extraneous provisions of this bill so that we could have that leadership amendment, that it had to be called up in his absence. I am sure he understood the reason and we are all grateful to him for his leadership on this score. No one has done a greater job than Senator DOMENICI on this budget.

I think the first order of business—and I am sure the Senator from New Mexico will agree—is to try to expedite this reconciliation bill. Time is running: we are limited to 20 hours. I have before me a list of some 27 possible amendments. Last evening, we cut back the time, under a unanimous-consent agreement, from 2 hours to 1 hour on each amendment. But if all the amendments I have on this side of the aisles are offered, that would more than consume the 20 hours permitted under the bill. So I hope—and I am sure the chairman of the Budget Committee will agree—that we work together and try to keep Senators in the Chamber and that this be given the first priority. I am sure the distinguished chairman of the Finance Committee is in a most important markup. But if we are going to call up these amendments, Senators are going to have to come to the floor. So rather than consuming time in quorum calls, I would prefer to work with the Senator from New Mexico to keep a few amendments backed up so we can do a little planning. That way the Members will be able to more effectively use the limited time we have to debate the merits of the amendments.

Mr. DOMENICI. I agree.

Mr. HOLLINGS. Maybe if Senator RIEGLE could call his amendment I am sure Senator DOLE will come to the Chamber.

Mr. DOMENICI. We are ready. Let Senator RIEGLE proceed. We have advised our good friend, the chairman of the Finance Committee, and he or someone he designates, perhaps the chairman of an appropriate subcommittee, will be here shortly, but we are ready to let the Senator proceed.

Mr. HOLLINGS. Surely.

Mr. RIEGLE. Mr. President, let me say that I wish to try to accommodate the Senator from Kansas, the chairman of the Finance Committee, who is in a markup this morning on the tax bill, and we have waited some period of time. I suspect that he may not come over until we actually start.

So, I think under those conditions that perhaps we should start and then in due course if he wants to come and speak on this we will all certainly be accommodating in whatever way is required to see to it that he has a chance to participate fully on the other side of the issue.

UP AMENDMENT NO. 173

(Purpose: To limit the repeal of the minimum benefit to new beneficiaries)

Mr. President, at this time I send an amendment to the desk for myself and a number of other Senators, including those who are in the Chamber, Senator KENNEDY, and others, and we will likely be adding additional cosponsors before we vote on this matter.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Michigan (Mr. RIEGLE) for himself, Mr. ROBERT C. BYRD, Mr.

BRADLEY, Mr. SASSER, Mr. KENNEDY, and Mr. PRYOR and other Senators, proposes an unprinted amendment numbered 173:

On page 194, beginning with line 34, strike out all through page 196, line 21, and insert in lieu thereof the following:

(g) This section and the amendments made thereby shall be effective only with respect to benefits payable under title II of the Social Security Act to individuals who first become entitled to benefits under such title after July 1981.

COSPONSORS OF MR. RIEGLE'S AMENDMENT

Mr. Robert C. Byrd, Mr. Bradley, Mr. Sasser, Mr. Kennedy, Mr. Pryor, Mr. Sarbanes, Mr. Mitchell, Mr. Hart, Mr. Randolph, Mr. Matsunaga, Mr. Levin, Mr. Long, Mr. Chiles, Mr. Moynihan, Mr. Bentsen, Mr. Metzenbaum, Mr. Cannon, and Mr. Glenn.

Mr. RIEGLE. I thank the reading clerk. The reason I had the amendment read as brief as it is was that it helps illustrate the fact that what we are dealing here with in dealing with minimum benefit under social security is reluctantly accepting the requirement, the inevitable pressure here to stop paying the minimum benefit to future persons who otherwise would qualify but to draw the line and to continue to maintain that benefit for those who currently receive it.

So, this unprinted amendment seeks to restore the minimum benefit under social security for those who now receive that benefit. I repeat it would not provide that benefit prospectively into the future for new persons who otherwise would come on the rolls and qualify for it.

The date of eligibility then, the cutoff date becomes, August 1, 1981. So if this amendment is adopted anyone who would become entitled to that benefit after that date, August 1, 1981, would no longer be entitled to receive the minimum benefit but all those who currently receive it or who become eligible before that date would continue to receive that benefit as it presently exists in the law.

I might say that we have debated this issue before on the floor and there are a number of key points that need to be made in the course of this debate. I anticipate that other Members will come over at the various points to indicate their feelings on the issue.

I think it is important for us to note that the people who receive the minimum benefit under social security are those who are on the bottom rung of the social security ladder, the minimum benefit being $122 a month, and the people who receive that in many instances are people in very modest financial circumstances. Income from the minimum benefit, in many cases, is absolutely vital to their ability to just maintain themselves in their present financial circumstances.

It is estimated that of the 3 million people who presently receive the minimum benefit roughly 75 percent are women, elderly women. One-and-a-half million of those 3 million people are 70 years old or older. There are a half million who are over the age of 80 and in fact there are more than 80,000 who are 90 years old or older. Some of these are up in their late nineties, numbering in the several hundreds, who will be affected by this reduction in their benefits.

I think it is a harsh, unwise, and unfair policy to suddenly deny these benefits to the current recipients, to those who have already retired. Over the years they have counted on this very modest income in making their retirement decisions and in attempting to plan their future to try to make ends meet.

The people who now receive this benefit have retired under a given set of rules and now what is being proposed is that we come along and we change those rules and we rip away that part of the system from them and others in this situation.

So I think the first point that needs to be made is that if this change goes through, if the new administration succeeds in cutting off the minimum benefit under social security for those who presently receive it, it clearly breaks faith with the workers of this country, it breaks faith with those who are affected. I think it also sounds the note loud and clear that other changes will now come along down the track from those who want to propose dismantling the social security system.

This elimination of the minimum benefit today is just the first step toward a serious effort to dismantle the social security system. That is not an idle charge. Since the effort has come forward to eliminate, the minimum benefit on social security we have also seen the attack on the annual cost-of-living adjustment, the COLA factor. More recently the proposal which made front-page news for several days across the country was the very ill-advised recommendation of the Reagan administration to fundamentally change the early retirement provisions under social security.

That was such an outrageous proposition that this Senate went on record—I think the vote was 96 to nothing—in opposition to any kind of hasty or sweeping change of that kind.

So the proposal here to eliminate the minimum benefits is really a part of a broader strategy to begin the systematic dismantling of the social security system in this country, and which is evidenced by at least these two other very substantial attacks we have seen in recent weeks.

I might say, too, with respect to the older people who would lose this minimum benefit, many of them are in very modest financial circumstances, and if the social security benefit is taken away, it is clear that many of these people are going to be forced onto welfare.

At age 88 or 94 or 97, having come this far in life and having avoided the dole, having stayed off the dole and off public welfare, it is both the premise and the supposition, and actually the effect of this change in the law to force those people onto the welfare system. They will become wards of the State, welfare clients, and have to go through all of the problems and the indignities at that late stage in life, of having to go on public welfare, to go on public assistance, in order to try to replace this meager income that most of them are using to meet the most minimal basic everyday needs that people experience.

So this change is not going to save the Government very much money. It certainly is going to force these people through a traumatic experience that is completely unnecessary, and it is heartless and it just is wrong.

I think everyone here would know that in order for people to be forced onto welfare because of the elimination of the minimum social security benefit, that there is an assets test, there is a means test, and so people, and especially these very elderly people, are going to have to go through this difficult tortured process of facing the fact of going on public assistance, going on welfare, at this late stage in their lives.

In addition to that, to try to make this change in such an abrupt way, on such an abrupt basis, turns out to be a bureaucratic nightmare. For an administration who came into power pledged to the efficient management of Government, it is very hard to square that particular stated purpose with what will actually have to take place if we fail to pass my amendment today. The way the bill reads now this change, the elimination of the social security benefit, has to occur by August 1, which is only 6 weeks away.

It has been estimated by the Department of Health and Human Services that they will have to expend something on the order of 10,000 man-hours of work just to go through the process of recalculating these benefits and decide who qualifies, who does not, and to go through the entire system and to change the system so that the new amounts of money would go out at the proper levels and those who would not receive checks would be removed from the rolls.

It is clear that cannot be done by August 1. So what is going to happen? What will happen here is, unless our amendment is adopted, the checks will go out to people who are not really entitled to receive them, if this change goes through, and some weeks or months down the line there is going to have to be an adjustment so people who get this money, and I assume most of them are going to have to spend it because most of them are in very tight financial circumstances, they are going to spend the money the Government has sent to them, and then they are going to get a notice saying, "By the way, we made a mistake. We should not have sent you that money. We want you to send it back."

So if the person does not have it to send back, there presumably will be some kind of an offset or people who will not get any benefit at all presumably are going to have to somehow come up with the money. I am not quite sure how that is going to be done, and I am not sure how some poor bedridden person somewhere, 95 years old, caught in this situation because of the absolute idiocy of the bureaucratic situation here is expected to respond to that situation. There is no good answer to it, frankly, and I think even those who want to change the system will concede that is a real problem.

I think it is clear from the reaction of the public in recent weeks to the Reagan administration attacks on the social security system, that most people, really an overwhelming majority in the country, see the social security system as one

of our most important and basic and fundamental institutions in the United States. Clearly it is a system that will be facing serious challenges in the years ahead.

I think the future of our social security system rests to a very large degree on the willingness of those still in the work force to continue to contribute their taxes to support the system.

I think that willingness depends on workers knowing that when their turn comes, when they are in a retirement situation, and they have paid into this system based on an expectation of future benefits, that those benefits are going to be maintained and not ripped away at the whim of some new administration that comes along or is ripped away because somebody here in the Senate or on the Budget Committee suddenly decides that this is a great way to try to shift around the budget impact by removing these benefits that people have paid for and which they have a right to expect.

I think the ability of people to have faith and confidence in the social security system is going to be badly damaged if we continue to allow this kind of an assault on the system itself.

As I say, this is only one of three different attacks we have seen just within the last short period of time.

I ask unanimous consent that Senator RANDOLPH be added as a cosponsor at this time.

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

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

The PRESIDING OFFICER. Who yields time?

Mr. RIEGLE. I yield to the Senator from Massachusetts 5 minutes.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized.

Mr. KENNEDY. Mr. President, I join with the Senator from Michigan in proposing this particular amendment.

As the Senator from Michigan very well pointed out, we did debate this issue at some length during the previous budget consideration. But I do think it is essential that we have an opportunity to discuss the importance of this amendment again with our colleagues in the Senate.

And, hopefully, the social security recipients who will be affected by these budget cuts, some 36 million of them in this country, will know about this debate. And I hope working people and young people who will be affected by social security over the future will also hear about this debate and discussion.

Mr. President, in his February message to the Congress of the United States, President Reagan used these particular words:

> I know that exaggerated and inaccurate stories about these cuts have disturbed many people, particularly those dependent on grant and benefit programs for their basic needs.
>
> Some of you have heard from constituents, I know, afraid that social security checks, for example, were going to be taken from them. I regret the fear that these unfounded stories have caused, and I welcome this opportunity to set things straight. The full retirement benefits of the more than 31 million social security recipients will be continued, along with an annual cost-of-living increase.

That was on February 18, 1981.

On October 21, 1980, directly quoting the President during his debate with President Carter, he said:

> No one presently dependent on social security is going to have the rug pulled out from under them and not get their check.

Well, Mr. President, I believe if we accept the position in the proposal that is before the Senate now we are effectively pulling the rug out from under the neediest people in our society—elderly people, widows, the disabled—those who are dependent upon the minimum benefit. We are running contrary and in conflict with the assurances which the President of the United States has given to the senior citizens of this country who are dependent on this particular measure.

I join in with my colleagues with a sense of deep concern. If we fail to accept the Riegle amendment we are effectively breaching our contract with the senior citizens of this Nation who are most dependent upon this minimum benefit.

What we are saying is that this may very well just be the beginning of additional cuts in the social security system—cuts which I believe are unwarranted, and unjustified. The case has not been made to any committee in the U.S. Senate that the difficulties or the financial situation of the Social Security Trust Fund are so immediate that these particular cuts are warranted and justified.

As a matter of fact, we have information to the contrary.

Not long ago, in a Senate forum which was sponsored by the Human Resources Committee, we listened to four former heads of the social security system. We listened to Mr. Schottland, who was head of the social security system under Dwight Eisenhower. We listened to Mr. Ball, who was head of the social security system under President Kennedy. We listened to Mr. Driver, who was head of the social security system under President Carter. And we listened, as well, to Mr. Gwirtzman, who was the chairman of the President's committee to examine the integrity of the social security system. That committee report to the Congress was just 6 months ago.

Each and every one of these expert witnesses refuted the administration's recommendations on the minimum benefit and the administration's other proposals on social security. They said it was unwise, unjust, and unfair, both in terms of social security compact concept that exists between the Federal Government and those that have paid into the social security system, and with regard to financial integrity of the social security system——

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

Mr. KENNEDY. Mr. President, will the Senator yield me 5 additional minutes?

Mr. RIEGLE. Mr. President, I yield 5 minutes to the Senator from Massachusetts.

Mr. KENNEDY. They did indicate that we in the Congress ought to permit borrowing from the different trust funds in order to maintain the financial integrity. Some of the trust funds are in surplus, particularly the medicare trust fund. We could meet our responsibilities to the Social Security Trust Fund if we were to take those particular steps. But they rejected categorically this particular proposal. I believe that we should reject the proposal that is before the Senate at this time by supporting the Riegle amendment.

Mr. President, I think it is worthwhile to point out that no one can tell us here on the floor of the U.S. Senate the real effort that will be made by social security recipients to try and take advantage of the SSI program in order to recoup some of their losses under social security.

The argument will be made that hundreds of thousands of those that will be cut from the minimum package will be able to make up their loss of income with SSI. What they do not point out is that there is an income test under SSI. Individuals who had worked many years ago in the 1950's and 1960's counted on this minimum benefit and, of course, are unable to go back to work at the present time. We all understand that. So their opportunities for employment are certainly nonexistent today. Maybe they have been able to save the $1,600, $1,700, $2,000 in their own savings accounts. Well, the fact remains that the liquid assets test under SSI, effectively excludes them from supplementing their income or being eligible for SSI.

There is no means test in social security, but there is a means test in SSI. There are those that tell us, "Well, these individuals will be just as well off with the reduced benefit program that is being recommended to the Senate today. We are really not affecting many of our elderly because they can come into SSI." The elderly people ought to understand that if they exceed $1,500 in the bank, which they may have saved over a lifetime, that they will not be eligible and they will not be able to benefit from this particular SSI transfer. So they are being shortchanged in that area.

There has been no examination, no hearings, and no calculations, other than the broadest kind of estimates, about what the real damage will be to those individuals.

We are, Mr. President, unless we accept the Riegle amendment, doing a very grave disservice to hundreds of thousands of our neediest people in our society—the senior citizens in our society. I do not believe this particular program is warranted or justified.

It basically, runs contrary to the longstanding historic commitments that the Federal Government has had with the working people of this Nation. It is, I believe, a breach of trust with our seniors.

Just the transfer itself, the recomputations required by the computers, will cost some $250 million this year; effectively a third of all the alleged savings for this particular year, not even including, as the Senator from Michigan

points out, the additional costs in terms of welfare.

It seems to me, Mr. President, that unless we accept the Riegle amendment we are saying to the seniors of this country, "Beware, this is the beginning of further cuts in social security." It is a basic and fundamental violation of what I consider to be perhaps the most important agreement that has ever been reached between the Federal Government and the people of this Nation, and that is the integrity of the social security system.

We all know that at some time or other we depend upon the word of the Federal Government. What Member of this body would vote to change the financing rules for elections, to reduce spending limits and make them retroactive?

Mr. President, it seems to me that we should not at this time break that trust and that confidence which has been achieved over scores of years with our seniors. The only way that that integrity and that respect can be maintained is by accepting the Riegle amendment. I hope that it will be accepted.

Mr. RIEGLE addressed the Chair.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. RIEGLE. Mr. President, I wish to thank the Senator from Massachusetts for his very profound and moving comments on this issue, and for his leadership in this entire area, meeting and understanding and responding to the needs of senior citizens and very particularly with respect to the vital role that social security plays in our society and its importance in terms of something that people across the land know they can depend upon, know that it is there, and know that it is secure.

When the Senate was asked the other day to respond to these hasty recommendations by the Reagan administration to severely damage the early retirement aspects of social security, this Senate went on record unanimously against those proposals and to not act in haste in starting to dismantle or damage the social security system. I think we did so because of the profound feeling across the country that the people have about the importance and the vital nature of this system.

Mr. President, I ask unanimous consent to add as additional cosponsors Senators MITCHELL, MATSUNAGA, LEVIN, LONG, CHILES, MOYNIHAN, BENTSEN, HART, METZENBAUM, and also ROBERT C. BYRD, with the specific request that, in the case of the distinguished minority leader, he be shown as the prime cosponsor and that his name be listed following mine on the list of cosponsors.

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

Mr. RIEGLE. Mr. President, I understand that the Senator from Colorado would like to speak. I yield to the Senator from Colorado.

Mr. HART. Mr. President, I thank the Senator from Michigan for yielding.

I wish to identify myself very strongly with this amendment and to add a word of support and encouragement to the Senator from Michigan for taking the lead on this, and also to associate myself with, I think, the compelling and convincing remarks of the Senator from Massachusetts, Senator KENNEDY.

I hope the Senate will see fit to support and adopt this amendment. I think it makes eminent good sense and it certainly is what a nation that is fair and just would want its Congress to do.

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

The PRESIDING OFFICER. Who yields time?

Mr. SYMMS. Mr. President, I yield myself such time at I may need.

This is not the first time that the distinguished Senator from Michigan (Mr. RIEGLE) has focussed our attention on the social security minimum benefit. During floor debates on the reconciliation instruction 3 months ago, the Senator opposed the President's proposal to eliminate the minimum benefit on the grounds that it would harm millions of elderly poor persons.

At that time, a great deal of controversy and concern surrounded the proposal, partly because there was so much misinformation circulating. Senator DOLE tried to set the record straight.

Three months later, after having given this proposal careful consideration and after having amended it in committee to protect the elderly poor even further, I will try to set the record straight again.

First of all, and I think this is significant, there is widespread agreement that the minimum benefits should be eliminated. It is widely recognized that the minimum benefit—which pays an amount in excess of what the worker would have earned using the regular benefit formula—no longer achieves its original purpose.

When enacted, the minimum benefit was intended to provide retirement income for workers with very low wage histories and for those elderly persons whose employment had taken place primarily before social security covered their work.

Times have changed. Today, people who have worked their lifetimes under social security at low wages receive a benefit based on the regular benefit formula that exceeds the minimum benefit.

Elderly poor people receive no extra income from the minimum benefit because their Federal assistance payments from SSI are reduced dollar for dollar on account of other sources of income.

The result is that today, the minimum benefit provides a windfall gain to people with short work histories under social security—such as those with long periods of civil service employment.

This has been well documented in separate studies by the CBO and GAO. The proposal to eliminate the minimum benefit, therefore, comes to us from the President, the GAO, and even the House reconciliation bill.

The only real question centers on whether or not the minimum benefit should be eliminated for those now receiving it—whether they, too, should have their benefits recalculated to reflect actual earnings in covered employment.

The concern is whether or not there would be, as often alleged, a large group of elderly poor who would be adversely affected by this change. The best estimates of HHS show that even under the President's proposal, there would not be.

According to HHS, there are only about 300,000 out of the 3 million minimum beneficiaries who could be poor and adversely affected by an elimination of the minimum benefit. Even this group may not be poor, however. Anyone 65 or older who is poor is eligible to receive SSI. If the minimum benefit is eliminated, their SSI payments would rise dollar for dollar.

The Finance Committee provision, an important modification of the President's proposal, makes it even more certain that the elderly poor would not be adversely affected. Under the Finance Committee provision, anyone 60 to 64 who meets the SSI eligibility requirements, would be eligible for a special SSI payment even though they are not yet 65.

To insure that they experience no reduction in income, the amount of this payment would be equal to the difference between the minimum benefit they had been receiving and their newly calculated benefit. This means that no minimum beneficiaries 60 or older who are poor must experience a loss of income.

I think the facts speak for themselves. The amendment to eliminate the minimum benefit only for future recipients reduces savings by roughly $900 million while doing nothing to help the elderly who are truly in need.

Moreover, this amendment would create a serious problem of inequity. Someone who retired, say, last year or last month, would receive a different social security benefit than someone retiring next year with virtually identical earnings history.

I think that is one of the most important points that we are talking about here today. I am confident that the Senate Finance Committee provision offered a reasonable and fair compromise.

I think more important, Mr. President, if we are going to start breaking into this reconciliation proposal today, what we are going to be doing is sending a signal that the Congress of the United States is not going to carry out the intention in all of the talk and all of the things we have heard in the past year and early on this year to actually try to get a handle at some point and in some way on Federal expenditures.

Of course, all of these particular votes are not necessarily easy votes, but I think this is one case where it would certainly be an error for this body to accept the Riegle amendment. I know that my friend from Michigan offers it most sincerely, but I think that he, himself, would have to admit it would be difficult to explain, if the Riegle amendment passes, that we have two classes of recipients of minimum benefits out here. What is the explanation to the person who retires on the 1st of August or after the 1st of August? Why should they be different from someone who retired, say, on the 4th of July? How can we come up with anything that would be equitable in that particular case?

I think for the reasons stated, this bill is the most equitable solution and it will

not leave those people without support and help and a safety net who are truly in need.

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

Mr. RIEGLE. Mr. President, may I inquire as to how much time remains on this side?

The PRESIDING OFFICER. Three minutes.

Mr. RIEGLE. I wonder if the ranking minority member would yield 5 minutes? I have only 3 minutes left.

Mr. HOLLINGS. Let me do that.

Mr. RIEGLE. And would he yield 5 minutes to the Senator from Florida?

Mr. HOLLINGS. I do not want to set a precedent, but so that all Senators will know, I have a list of over 20 amendments each from the majority and minority side, and I know there may be other amendments. I am really yielding time that others might have to use on their own amendments. I am glad to do it, but let us not set that as a precedent. I think in our caucus we will have to discuss cutting back further on the time for each amendment.

Mr. CHILES. Will the Senator make it 6 minutes and yield 3 minutes to me and 3 minutes to the Senator from Michigan?

Mr. HOLLINGS. All right.

Mr. CHILES. I thank the distinguished Senator from South Carolina.

Mr. President, I have spoken on this matter, as a number of us have, on several occasions. I think I can do it quickly. What really concerns me when we start talking about this minimum payment is that we are talking about—and I have listened to all the numbers and I have studied those numbers myself, and I listened to all the hearings last year from all the commissions—approximately 1.2 million people. We are talking about over 3 million people who get the minimum benefit. I think 1.2 million of those people are below the poverty lines. So we are talking about those people.

Yes, there is something those people can do. Yes, they can be taken care of. It is a very simple thing: They go on welfare. That is exactly what they do.

We are talking about people who in the main are over 70 years old and most are over 75. Most are getting the minimum benefit because in my particular State a lot are farmers and they did not get into the program until after they were over 50.

They are people who just went out and worked on the land. They did not know much about payrolls or anything else. When they were 50, they were told they had to pay social security on themselves and they did. They did what the Government told them.

They were told over the years that they were going to get certain benefits. That was more than they paid in, but we are the ones that did it, this Congress. Many of us were responsible. I proposed the amendment that froze the minimum payment about 2 or 3 years ago, to try to save some money.

At that time we began to try to pare down our appetites. But it was us and our predecessors who gave this kind of benefit, who allowed these farmers over 75 years of age to retire and now we are going to say to those people, "You are not going to get a Government check any more. We are cutting that off. You just go sign up for welfare; it can take care of you."

Think of these people. They do not sign up for food stamps because they have too much pride. They have the idea that they have a check coming from something that they paid into. The system started late. That is why they did not get into it earlier.

I will be dadgummed if I do not think we can find the money somewhere else, in some other program that we can save in, and not tell these people, "You can go get welfare; that is all you deserve. We have decided we are going to save some money now and we are going to change our whole way of acting. We are going to put this Government on a firm basis. We are going to pay out a lot of money for a lot of other things, but we are not going to take care of you, so you go get welfare."

Mr. President, it seems to me we can say, yes, we are going to cut out the minimum benefit for people, we are going to say we cannot change these things. But, for goodness' sake, to go back and tell these people, "We are going to cut you off, you go back and get welfare"—my Lord, that is like sending these people to the poorhouse. That is how they would feel. They know about the poorhouse. That is what used to happen to them before we started changing things in this country.

I am not willing to do that. As I say, I would find some other way to save this money.

Mr. RIEGLE. Mr. President, before the Senator from Arkansas speaks, it is important for the Senate to know that, if the Senate accepts our amendment to maintain this minimum benefit for those who now receive it, the overall spending levels will still be below the Reagan budget request. In other words, we still will have saved more money than the President asked us to save. So, by inserting the money in this amendment back into the budget, we are not going above the totals the President asked for. As a matter of fact, we are below his totals and it is important that no one misunderstand that point.

Mr. PRYOR. Mr. President, I very much appreciate the ranking minority member on the Budget Committee giving me this 2 or 3 minutes. I would be glad to yield back my time to the distinguished Senator from Florida, who so eloquently addressed this issue, if he desires it.

Also, I thank the distinguished Senator from Michigan, who has brought this issue to the floor this morning.

Mr. President, when we were all back in school we learned about the full faith and credit clause of the Constitution. I am certain most law students today are familiar with this clause. This clause is a vital part of that Constitution which we revere so much.

Mr. President, today we are addressing an issue which is akin to the full faith and credit clause of the Constitution.

We are addressing what I consider to be a solemn trust which we must not breach with the people—a commitment which must not be broken with those who are, today, drawing the minimum social security benefit. Those with whom we have contracted in recent generations, for a guaranteed benefit in their retirement years.

This is exactly, Mr. President, what this amendment offered today by the Senator from Michigan is addressing. It is that commitment. It is that feeling that Congress does not breach that faith. It must not destroy that commitment or that promise that it has made to these individual citizens who are drawing this minimum social security benefit.

Mr. President, this amendment is sound, it is right. We have heard arguments from the other side as to why it should not be enacted. But, Mr. President, once again, we must look at the overall promise this amendment restores and at the catastrophic result if this amendment is not passed and if it is not part of this reconciliation process.

Mr. President, I yield back the remainder of my time to the Senator from Michigan if he wishes it.

Mr. RIEGLE. I thank the Senator for doing so, Mr. President. I just want to make two points very briefly.

The first point is with respect to the question of the Senator from Idaho when he asked earlier about the difference between people in different categories here. The difference is exactly as spoken by the Senator from Florida a moment ago. That is, that people who made retirement decisions 10 years ago, 15 years ago, 6 years ago, 20 years ago, depending upon the ability to rely on the social security payment in the future, cannot go back to work.

The motion that, somehow or other, they can go back and undo a retirement decision because, now, suddenly, we have changed our mind and want to rip this benefit away is just not practical.

I would say further that, today, in the Committee on Finance, we are marking up the tax bill. That room is so crowded with people pressing their own special interests that you cannot even get into the room. You have to stand in line down the hallway just to get a chance to get into the room. The reason that is important to note, Mr. President, is that the old people in this country who rely on the minimum social security benefit are not able to come here and lobby for themselves. That is one of the reasons they were the first ones put on the Reagan hit list, and they are on the hit list here today unless we change that today by the force of my amendment. The House of Representatives, to their credit has already done so, they have made this restoration. We ought to here.

I reserve the remainder of my time.

Mr. SYMMS. Mr. President, I yield myself such time as I may need.

I just want to say again, Mr. President, that it is no wonder that the budget of the United States is so astronomically out of shape. I hear my friends here making the argument that we are going to keep on giving this money out whether or not it is a fair and equitable system. We do know that those people who are truly in need are going to get dollar-for-

dollar SSI benefits to replace the minimum benefit.

So we cannot stand in here and make the argument that, somehow, we are going to take money away from those people in true need.

We know there is an equity problem here, Mr. President. But what are we going to do? Are we going to keep on spending $2.9 billion in this amendment that the Senator from Michigan offers, whether it is right or wrong, just because, sometime a Congress, years past, agreed to do this. If we are going to do that, Mr. President, then we have no hope of ever bringing this budget under control. We have no hope.

That, too, has an impact on senior citizens, because inflation is more devastating to the senior citizens than, probably, any other group of citizens in the United States if you want to lump a group together. It cuts right into the purchasing power of their income. Most of us would agree that the inflation got started right here, in this Capitol building, by giving the Government permission to print money and expand the currency, and the volumetric expansion of money supply causes the general price levels to rise. That is what is hurting the senior citizens, Mr. President.

So I urge the membership of this body to vote down this amendment and I do not, in any way, take away from the sincerity of the Senator from Michigan who offers it, because I know he does offer it in sincerity.

I just say again, that dollar for dollar, those people in true need will be getting SSI benefits to replace the minimum benefit. But this amendment will cost $2.9 billion in 3 years.

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

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

Mr. SYMMS. Yes, Mr. President.

Mr. RIEGLE. I thought I heard him say earlier that there are 300,000 people who will lose out, even by his estimates. I do not agree with those projections, but that is 300,000 people who would not be protected. Did I hear him say that? I am just wondering what he sees happening to those people, or do we just discard those?

Mr. SYMMS. I say to my friend from Michigan that those are 300,000 that are unaccounted for. They may be rich, they may be poor. The statisticians could not keep track of them.

Mr. RIEGLE. But what happens to them? Maybe some are wealthy. I would assume that because the majority of the country is not wealthy, most of them are probably not wealthy, most of them are poor. Assuming some are poor, what happens to them?

Mr. SYMMS. Mr. President, I just say back, before I reclaim my time from my friend from Michigan, I guess we could say that the majority of people are wealthy or not wealthy. But it is all a question of compared to what? It is all a question of compared to whom?

I think that, by and large, all groups of people in the United States, compared to the run of the ladder in other places, are much better off. But they will not continue to be better off if Congress cannot get hold of the purse strings, if we are going to go ahead and spend $2.9 billion that we have to borrow and we have an opportunity here to make a correction that is going to be equitable. It is not equitable to say that I am going to retire or a senior citizen is going to retire on the 30th of July, so he gets the benefit. The next day, the 1st of August, someone else retires and he does not get the benefit. What is equitable about that? Are we going to come in here and offer another amendment to keep the minimum benefit going to the 30th of September or until Christmas? Is that what the amendment is?

Mr. RIEGLE. Let me try to respond to that, Mr. President. I do not think anyone says there is a way to achieve perfect equity in the system, whether it is this amendment or other amendments. The question is whether somebody who made a retirement decision 10 years ago and is now relying on this benefit, who has counted on it and whose standard of living requires it, whether yanking that away from that person now without ever indicating that that might happen, is more inequitable than the kind of inequity the Senator talks about. I think it is. I think that is a greater inequity.

Mr. SYMMS. It is compared to what? Here is the situation: The senior citizen who is poor and over 60 is going to get SSI benefits, dollar for dollar, to replace the minimum benefit. So these people who are accountably poor are going to get it.

Mr. President, I reserve the remainder of my time, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The time will be charged against the Senator's time on the amendment.

Mr. HOLLINGS. How is the time to be charged? We have just about run out of time on the minority side.

Mr. SYMMS. I yield myself 1 minute.

Does the Senator want to agree on a time to vote?

Mr. HOLLINGS. We are waiting for the distinguished Senator from Arkansas, and he should be here about 12:25. Let us check on that.

Mr. RIEGLE. Mr. President, I suppose I have 1 minute or 20 seconds remaining.

Mr. HOLLINGS. I yield 5 minutes on the bill to the Senator from Michigan.

Mr. RIEGLE. I thank the Senator from South Dakota. I assure him that we want to move expeditiously, because, as he correctly points out, a number of other amendments are standing in line today.

Mr. President, I ask unanimous consent that the names of Senator CRANSTON, Senator SARBANES, and Senator TSONGAS be added as cosponsors of this amendment.

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

Mr. RIEGLE. Mr. President, first, I draw attention to the fact that we now have approximately 15 cosponsors of this amendment. I believe that is a very significant showing of support on this issue and the importance of this issue to the country.

I say to the Senator from Idaho, who is my friend—that I do not make my comments in any personal way, as he knows—it is very easy for those who might be in reasonably good financial circumstances to assume that other people out there who are living right at the margin and who are literally wondering how they are going to survive financially, day to day, will somehow get by. Given the high inflation he speaks about, given the high cost of food and shelter and medical care, especially for elderly people—many of these people are absolutely frightened to death.

They are out there struggling to make ends meet, and finding it harder and harder to do that. The first group that has been targeted aid has gone on the hit list is that group on social security, that group least able to go out and fend for themselves.

Bear in mind that more than 80,000 of these people are over the age of 90. Three-quarters of them are women. What is it we actually expect them to do? What is the answer?

It is one thing if we are able-bodied and more or less in the prime of life, as U.S. Senators, and we talk about how easy it is to cope. But what if somebody is 97 years old and is alone? What are they to do? The fact is that there is no answer here. The proponents do not come forward with an answer.

The unspoken answer is, "Well, look, that's the way it works out. We can't do everything for everybody." That is the theory.

We looked at this problem many years ago. The reason we established a minimum benefit was that we felt it was important, within the overall construction of the social security system, that it be done and that people in that circumstance have some basis upon which to depend on a future benefit as they try to map out their plans for remaining financially sufficient throughout their lifetime.

Part of the answer we hear is that we should let them go on welfare. It is one thing to say "SSI." That makes it sound nice and easy. But the Senator from Florida used a more meaningful phrase when he talked about people having to face the prospect of the poorhouse. That is what we are talking about here. I hope there are still a few shreds of compassion left around here.

It is not as if we are not going to save a lot of money next year. This proposal is within the amounts the President has asked for. We are under his targets. We have cut deeper than he has asked us to cut. We can make this restoration and still be below the Reagan budget numbers.

Let there be no confusion about that. We have gone beyond what the President has asked for in the way of a cost-cutting goal, and I believe that is significant. It is a significant step we have taken. But let us not tell these poor, old folks, who are the least able to fend for themselves, that they must come down here and lobby and elbow their way into the committee rooms and ask for our consideration. Let us not make them the first people to me damaged by this hit list mentality. I believe that is wrong.

The PRESIDING OFFICER. Who yields time?

Mr. DOMENICI. Mr. President, how much time remains in opposition?

The PRESIDING OFFICER. Seventeen minutes in opposition.

Mr. DOMENICI. Is the majority leader prepared to speak at this point?

Mr. BAKER. Mr. President, will the Senator yield me 3 minutes?

Mr. DOMENICI. I yield.

Mr. BAKER. I thank the distinguished chairman of the committee.

Mr. President, service in the Senate is always beset with difficulties and inconvenient judgments to be made on behalf of the people of this country. But that responsibility is the paramount responsibility and fundamental trust of every Member of this body, to do those difficult things that must be done, for the greatest good for the people of the United States.

Few things rank in importance on the domestic scene with the saving of the social security system and bringing it back from the edge of the abyss of insolvency. Unless we face that responsibility, unless we do those difficult things we are required to do, unless we face reality, we surely will pay the price at the hands of the public for the failure of our trust in the formulation of the public policy of this country. Social security and the elimination of minimum benefits as suggested by the Finance Committee clearly fall within that category of different subjects.

Mr. President, we are not here dealing with the question of our compassion for the elderly and the poor. We are dealing, rather, with the solvency of the system and our trust and responsibility to virtually every American who now shares or will share in the future in the protection of the social security system.

So, please, let us not limit this debate to the measure of our compassion and concern. Please let us not narrow our focus to the point where we ignore the future consequences of an action such as this, which may be taken because it is momentarily attractive and expedient politically.

Mr. President, if we do not face up to this responsibility in this first amendment to this reconciliation bill, if we do not support the committee of the Senate which has made to us this recommendation for salvaging the solvency of this system, if we do not do that difficult and politically nonexpedient thing that is required of us to provide for the future good of Americans, if we do not do the difficult thing that is now placed before us, I have grave doubt that we will be able to do it for the remainder of this year.

It is an attractive amendment, beguiling in its political consequences, but it is destructive to the most fundamental responsibility we have as Senators, and that is to preserve and protect this country and her population against the insolvency of a system that guarantees the security of virtually every citizen.

Mr. President, I urge the defeat of this amendment.

Mr. RIEGLE. Mr. President, I ask unanimous consent that the names of Senator CANNON and Senator GLENN be added as cosponsors of this amendment.

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

Mr. DOMENICI. Mr. President, I thank the distinguished majority leader for his remarks. They go right to the point.

I yield myself 3 minutes to explain further the issue as I see it.

Obviously, Mr. President, this is a substantive matter within the jurisdiction of the Finance Committee. The Finance Committee voted 18 to 2 to report their reconciliation instructions, and those instructions, in the form of this bill, included the recommendation on the $122 unearned social security benefit. That is point No. 1.

Second, the funds that Senator RIEGLE wants to restore amount to less than three-tenths of 1 percent of the total direct spending outlays under the authority of the Finance Committee.

This was a further attestation to them as substantive lawmakers' confidence that this was one that they should change. They had a myriad of other direct and entitlement spending that they could have addressed. This one is only three-tenths of 1 percent, and yet they found it necessary, among all of those, to say this one should terminate.

Third, it is important for us to understand that this is unearned social security. These beneficiaries are entitled to this base because Congress said: "We will make an exception and they do not have to earn it as others in social security must."

If they come off the rolls they will get what they earned as others have. In addition, most of them will be entitled, if they meet the poverty criteria of this country, to an equal amount from that system which was not intended to be supported by social security funds but rather the SSI system which was permitted to help those in need. If there are such they will get that money instead.

This is not a new issue. The GAO in 1979 studied this minimum benefit and they found that at least 74 percent of those who received the minimum benefit do not depend significantly on social security for their support. Those who do, as I indicated, are going to be eligible for SSI.

Remember, Mr. President and Members of the Senate, that we did not say to those who want to receive unearned social security minimum benefits that they had to be poor. We did not say they could not qualify if they had another pension. That is what GAO is talking about. Seventy-four percent who received the benefit do not depend significantly on it for their support.

What does that mean? That means they have found a way to get this minimal social security, not in the way we intended for those who are poor and did not have enough time to work to qualify for it. Ingenuity has caused these others to go and qualify even if they had a Federal pension, if they had private pensions, if they had military pensions, because we created this unearned benefit based upon a very short work history or even a cash pay-in. The intention was to cover those who had not enough time to come under social security and were poor.

In closing, I want to commend the Committee on Finance. There was one group of Americans who might have indeed had a problem. The age definitions for SSI, income supplement, was 65. They found there just might be some who were getting this unearned social security who were between 60 and 65, and by definition that few would not qualify for SSI. They altered the SSI so they would not fall without that income. But obviously our clear intent would cover them for they would have to have the poverty level that SSI requires.

So I wholeheartedly agree with our majority leader. Cutting anything is not easy. Making the social security system solvent over the long haul is not going to occur with just this vote. But this was one of those up-front votes recommended a number of times by other people besides this President, which is going to indicate whether we are going to have the courage to bring this budget under control.

It is a first test of whether we are going to approach the social security solvency in other areas yet to be addressed by the substantive committees of Congress.

For if this one will not go, if this one will not pass, then which ones will? The Senate has voted on at least two occasions to support assumptions in the reconciliation instruction and in the First Budget Resolution to the Committee on Finance saying, "Yes, do this one."

I acknowledge it is within their jurisdiction as to whether they want to or not, the jurisdiction of that committee. They did. They chose to by a rather overwhelming vote.

My final remark is, in addition to those made by our leader with reference to fiscal responsibility, everyone should know if this one fails, unless we can find some other savings the Committee on Finance, which has been marvelous in its response to the institution which asked them to save a given amount of money, will not have achieved their requisite instruction totals, and we will be back to saying which committees are going to do it. If Finance did not, because we break their proposal here, then who will, who should?

When this issue has been before us enough times, voted on enough times, so that when we finally get down to that last "t", that is changing the law with language in a piece of legislation, and we will say "No," I do not think that is what we ought to do today. I do not think that is what we ought to do in the days to come, the next 2 or 3, on this reconciliation instruction when our substantive committees have made their best recommendations.

Mr. MITCHELL. Mr. President, I rise in support of the amendment that the Senator from Michigan has offered. Restoration of the minimum social security benefit would reverse one of the most seriously flawed budget cuts proposed by the administration.

The concerns raised by the proposed elimination are typical of those raised by the administration's recent social security proposals. These proposals have

shaken the confidence that the elderly and many working men and women have in the social security system. Although the administration contends that its proposals would not affect current social security recipients, this proposal directly affects current beneficiaries. The termination of the minimum benefit would break commitments made to existing and future beneficiaries. Often in many cases, recipients of the minimum benefit are those with the lowest wages in their work history.

Not only does this proposal place a substantial burden on those least able to adjust to it, it also creates a significant administrative burden on the Federal Government. The Department of Health and Human Services has estimated that recalculating the benefit for existing beneficiaries will require 3,200 work-years this year and 7,300 work-years in 1982. This additional work effort is wasteful and it is even questionable that HHS could accomplish it under existing budget constraint.

Mr. President, I congratulate Senator RIEGLE for his persistence in attempting to present this inequitable proposal from being enacted into law. I urge my colleagues to support this amendment. His proposal is a reasonable compromise between eliminating the minimum benefit and making no change.

Mr. LEVIN. Mr. President, I support the amendment offered by my colleague Senator RIEGLE.

I would like to ask the Members of this body to give serious thought to the psychological effects on many of our elderly should we not adopt the amendment before us today—the results of not adopting this amendment would be horrendous.

Mr. President, we are talking about eliminating benefits to current recipients—those already on the rolls, many of whom are medically indigent, have no close family members and cannot work. We are telling many of them they must now go on welfare, or that they simply must make it on a lower fixed income.

Mr. President, we are talking about 13,678 beneficiaries who are over the age of 95; 66,396 are between the ages of 90 and 94; 66,552 are between 86 and 89; 248,534 are between 80 and 84; 410,376 are between 75 and 79; 508,226 are 70 to 74 years of age.

These are the people who will be affected—the people that are being told that the Government has changed its mind about them—that it has decided not to honor its commitment to them.

Mr. President, it is hard to believe that this Senate would support such a clear breach-of-contract with the elderly citizens of this Nation. What have we come to when we find it necessary to renege on a commitment made to millions of older Americans who have reached the twilight of their years? I say let them live these years with dignity and peace of mind, and with the reassurance that their Government can be depended on to keep its promises.

Mr. BENTSEN. Mr. President, I am pleased to join Senator RIEGLE as cosponsor of the pending amendment to retain the minimum social security benefit for persons currently receiving it. As Senator DOLE noted on March 30 when we last discussed this provision, the social security programs are complex and potential ramifications of major changes in the programs can be difficult to explain in brief remarks on the Senate floor. However, as a member of the committee charged with jurisdiction over the social security programs, I would be remiss if I did not take a few minutes to review with my colleagues some information that may be useful in reaching a decision about how to vote on this amendment.

Social security beneficiaries whose average lifetime earnings in covered employment are low, receive a minimum benefit—or Primary Insurance Amount (PIA)—which is higher than what they would receive if their benefit level was computed on the basis of the regular earned income formula. Low average benefits can result either from work at a low wage over a long period of time or from only a few years attachment to the program.

The minimum benefit has been a feature of the social security program since its earliest days, and was originally adopted as an administrative cost savings device and as a means of providing a very modest monthly income to annuitants. However, because the administrative difficulties associated with calculating small accounts have been minimized with the advent of computerized recordkeeping, and because alternative financial assistance programs are now available, the Social Security Amendments of 1977 froze the minimum benefit at $122 per month for new entrants into the program.

Presidents Carter and Reagan each proposed that the minimum benefit be eliminated for future beneficiaries, an approach with which I concur, however, the current administration has gone one step further and recommended that the benefits received by current beneficiaries be recomputed based on actual earnings. According to the Social Security Administration, implementation of the President's proposal retrospectively will mean that the average minimum beneficiary would experience a 40-percent reduction in his or her monthly benefit amount.

The administration's argument for recomputation of benefits draws heavily from a 1979 GAO study which found that for the year 1977, many minimum benefit recipients were attached to the social security rolls for a short time only and have alternative sources of income. For instance, spouse's earnings, Government pensions, and private personal resources.

The conclusion, then, is that the social security minimum benefit constitutes a windfall for these annuitants—a luxury we cannot now afford to pay out of Government coffers. Additionally, the administration points out that minimum benefit recipients are not drawing the social security benefits as a consequence of earned income—instead they receive a stipulated amount, sometimes higher than what they would have been entitled to had their attachment to the program and earnings been computed on the basis of the standard formula applied to regular program participants. OMB estimates that adopting the administration's approach would save $1 billion in fiscal year 1982 and $1.1 billion in fiscal year 1983, mostly from implementation of the retrospective aspect of the proposal.

However, it should be stressed that many persons now on the minimum benefit have been receiving social security for years and retired long before alternative pension programs were as generous as they now are. There is reason to believe that the GAO study of 1977 entrants into the program is not an accurate reflection of persons who entered the rolls 20 or 30 years ago—a conclusion with which the GAO study authors agree. Furthermore, it is generally acknowledged that while other welfare programs (such as SSI) may pick up a portion of those persons who lose income through benefit recalculation, it is also true that we know little about the assets and financial condition of the 1.8 million beneficiaries expected to fall into this group. Estimates have been made by the Social Security Administration, but it should be emphasized that these figures are approximate and that no one can give a more accurate picture without first reviewing the records of each beneficiary attached to this program.

Finally, Secretary Schweiker, in testimony before the Finance Committee indicated that manual review of the minimum benefit recipient's files would require between 8,000 and 10,000 man years and cost in excess of $225 million, thereby reducing the anticipated "savings" associated with enactment of the President's proposal.

Nationwide, there are approximately 36 million social security recipients; 3 million, or 1 in 12 are minimum benefit annuitants. A substantial number of these annuitants are quite elderly, in fact, the Social Security Administration indicates that approximately 950,000 are 75 years old or older. If we accept the accuracy of the administration's estimates regarding the numbers of persons likely to be affected by the retrospective aspects of this reconciliation provision—and there is reason to believe the projected figures are overly optimistic—then understanding the following breakdown of affected recipients by alternative financial resources becomes critical.

Of 3 million total recipients, 1.2 million are expected to experience no reduction in monthly benefit amounts because 1 million are duly entitled and their spouses will receive a dollar for dollar increase to replace the loss of minimum benefit. For an additional 200,000 beneficiaries their "earned" benefit is anticipated to equal what they are receiving under the minimum benefit, therefore no reduction in monthly benefit amounts is likely. However, the financial alternatives for the remaining 1.8 million persons estimated by the administration to lose benefits are less well understood.

Specifically, 1 million, according to the OMB, may be able to turn to SSI to make up the loss in income; 450,000 to 500,000 may receive a dollar for dollar increase in SSI payments as they experience a drop in their minimum benefit payment; 80,000 individuals not now eligible for SSI could become eligible; 450,000 to 500,000 who are assumed to be

eligible for SSI but who, for some reason are not receiving it, could apply for this program; and 800,000 persons are unaccounted for. With respect to this group, it cannot be estimated with any precision how many of these individuals potentially without alternate sources of income would be seriously harmed by the proposal because information about the assets and living arrangements of elderly social security minimum benefit recipients is far from complete.

Mr. President, as you may recall, under my chairmanship the Joint Economic Committee last year undertook a wide ranging study of pension systems, including the social security program. The JEC study—among others—documents the need for substantial restructuring of the social security program as a means of stabilizing its fiscal condition.

However, because of the broad implications of even minor reforms in the social security system, it is my belief that changes in the program should be made only after measured, deliberate and thorough evaluation of the probable consequences of implementing those changes.

My commitment to elimination of wasteful and unnecessary Federal spending is a matter of public record and, as many of my colleagues know, I share the administration's view that the social security system is in serious difficulty. Nevertheless, I do not believe that restructuring individual elements of the program should be attempted without benefit of hearings and in isolation from other social security program reforms. Instead I urge my colleagues to support this amendment and thereby allow the Finance Committee to examine this proposal and its potential ramifications just as the committee will consider many other recommendations for insuring the long term stability of the social security system.

While we in the committee may ultimately agree that recalculation of the minimum benefit is warranted, this proposal has not undergone adequate review and could, if implemented, result in the very precipitous and unduly harsh ramifications for beneficiaries that we here in the Senate recently resolved to avoid as we search for ways to insure the stability of our Nation's largest retirement program.

Mr. BRADLEY. Mr. President, the reconciliation bill before the Senate would eliminate the social security minimum benefit, effective this August. Three million older Americans would be affected by this wholesale slashing of benefits. Once again, budgetary savings are being built upon the sacrifices of the low-income elderly and the much heralded social safety net grows smaller with each new set of administration proposals. Mr. President, I cannot support such misguided efforts at budget cutting.

The minimum benefit under social security is not an overly generous amount. The 1977 amendments froze the benefit at $122 per month, or roughly $30 a week. Many recipients are those whose average lifetime earnings in employment covered by social security are low, the result of many years at low-paying jobs. Opponents of the program point out that there are those collecting the minimum benefit who have spent relatively few years in covered work but at relatively high wages. They cite the evidence of double-dippers who collect Federal or State government pensions on the basis of a civil service career and the minimum benefit, due to a short work record in jobs covered by social security. They use this example to justify eliminating the entire program. However, a GAO study in December 1979 concluded that only 15 percent of those receiving the minimum benefit fit the description of the double-dipper. Nonetheless, it seems that the remaining 85 percent, including many low-income lifetime workers, face the loss of the minimum benefit because of this small group of double-dippers. This rationale can only be read as a modern example of guilt by association.

The opponents of the minimum benefit also argue, in defense of their proposal to eliminate the program, that approximately 1.2 million of the current beneficiaries—the truly needy—would not have their net benefits reduced, due to offsetting increases in benefits under the SSI program and other income supports, such as food stamps for which they would be eligible by virtue of their reduced incomes.

Mr. President, to suggest that the elderly will make up this loss in income by searching through our maze of social welfare programs for the benefits their newly lowered incomes qualify them for is both dishonest and cruel. The evidence indicates that the elderly are poor users of the services intended for them, for a variety of reasons ranging from problems in securing transportation and coping with application forms to pride and their sense of self-esteem. We should not require those elderly with little savings, after a lifetime of work, to make new initiatives to receive equivalent benefits to those they now receive automatically under the minimum benefit provision. If savings must be made from this program, then it should be phased out by closing it to new retirees. Current recipients should be protected.

Mr. President, that is exactly what Senator RIEGLE's amendment would do. The savings will not be as great as they would be from total elimination of the program, but neither will the suffering of the older Americans dependent on this benefit. For these reasons, I urge all my colleagues to support this important amendment.

Mr. ROBERT C. BYRD. Mr. President, today the Senate is considering the question of whether to take the social security minimum payment away from retired Americans through the budget process. The amendment before the Senate offered by the distinguished Senator from Michigan (Mr. RIEGLE) would not extend the minimum benefit to future social security retirees, but it would preserve the payment for current retirees.

Three million Americans currently receive the minimum social security benefit. More than 500,000 Americans, age 80 or older, have been receiving the minimum payment for 15 years or longer. Failure to adopt the amendment being offered by the Senator from Michigan will send a chilling message to these people.

We will be telling them that they are no longer entitled to the benefits promised them by the social security system when they made their retirement plans. We will be telling them that if they need assistance, they should apply for welfare.

When Mr. Reagan accepted the Republican nomination for the Presidency, he told the American people:

> It is essential that the integrity of all aspects of social security be preserved.

In his campaign, as the Republican nominee for the Presidency, he said:

> The integrity of the social security system will be defended by my administration and its benefits will once again be made meaningful.

When the President came before the Congress to campaign for his budget cuts, he told us that no budget savings would be made by cutting social security retirement benefits, and that they would be preserved as part of the Nation's safety net.

The minimum payment was designed to provide an adequate monthly check for the neediest social security retirees. It was designed as a safety net under social security—to keep elderly Americans from living their retirement years in poverty. Eliminating the payment would plainly send some social security retirees falling through the President's safety net.

The social security system is based on trust, confidence, and dependability. Without these essential qualities, the system loses its integrity. Taking away basic benefits from those who have already retired or are approaching retirement age destroys the system's integrity. It is cruel, and it is inhumane.

Last month, after the administration called on the Congress to immediately slash benefits for those men and women planning to retire at age 62—the Senate unanimously went on record against such a plan. The principles at stake today are not very different from those argued last month. The issue is whether the Congress will act to unfairly and precipitously cut social security retirement benefits. We are talking about a smaller group of retirees today than we were talking about last month, but we are discussing what amounts to the same question.

We are talking about the same system—so vital to the well being of the Nation's elderly—and we are talking about the system's integrity and purpose

I reject the idea that has been proffered by the administration that the neediest social security retirees should be asked to abandon the system and turn to the welfare system.

I support a balanced budget. But the Federal budget cannot be balanced on the backs of the Nation's elderly.

Mr. DOMENICI. Mr. President, how much time do we have?

The PRESIDING OFFICER (Mr. EAST). The Senator has 5 minutes and 10 seconds remaining.

Mr. RIEGLE. Mr. President, is the Senator ready to conclude? I want to

make a final comment. I have a minute left, and then we would be prepared to go ahead and vote.

Mr. DOMENICI. Mr. President, I will reserve my time.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. RIEGLE. How much time do I have left?

The PRESIDING OFFICER. One minute and ten seconds.

Mr. RIEGLE. Mr. President, I want to express several points quickly. First, if the amendment presently before us that I am proposing with 20 cosponsors passes we are still below the Reagan budget totals in terms of what he has asked us to cut. I think that is a significant fact.

Perhaps even more significant is this: I was not here in 1935 when we passed the social security legislation. I was not here in 1941 when we began to pay the benefits out under this system.

Workers over the years, through the forties, the fifties, the sixties, the seventies, those workers and their spouses made decisions in terms of planning for their future based on solemn commitments that were made by this Government, and the money that was put into this system was put in on the basis that those promises would be kept. This is a vote today as to whether or not we break that promise. That is what it is all about, and make no mistake about it.

These people who are out there today, most of them very old, 75 percent women, over 80,000 of them above the age of 90, most of them in poor health, to suggest that they have some other place to turn is really outrageous. We know better than that. Their plans down through the years were based on those commitments made by predecessor Senates and Congresses that were here before we were.

Yes, it may be necessary to phase this out in the future if there is no other way. But to go back and to penalize these people who have depended on those over the decades is just wrong. There are other places we can make savings. Why target the weakest people, those least able to defend themselves and fight back in this country? Why? Because they are an easy target.

Contrary to earlier statements by others, it is not easy to offer this amendment. People can shed crocodile tears in voting against it. It is tough to vote for it, but I invite them to vote for it.

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

Who yields time?

Mr. DOMENICI. Mr. President, have the yeas and nays been ordered?

The PRESIDING OFFICER. No, they have not.

Mr. RIEGLE. Mr. President, I ask for the yeas and nays.

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

The yeas and nays were ordered.

Mr. DOMENICI. Mr. President, parliamentary inquiry. Is there any time remaining on the side of the proponents?

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

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

The PRESIDING OFFICER. All time has been yielded back. The question is on agreeing to the amendment of the Senator from Michigan. The yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. STEVENS. I announce that the Senator from Nevada (Mr. LAXALT) is necessarily absent.

Mr. CRANSTON. I announce that the Senator from Nevada (Mr. CANNON) is necessarily absent.

I further announce that, if present and voting, the Senator from Nevada (Mr. CANNON) would vote yea.

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

The result was announced—yeas 45, nays 53, as follows:

[Rollcall Vote No. 160 Leg.]

YEAS—45

Baucus	Ford	Metzenbaum
Bentsen	Glenn	Mitchell
Biden	Hart	Moynihan
Boren	Hawkins	Pell
Bradley	Heflin	Pressler
Bumpers	Huddleston	Pryor
Burdick	Inouye	Randolph
Byrd, Robert C.	Jackson	Riegle
Chiles	Johnston	Sarbanes
Cranston	Kennedy	Sasser
DeConcini	Leahy	Specter
Dixon	Levin	Tsongas
Dodd	Long	Weicker
Eagleton	Matsunaga	Williams
Exon	Melcher	Zorinsky

NAYS—53

Abdnor	Goldwater	Nickles
Andrews	Gorton	Nunn
Armstrong	Grassley	Packwood
Baker	Hatch	Percy
Boschwitz	Hatfield	Proxmire
Byrd, Harry F., Jr.	Hayakawa	Quayle
	Heinz	Roth
Chafee	Helms	Rudman
Cochran	Hollings	Schmitt
Cohen	Humphrey	Simpson
D'Amato	Jepsen	Stafford
Danforth	Kassebaum	Stennis
Denton	Kasten	Stevens
Dole	Lugar	Symms
Domenici	Mathias	Thurmond
Durenberger	Mattingly	Tower
East	McClure	Wallop
Garn	Murkowski	Warner

NOT VOTING—2

Cannon	Laxalt

So Mr. RIEGLE's amendment (UP No. 173) was rejected.

Mr. DOMENICI. Mr. President, I move to reconsider the vote by which the amendment was rejected.

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

The motion to lay on the table was agreed to.

Mr. DOMENICI. Mr. President, could we have order in the Chamber?

The PRESIDING OFFICER. The Senate will be in order.

RECESS UNTIL 2 P.M.

Mr. BAKER. Mr. President, I ask unanimous consent that the Senate stand in recess until 2 o'clock this afternoon and that the time not be charged against the bill.

There being no objection, the Senate, at 12:56 p.m., recessed until 2 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. COHEN)

The PRESIDING OFFICER. Who yields time?

UP AMENDMENT NO. 174

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

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Idaho (Mr. McCLURE) proposes an unprinted amendment numbered 174:

On page 180, on line 11, add a period after "Act" and delete the remainder of the sentence.

On page 180, amend lines 14 to 16, to read as follows:

"SEC. 168. (a) During the fiscal year ending September 30, 1982, the Secretary of the Treasury, to the extent provided in appropriations Acts, is directed to provide funds to the strategic petroleum reserve account as are necessary to meet the obligations created under section 167(b): *Provided, however,* That the aggregate amounts of such funds during the fiscal year ending September 30, 1982, may not exceed $3,704,912,000 plus any funds deposited under section 167(a).

Mr. McCLURE. Mr. President, I yield myself such time as I may consume. I understand this amendment has been cleared by the leadership on our side of the aisle.

The amendment concerns off-budget financing of the strategic petroleum reserve. In my earlier comprehensive statement I reviewed the legislative history of the Strategic Petroleum Reserve Amendments Act of 1981. Concern has been for finding an off-budget financing mechanism beginning with fiscal year 1982. Subtitle D of title V sets forth the recommendations of the Committee on Energy and National Resources on the strategic petroleum reserve.

Under our proposal, funding of certain SPR activities would be undertaken by the Federal Government off-budget to satisfy the reconciliation instructions to the committee. As the Budget Committee's report observes, the legislation fulfills the technical requirements of the Energy Committee's instruction. However, the provisions to achieve savings in the strategic petroleum reserve program violate the spirit of the Budget Act in two respects:

First, the SPR oil acquisition functions continue to be Federally-financed, but are placed off-budget. Second, funding for the program is not subject to annual appropriations. The latter provision violates Section 401(a) of the Budget Act.

The Energy Committee's proposal shifts the Strategic Petroleum Reserve account from on-budget to off-budget status, but continues to use Federal dollars to fund oil acquisitions. While moving the program off-budget will reduce on-budget outlays, and thus reduce the federal deficit, the costs of the program will still increase the national debt by $9 billion by 1984, and will result in substantially increased interest costs to the Treasury.

The SPR legislation does not meet the intent of the reconciliation instruction, which was to require private or alternative financing for the Strategic Petroleum Reserve.

As chairman of the Committee on Energy and Natural Resources I am disturbed by this Budget Committee report language; however, in the spirit of reconciliation, I offer this amendment.

Mr. President, this amendment would take the SPR financing off-budget for fiscal year 1982.

It would "sunset" at the end of fiscal year 1982 unless subsequently extended by the Congress.

It would authorize the use of such "off-budget" financing mechanism only to the extent provided in appropriation acts.

The amendment would authorize "off-budget" the amount of funds, $3,704,-912,000, proposed by President Reagan for SPR activities other than facilities construction and acquisition during fiscal year 1982.

It assumes SPR financing would remain off-budget during fiscal years 1983 and 1984; therefore, the reconciliation instructions to the Committee on Energy and Natural Resources would be met, although final congressional approval of the specific funding mechanism for fiscal years 1983 and 1984 would be deferred.

By this action, we would address the Budget Committee's concerns, but more importantly we will have the opportunity to compare firsthand the advantages and disadvantages of "on" and "off" budget financing.

Mr. President, this particular question is not newly before the Senate. We have visited it a number of times this year and in the past. It is not new to the Energy and Natural Resources Committee, either. We have visited the problem a number of times, also.

My first attempt in the committee was to get the committee to approve an off-budget financing mechanism but the committee turned thumbs down on it very quickly by saying it should be on-budget.

We then, by a substantial vote in the committee, transmitted that decision to the Budget Committee and to the floor of the Senate. When we got to the floor of the Senate, we were told in no uncertain terms, "No, you won't; you will put it off-budget." That action was led by the Budget Committee.

We then went back, after the vote of the Senate, and tried to find the mechanism by which we could finance it off the budget. Despite the several suggestions that have been made, and after extensive hearings chaired by the distinguished Senator from Virginia (Mr. WARNER), we did conclude that there was no certainty in off-budget financing mechanisms that did not also include the use of Federal Treasury obligations; that, indeed, we might be playing a form of Russian roulette with something that is far too important for the security of this country to hazard that kind of doubt concerning the ability to finance; and that, while some obligations might well sell in the private market, it might well be that they would not sell in sufficient quantities in the private market.

The more we looked at it, Mr. President, the more we came back to the same conclusion ultimately that we had started from, that there was no certainty in the alternative funding schemes and we must have certainty in the financing mechanisms for the strategic petroleum reserve.

So both Senator WARNER and myself introduced the original legislation (S. 998) that had a series of alternatives. But we concluded after extensive hearings that for now, all we could do was do the thing that was obvious.

That is to make certain that the SPR was financed, to make certain that the purchases could go forward, and to make absolutely positive that there would be no lapse in the purchases for the strategic reserve, that is absolutely vital to the security of this country.

After having reviewed that action, the Senate Budget Committee again suggested that what we had done, while it met the letter of the Senate budget resolution, did not meet its spirit because we had not found a way to do this without costing anything. We have not found a way to do this without costing anything. We have asked a number of people if there is an alternative. So far, that answer has not come forth loud and clear.

Therefore, Mr. President, this amendment is simply a way of saying that for the year 1982, it will be off-budget. It will be financed as we outlined and this will give us the opportunity to see whether or not there is another mechanism that can be made to work with certainty and not with the opportunity or the likelihood of some kind of chance taking place that would make it impossible to finance the oil acquisitions for the strategic reserve. The amendment provides for that off-budget mechanism for fiscal year 1982.

Also, Mr. President, it responds to another criticism raised by the Budget Committee that being off budget but not subject to appropriation made it subject to a point of order under the Budget Act. This would provide that the authorized amount off budget funding would need to be provided in appropriations acts.

Mr. President, I think it is a workable way around the dilemma which all of us face of how to make certain the money is there to finance the acquisition of this oil and, at the same time, give us the opportunity to see if we can find an alternative mechanism for 1983 and beyond.

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

Mr. WARNER. Mr. President, I support the amendment. The Committee on Energy, the subcommittee of which I am a chairman, held a total of 5 days of hearings which resulted in over 1,000 pages of testimony. I draw my colleagues' attention to the copies on each desk in the Chamber at this time.

Thirty witnesses, including the Secretary of the Treasury, the Secretary of Energy, and the Director of the Office of Management and Budget, appeared. The committee devoted 3 days of business meetings to this item and thoroughly reviewed nine major options, with multiple suboptions for removing the SPR program from the Federal budget and satisfying the reconciliation instruction. The SPR proposal in title V of the bill is the product of that effort.

Mr. President, it is the considered judgment of the committee that the proposal accomplishes in the best possible manner the dual objectives of first, continued predictable implementation of this critical program; and second, off-budget financing.

Costs of the program for the economy and the American taxpayer are minimized, while necessary funding for the program is provided in an assured and timely fashion.

The amendment would limit the program to fiscal year 1982, would set a funding limit consistent with the 1982 program of $3.7 billion, and would require an appropriations action to trigger the program. The amendment therefore would remove the $22 billion direct spending authorization in the reported bill and substitute a fiscal year 1982-only program.

The bill as reported by the committee attempted to provide a total solution to the SPR funding issue for the foreseeable future.

The $22 billion would, based on current planning, support oil purchases for the SPR through fiscal year 1986.

The committee decided in effect to end the annual controversy over SPR funding by this action. This amendment will reverse that decision by constraining the committee's approach to 1 year.

Consequently, all of the interested parties in this issue will have a full opportunity to revisit the committee's decision in appropriations action this year and in additional authorization next year.

This amendment constitutes an accommodation of the concerns of the Appropriations Committee, the Budget Committee, individual Senators, and my committee.

The amended bill would insure that the SPR program can proceed with the oil purchases proposed originally by the President for fiscal year 1982, while preserving our options for continued consideration of the financing issue.

It is important to emphasize at this time the critical nature of the SPR program and the necessity of our commitment to it this year and in subsequent years.

Since the amended bill is limited to fiscal year 1982, and since the budget resolution and the budget limits in this bill contemplate off-budget financing, we must be most careful that the program does not become a hostage or even worse, a victim, of the budget process in the months and years ahead.

The Energy Committee and this Senator are committed to insuring that the program does not fall hostage or victim, but rather proceeds aggressively to establish a 750-million-barrel strategic reserve for this country.

Mr. President, I urge that our colleagues support this amendment.

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

Mr. JOHNSTON. Will the Senator from Idaho yield for a question?

Mr. McCLURE. I am happy to yield to the Senator from Louisiana for a question.

Mr. JOHNSTON. Mr. President, I won-

der if my distinguished colleague from Idaho can tell me what the total DOE budget is for 1983? Am I correct that it is $5.6 billion?

Mr. McCLURE. That is approximately correct.

Mr. JOHNSTON. And the estimated amount for SPRO in 1983 is $4.3 billion?

Mr. McCLURE. I do not remember the figure for 1983. The figure for 1982 is $5.88 billion-some, so it is close to $6 billion for 1983.

Mr. JOHNSTON. In the neighborhood of $6 billion, plus or minus $1 or $2 million?

Mr. McCLURE. Yes.

Mr. JOHNSTON. So this resolution does not increase the allocation to the Budget Committee.

Mr. McCLURE. The Senator is correct.

Mr. JOHNSTON. So that means we would have to take out of the $5.6 billion allocation to the Budget Committee about $4 billion, out of existing programs.

Mr. McCLURE. Mr. President, let me say to the Senator that for 1982, that is not the case. For 1983, a decision will have to be made. That decision will have to be made in the budget actions next year.

Mr. JOHNSTON. That decision not having been made, we would have to take $4-point-something billion out of a total allocation of $5.6 billion.

Mr. McCLURE. As a matter of fact, the amendment does not say it would be on-budget for 1983 and 1984.

Mr. JOHNSTON. What does it say, Mr. President?

Mr. McCLURE. It is silent with respect to that.

Mr. JOHNSTON. Then we either put it on-budget or we do not bill SPRO.

Mr. McCLURE. Or we make another decision, Mr. President.

Mr. JOHNSTON. We decide to do it in another way.

Mr. McCLURE. This amendment affects 1982 specifically. It does not change the language adopted by the committee with respect to 1983 and 1984.

Mr. JOHNSTON. I thank the Senator.

Mr. President, I wonder if the Senator from South Carolina would yield me 5 minutes?

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

Mr. HOLLINGS. Is the Senator for the amendment?

Mr. JOHNSTON. I am opposing the amendment.

Mr. HOLLINGS. Oh, definitely. I just wanted to make sure.

Mr. JOHNSTON. Mr. President, I hesitate to get up and oppose my distinguished friend from Idaho, with whom I am usually in agreement, and also my friend from New Mexico, but I have been a member of the Budget Committee and of the Energy Committee and of the Appropriations Committee and chairman of the Energy and Water Subcommittee of that committee for some time. I have dealt with SPRO now for any number of years, I guess, ever since it was created in 1975. Each year, Mr. President, we hear the same arguments.

On the one hand, we hear the arguments that say we must fill SPRO, it is a matter of highest strategic necessity. I agree with that argument. Then we come to budget season and the Budget Committee and the Committee on Appropriations look at these big, juicy targets—this year some $3.8 billion, as I recall. They look at how much that would fund in terms of food stamps if you are a food-stamp man, or in terms of all this broad panoply of Federal programs, and each year, it is deja vu and we cut down on SPRO.

Mr. President, instead of having three-quarters of a million barrels in place now, as we had planned initially, we have 151 million barrels of oil in SPR.

So I proposed, after all these years of seeing that process go on in the Energy Committee, that we confront the problem directly and simply put SPR off budget; that we display the numbers in the budget each year but not count it against the totals in the Budget Act. As I recall, the Energy Committee reported that bill with one dissenting vote—overwhelmingly.

Mr. President, this proposal solves the problem, it is true, for 1982 but gives us the same misery for 1983 and 1984. Any of the alternatives for those years will be a worse choice than what we have now.

Those alternatives are, first of all, to not fund SPR. I believe that virtually everyone in this body agrees that we need to fund SPR, that we need to fill it at the rate of at least 300,000 barrels a day. We have voted repeatedly on this floor to do that. I do not believe that is a viable alternative.

The second alternative is to put SPR on budget. The figures I have for 1983 estimate it at $4.3 billion; in 1984, $3.9 billion. It is in the neighborhood of $4 billion a year. If you put that on-budget, you have a big target for everyone to shoot at.

For those who want to fund every activity of Government, look at that $4 billion and point out that it funds only a very few days of national oil supply. I do not recall what the figure is. It is only 3 or 4 days.

Or, alternatively, Congress will face up and say, "Yes, we need the $4 billion," which will mean that instead of having to cut these huge amounts the Reagan administration has identified already, they must be cut in addition, over and above those cuts already specified, and we will have to come up with another $4 billion. If you think it is easy to come up with another $4 billion in cuts, I assure you it is not. I believe Congress has come to the realization that that is not so.

The final alternative is to come up with some new gimmick. Is this a gimmick, what we have at the present time?

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

Mr. JOHNSTON. Mr. President, I will act as though I am in control of the time and yield myself 2 additional minutes.

It is true, as Senator WARNER pointed out, that we did have all these hearings on this matter. But after all these hearings were held, the Senate committee came to the conclusion to write the law exactly as it is now, without this amendment, with one dissenting vote. The reason for that was that we heard testimony from the Secretary of the Treasury; the Director of OMB, Alice Rivlin, and others who pointed out that the cheapest to the Treasury, the most direct method, the method by which the Government gets the best control of the strategic reserve is to do it under the aegis of the Government—not with oil bonds, not under one of these other methods. Each of the other methods constitutes a higher cost to the Treasury in borrowing.

If you go oil bonds, they cost between 1 percent and 2 percent more, depending on how it is structured, than if you go T bills, which is the method of financing identified here.

The effect on the credit markets is precisely the same. If you are going to the credit market for bonds as opposed to T bills, you are still draining from that credit market the same number of dollars.

So it is absolutely clear that if you want to finance this matter off-budget, do as we have done thus far and plainly say it is off-budget. Then you get maximum Federal control and maximum savings to the Treasury. If you want to put it off budget by one of these other schemes—we looked at all of them, and none made sense—none has the advantages the present system has. If you go in those directions, you are hurting the Treasury and hurting control.

I hope we will not adopt this amendment, which would give us great misery for 1983 and 1984.

The PRESIDING OFFICER. Who yields time?

Mr. HOLLINGS. I yield to the distinguished Senator from Washington.

Mr. JACKSON. Mr. President, the amendment offered by Senators McCLURE and DOMENICI is a step backward from the committee bill. The effect of this amendment is to leave expenditures for SPR oil acquisition off-budget in fiscal year 1982, as the Committee on Energy and Natural Resources intended, but to revert to on-budget treatment of these expenditures in fiscal year 1983 and thereafter.

I recognize the need to compromise as part of the legislative process. However, the amendment fails to make the necessary changes in the funding ceilings for the Department of Energy for fiscal years 1983 and 1984 to accommodate on-budget SPR funding. These SPR requirements, estimated by DOE at $4.3 billion in fiscal year 1983 and $3.9 billion in fiscal year 1984, cannot be met if the DOE is held to the overall ceilings contained in the reconciliation bill before us.

Thus, we are only setting ourselves up for another game of Russian roulette with the SPR next year when we begin the fiscal year 1983 authorization process. The testimony to the Committee on Energy and Natural Resources has been nearly unanimous in opposing this approach. Every knowledgeable witness has advised the committee to provide adequate and consistent Federal funding for the SPR and to reduce Federal support only after and only to the extent that an alternative funding scheme has proven itself reliable.

The McClure-Domenici amendment

ignores this very basic and very sound policy advice. It reopens an argument that we all thought the Committee on Energy and Natural Resources had settled and directly, in my view, threatens the most valuable energy security program we have with inadequate funding in fiscal year 1983 and beyond.

Mr. McCLURE. I yield 3 minutes to the Senator from New Jersey.

Mr. BRADLEY. Mr. President, I support the Domenici-McClure amendment. It is far from a perfect amendment, as both the Senator from Louisiana and the Senator from Washington have described.

Clearly, everyone who came before the Energy Committee confirmed that the best way to finance the building of the strategic petroleum reserve on-budget was to make that decision and bite the bullet. That did not happen. The Energy Committee decided that it would move to finance off-budget and set up the conflict course from which we now try to extricate ourselves by the McClure-Domenici amendment.

Mr. President, I believe that one of the subsidiary benefits of the McClure-Domenici amendment is what my colleagues have described as one of its weaknesses, and that is that next year at this time, we will be discussing what should be the disposition of the strategic petroleum reserve.

One of my arguments for putting it on-budget was that that question would have to be faced annually. One of the subsidiary benefits from facing the question of filling the strategic petroleum reserve annually would be that the public might focus on the degree of vulnerability we have in this country because of our dependence on insecure sources of foreign oil.

So the Domenici-McClure amendment allows us the possibility of continuing the education function, which is as important to a Senator as is the legislative function, particularly in areas of national security, such as the strategic petroleum reserve.

Mr. President, although this amendment is not perfect in all its details, I have to support it, and I strongly urge my colleagues to support it, because I am afraid if it is not adopted, there will be nothing else moving through Congress this year, and the reserve will not be filled. So I support this amendment and urge my colleagues to do so.

The PRESIDING OFFICER. Who yields time?

Mr. DOMENICI. Mr. President, will the Senator from Idaho yield 5 minutes to me?

Mr. McCLURE. I yield.

Mr. DOMENICI. Mr. President, I support the McClure compromise amendment.

I believe that my position heretofore has been well known. I favor SPR. I have been concerned as anyone else about our failure to be able to build an adequate strategic reserve in the event of a major disastrous cutoff. However, at the same time, I have had a genuine concern as to whether or not there were alternate ways to finance it. By "alternate," I had in mind ways that would preclude the taxpayers and the American Government from having to pay for this reserve.

I acknowledge that to this point there have been many suggestions about how we might do that. I acknowledge that I have my own ideas as to how we might do that. But I also have to acknowledge that this committee, a committee of jurisdiction chaired by the distinguished Senator from Idaho (Mr. McCLURE), has tried its best during the short period of time we had, as part of this reconciliation process, to come up with ways to comply with the instruction that Congress gave it, to take SPR off-budget.

I believe that the committee has genuinely tried to say, "We don't only want to taket it off budget; we have to find some ways to finance it so that it will not continue to be a burden on the taxpayers as part of the general obligations of the Treasury."

However, I also must acknowledge that, to this point, they have been unable to find such. That is not just by a close vote. By an overwhelming majority of the committee, they have found that it is urgent that we continue SPR. They have found that we cannot find a salutary and acceptable way to fund it off budget without Federal involvement, and I, for one, have no alternative. When they say that, I respect their judgment.

I was concerned about a couple of things. Say, we cannot find a way to finance it without the Federal Government and then take it off budget, in toto and laterally, and not even have it subject to appropriations. The chairman of the committee knows I would have had to oppose that. That approach would not have even had it subject to appropriations.

So I think what he has done, working with our distinguished leader, Senator BAKER, and others, is to come up with something that recognizes the dilemma we are in. We have a bill before us now that did not give them a lot of time to go into alternatives, although they spent 5 days.

They now suggest in this amendment, which incorporates the idea, whatever it is, we will appropriate the money. That takes care of one serious problem. It is not just an item out there languishing that we have been trying to cure as part of the budget process, that spends money, uses Treasury notes but we do not account for it, taking care of that by making it subject to appropriations.

Then they have done the next best thing, and I think we should support it. They have said, "Put SPRO on in this manner subject to appropriations, but do it for only 1 year," giving the Congress of the United States and their jurisdictional committees an opportunity to get this reconciliation package passed, make the moneys that are needed for SPRO available, insist that they be appropriated, but to do it for only 1 year, leaving the decision of whether there is a mix of ways to finance it that we have not yet thoroughly explored, get some other alternatives and options in, and give us the full legislative year, the remainder of this one, a significant portion of next year, to explore those.

That basically takes care of the major problem we have. We should not expect a committee with a matter as difficult as this, that has been bandied around from one side to the other, from those who say you do not need it at all to those who want it off budget with no accounting at all, to those who want it all on budget and in the normal manner and put in there rigidly for the next 3, 4, or 5 years, that is the gamut we have been through, with everything in between and many problems of management and preparation that have festered this.

One additional minute, Senator.

Mr. McCLURE. I yield 1 additional minute.

Mr. DOMENICI. So what this compromise does is it takes care of the technical objection because it is subject to appropriation. It adequately provides for SPRO for the entire year of 1982, along with the 1981 moneys that have been handled heretofore.

We can begin the fill and continue it with certainty.

Conversely, it gives those who feel genuinely that there must be another way an opportunity during the next legislative months to see if they can convince this committee that is genuinely interested and has jurisdiction to try to convince the administration and others to see if there is an alternative.

So while I started hoping we could do better, I am convinced on short notice that we cannot. I am convinced there are alternatives, but I am convinced in a short period of time we cannot put those together.

So I urge we adopt this compromise supported by the distinguished chairman, by our leader, Senator BAKER, and I am pleased to join them in this amendment.

I thank the Senator for yielding.

The PRESIDING OFFICER. Who yields time?

Mr. HOLLINGS. Mr. President, just one comment, and that is, with all due respect to the distinguished Senator from New Mexico, who helped formulate the language contained in our budget report. This language not only was in violation of section 401(a) of the Budget Act by not being subject to annual appropriations, but we also——

The PRESIDING OFFICER. The Senator will suspend until the Senate Chamber is in order. There is much too much conversation going on on the floor.

The Senator from South Carolina.

Mr. HOLLINGS. The major objection and the misgivings that we all must have and should have is that it is off-budget, and it more or less formalizes or dignifies the approach here of having it off-budget. It sort of gives it some credence or some acceptability.

We have got to have truth in budgeting, and while I realize that putting this account back on the budget will increase the Federal deficit by $3.3 billion, the mere transposition of the account from on-budget to off-budget is just no answer to excessive Federal spending, and it is on that basis that I continue to oppose this amendment.

I was hoping we would have a substitute amendment—and perhaps we will at the end of the time on this particu-

lar amendment—to try to get SPRO funding back on budget.

In the meantime, I would be glad to yield to any of the Senators who want to be heard on this particular score.

Mr. McCLURE addressed the Chair.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. McCLURE. Mr. President, it is my understanding that there is a perfecting amendment which will be offered. Pending the arrival of the Senator from Ohio who will offer that perfecting amendment, allow me to respond to this extent: Certainly the Senator from South Carolina is right that it would be better to have this matter contained on budget and stated in the budget. That has been my position all along.

But the Senate has voted three times to say it is going to be off budget. You know I can express my own opinion stubbornly and repeatedly around here. But when I have not got the votes I will try to do what the majority of the Senate instructed our committee to do, and they instructed our committee in the first budget resolution for fiscal year 1982 to take it off budget; so we did what the Budget Committee said for us to do; and we did it in the best and most constructive way we could figure out. If somebody else has a better idea we are willing to hear it.

On 5 days we had hearings; we listened to witnesses who came before us; and we ended up with the best of solutions that came forward available to us pursuant to the instructions given to us in the first budget reconciliation.

Mr. HOLLINGS. Mr. President, will the distinguished Senator yield?

Mr. McCLURE. I would be pleased to yield.

Mr. HOLLINGS. The distinguished chairman of the Energy Committee was acting in good faith about it. However, it was not the intent of the Budget Committee to place it off budget.

The intent was to have it financed privately. That was the intent in the Budget Committee's instructions. Now, we do not have a private support plan, although we heard from the Senator from Kansas and others within the discussion in the Budget Committee it was possible. Based on that discussion, we said, "Let us allow that all-wise Energy Committee and its brilliant chairman—a great private enterpriser—work out a way to do just that."

Mr. McCLURE. Let me say to my friend we did our best to find that kind of a mechanism. But ultimately the arguments of the Senator from Louisiana, the Senator from Washington, the Senator from New Jersey prevailed, that the higher priority in this instance was to make certain that the reserve would be filled, and unless we could come up with a mechanism that assured the financing we could not make that assurance.

We were not able to come up with that mechanism. We could not come up with that degree of financing, so we came up with the least costly method and in conjunction with the instructions under the first concurrent resolution and the reconciliation that were given to us with respect to our package.

What I am afraid is now our alternative is either we put it back into the budget, which would throw awry the targets given to my committee—I could not very well go back and open up that entire area and take $3 billion out of the targets that were given to us, simply could not do it, and unless the first budget resolution were opened up to change the targets for our committee, then I would not be able to enroll any legislation in the remainder of this session until the second concurrent resolution was adopted.

Mr. HOLLINGS. That is right.

Mr. McCLURE. I might just as well tell the members of my committee to go home and go fishing until the second concurrent resolution for fiscal year 1982 is adopted because our hands are tied. We cannot legislate. So you put us into a straitjacket in the first budget resolution, and we are trying to find a way to work under it.

The other part of it is that at the same time the Senate has repeatedly said there can be no higher priority to this country than getting the strategic reserve filled. I think a great many people are now more comfortable than they were immediately following the Israeli raid on Iraq, in which we thought there might again be an outbreak of hostilities in the Middle East as a result of that and another oil embargo. Where would we be today had we gotten into that? Where would we be 2 years from now or a year from now or 3 years from now unless we not only get better production of energy in our own country but also a strategic reserve on which we can draw in time of a petroleum emergency?

So there is an urgency in getting this done. It does have a priority. We have found a way by which we can live under the first concurrent resolution and still meet the objectives of filling the strategic petroleum reserve.

I reserve the remainder of my time.

Mr. HOLLINGS. Mr. President, the Congress must accept its responsibility and realize that we can no longer avoid the real issue, either funds equal to the real cost of oil acquisition must be appropriated or they should not.

I would admit the Budget Committee's instruction to the distinguished Senator from Idaho and the Senate Energy Committee was premature. At the time, I think too much emphasis was being placed on reducing the budget without regard to establishing a valid alternative financing mechanism.

I would, therefore, recommend, Mr. President, that the Senate Energy Committee give its opinion to the Senate Budget Committee prior to markup of the second budget resolution and then we can change those levels if necessary. Also, if it is the opinion of the Senate Energy Committee that an alternative mechanism does not exist, the Budget Committee should then move, and I would move, to place the funds on budget.

At the same time, I think we should make absolutely sure that the Appropriations Committee crosswalk is amended to permit on-budget financing. Based on the current schedule of the Appropriations Committee, I would assume this issue could be resolved prior to causing any unnecessary hardship to the appropriations process.

But to try to put this activity off-budget does not resolve the problem or in any way reduce the cost of oil acquisition. On- or off-budget the cost of oil for SPR will still be in the range of $35 per barrel, and the cost to the U.S. Treasury will be the same. The difference is in one way the budget process is being preserved, whereas in the other way it is not.

While I do not want to go as far as Robert Samuelson, who recently said it would be, and I quote "criminal negligence" not to fill the reserve, I do feel it is a priority item. If the experiences of the last 8 years have taught us one lesson it is that the oil market is extremely volatile and, perhaps, more so today than ever before because of the degree of instability in the Middle East. Therefore, if the U.S. economy and our national security are to be protected, it behooves us to fill the strategic petroleum reserve at the quickest rate of fill. If the budget process is to be preserved, it behooves us to keep this account on budget and to accommodate a direct appropriation for the reserve.

I fully realize that the language included in the Senate Energy Committee's submission and in S. 998 reflect the administration's preference for the financing of SPR. However, in this particular case, I hope that a bipartisan Senate will come to agreement that placing SPR off-budget is more than just a mere bookkeeping difference. It is a violation of the spirit and intent of the Congressional Budget Act.

One thing we have grave misgivings about are the constant news conferences we have stating that the President asked for so many dollars and "oh, what a wonderful Congress we are, we have given him $2 billion or $3 billion more than he asked for," knowing all along it was just an accounting entry. We just transferred it to the other side of the page, in another book.

So those who are going to try to maintain the integrity of the budget process, and I think we have good integrity under Senator DOMENICI's leadership and the leadership of the majority and minority leaders, should demand that we do not just casually pass this as a solution to the problem.

The effort made by the Senator from Idaho and his Energy Committee has been under the most difficult circumstances. But the real crux of the matter was that we had hoped it would be private financing. But barring that, we were not so much exercised by the procedure because we certainly can change that within the Appropriations Committee, but we are more exercised by telling the people that you have either cut this much in spending or you have not. We cannot all go around saying it is vital, we are going to spend it, but we are just not going to account for its spending.

and that should be brought forth very clearly here today as we consider these amendments.

I will be glad to yield to the Senator from Idaho.

Mr. McCLURE. Mr. President, I thank the Senator for yielding. There are a couple of points that I think might be made. If the author of the perfecting amendment would like to offer the amendment, I would be prepared to yield back the remainder of my time.

Mr. President, two points need to be made. One is that the strategic reserve, or any reserve of commodities, is a slightly different breed of cat from the standpoint of balancing the budget. While now we may have the budgetary drain, at some time in the future there may be a withdrawal from the reserve which will place this oil into market channels at a time of emergency. Presumably, if there is such an emergency, it will come out in large volumes and very quickly. Under standard accounting procedures, the proceeds would be a receipt to the Treasury and, therefore, available for expenditure. All of a sudden the budgetary accounting would become terribly skewed. Indeed there might well be a reason for us to insulate the budget from that effect at the time of the sale of this commodity.

There is also another one which we are facing right now in this budget. We have strategic reserves of minerals. We have already seen in this resolution the decision made for budgetary reasons, not for national security reasons, to sell every ounce of silver in the strategic stockpile, to reduce it to zero, in spite of the fact that numbers of people can testify to the strategic necessity for having that mineral available to our industrial processes. I am not talking about monetary or jewelry or flatware or hollowware. I am talking about it as an industrial metal that is necessary to us. Yet we are going to sell every ounce that we have in order to offset budget expenses, even though the money is not available to pay for anything except the acquisitions to the strategic stockpile.

That is not the first time that this has been tried with the strategic reserve. It has been tried in every administration since I have been here, for economic reasons, not security reasons. There will be a temptation with oil in the reserve, at times when things look very good, to sell off a little of that oil to relieve the pressure on the budget.

There is a justification for moving off budget. In order to avoid that temptation, I say very clearly to those who might like to tinker with the budget in that way, "Do not assume you can sell the oil and buy something else with it."

Mr. JOHNSTON. Will the Senator yield at that point?

Mr. McCLURE. I yield.

Mr. JOHNSTON. The Senator will recall that one of the witnesses before the committee, and it might have been the Secretary of the Treasury, was asked about the method by which the Government used to buy gold and whether or not the expenditures for gold were put into the budget as an expenditure. Of course, he replied that was not displayed as an expenditure because it is simply converting from one form of assets to another. Does the Senator find that rather persuasive, that oil is just as good as gold, and, as a matter of fact, probably a better investment?

Mr. McCLURE. I would not say it is better but certainly not less important to our country right now or in the immediate future.

Mr. JOHNSTON. Its value is at least as steady as any other form of assets?

Mr. McCLURE. Yes, indeed it is. As a matter of fact, when you look at what we have done to the strategic stockpile of minerals, altering gold, going up and down like a roller coaster, to fit political and economic necessities of the budget rather than national security requirements of our country, there is certainly a reason for us to take a look at oil and saying, "All we are doing here is setting a reserve of an asset that may be necessary sometime in the future."

Mr. JOHNSTON. Under the leadership of the distinguished Senator from Idaho——

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

Mr. HOLLINGS. I yield additional time to the Senator from Idaho and the Senator from Louisiana.

Mr. JOHNSTON. As chairman of the Energy Committee, I will ask the chairman, Is that not precisely what we did, citing those precise reasons, with only one dissenting vote?

Mr. McCLURE. The Senator is correct. After we tried initially to put it on budget, we were under reconciliation instructions to put it off budget. We looked for the opportunity to finance it out of private investment, out of non-Federal funds.

I might say to my friend from South Carolina that even if we succeeded in doing that, in macroeconomic terms it still has the same economic impact unless the Federal deficit is used to finance the increased monetary supply.

Mr. JOHNSTON. I would like to say that I think the Senator from Idaho makes a very powerful argument, that if we knew precisely and exactly what we were doing in our committee under his leadership, we did the right thing, if we are going to come back with those same old bad choices we had, that we faced before, when we looked at all the alternatives and found this was the best alternative. I hope we will go along with what the Senator says, that is, his argument that we ought to leave it like it is and not pass this amendment, rather than go along with his amendment.

Mr. HOLLINGS. Mr. President, the Senator from Idaho gets into one of the fundamentals involved in budgetary and governmental finance. The great vice and the great threat we have is those who want to insulate their programs from Government. I have experienced earmarking programs at the State level and here at the Federal level. Regarding the skewing that the distinguished Senator from Idaho said could happen if we started selling the oil and the Government obtained receipts, I would like to enjoy some of that skewing. I would like to see the problem of the Government having too much money be the Government's problem for a change. I would not mind that problem.

What I do mind is just exactly that, as he says, now that we have the problem we move it away from Government and try to move it off budget.

It was just like last year when we tried to balance the budget only to find when we got to the second budget resolution later in the year that we had a deficit. I will conclude my remarks because the distinguished Senator from Ohio is here and ready to present his perfecting amendment. However, in concluding, let me say that when we got to that particular point last year there was discussion of moving TVA off-budget to get a $2 billion savings. TVA came in with a presentation and they had all these persuasive arguments, just like those for placing the strategic materials stockpiling account and the SPR account off-budget.

I could give you all kinds of beautiful arguments that were made to get this governmental endeavor away from government so that all you would have to contend with is your appointments. Then they will sit down and spend your money. There would be no need to bother them further because they would be off budget.

That is really the worst thing that could occur, and that is what is occurring in the Senate Energy Committee proposal. We are falling into the trap of saying "There ain't nobody here but us chickens." Let us get this thing out of the way and account for this Government activity on-budget.

Is the distinguished Senator from Ohio prepared to move?

Mr. METZENBAUM. I am prepared to proceed when all time is yielded back.

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

Mr. HOLLINGS. We yield back the remainder of our time on the amendment of the Senator from Idaho.

UP AMENDMENT NO. 175 TO UP AMENDMENT NO. 174

Mr. METZENBAUM. Mr. President, I call up an amendment which is at the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Ohio (Mr. METZENBAUM) proposes an unprinted amendment numbered 175 to the McClure unprinted amendment numbered 174:

At the end of the pending amendment, add the following:

"Notwithstanding any other section, all funds appropriated to fill the Strategic Petroleum Reserve shall be included in the totals of the United States Budget."

The PRESIDING OFFICER. The Senator from Ohio.

Mr. METZENBAUM. Mr. President, we have a law on our books called the Truth in Lending Act. This amendment might very well be described as the truth in budget act because this amendment will put the SPR back on budget where it belongs for the year 1982. Quite simply, this is an amendment to maintain the integrity of the process. I give my good friend from Idaho credit and respect for

offering his amendment which would provide for putting SPR back on the budget for the outyears. But as far as 1982 is concerned, which is the year with which we are really dealing, it is off budget. My amendment says to the American people, "We will have truth in budgeting."

I urge my colleagues on both sides of the aisle, liberals and conservatives, to support this effort.

I believe this move to put SPR back on budget has considerable latent support. Everybody I have talked to believes it is unfair that the Energy Committee can get around the budget reconciliation instructions simply by moving SPR off budget. If you can do that in the Energy Committee, you can do it with respect to any other single item in the budget. Just move it off budget and then you can balance the budget. You have lived within the reconciliation rules.

But it simply cannot be justified as a valid budget move. That is why I feel it is so vital that we put this accounting back in the budget.

In offering this amendment, I believe I am actually taking the side of the Senate Energy Committee, of which I am a longstanding member. I believe the Energy Committee has been placed in a box by the Budget Committee, on which I also serve, and by the Senate as a whole during debate on the reconciliation instructions bill. In its March 15 report to the Budget Committee, the Energy Committee voted 19 to 1 against an amendment that would assume that we can fund SPR through the private market. The Energy Committee has searched for such a private financing alternative but they have not found a way to fund SPR without using Government funds.

You cannot do it by make-believe, you cannot do it by mirrors, and you cannot do it by calling it something else. But the Budget Committee in its wisdom chose to ignore that report. Instead, it adopted the language proposed by one of its members which assumed a savings of $3.8 billion could be made by developing a private financing plan for SPR.

When the reconciliation instructions bill reached the floor in late March, several Members offered amendments to put money back in the budget for SPR.

Mr. President, a parliamentary inquiry. How much time have I available on my amendment?

The PRESIDING OFFICER (Mr. GORTON). The Senator has 11 minutes, 48 seconds.

Mr. METZENBAUM. I thank the Chair.

All of those amendments were defeated. Senator STEVENS offered an amendment to restore $11.5 billion to the budget simply to keep the fill rate of SPR at the current level. That amendment was defeated.

Senator MCCLURE, the distinguished chairman of the Senate Energy Committee, offered an amendment to restore $3 billion to SPR by taking that amount from other Senate committees. That amendment was defeated.

Senator BRADLEY offered an amendment to simply add the full amount of $3 billion back into the budget. He argued that no private financing scheme had yet been developed. But that amendment was defeated.

In short, the Energy Committee told the Budget Committee and the Senate as a whole that it had not figured out a way to fund SPR through the private market; yet the Senate insisted.

Faced with this arbitrary instruction, the Senate Energy Committee tried its hardest to find a way to develop a private financing plan to fill SPR.

On May 8, the Senate Energy Committee held a fifth hearing on the subject and invited the administration's three wise men, Secretary of Energy Edwards, Treasury Secretary Regan and OMB Director Stockman, to testify.

Mr. Regan gave us his expertise on a scheme to develop financing through the private market. He certainly has been successful in that effort in his private life.

I think it is fair to say that Mr. Regan found such financing alternatives problematical at best.

Despite the intensive efforts to bring some of the best financial minds to bear on this problem, we have not been able to figure out a way to finance SPR in the private market.

Then Mr. Stockman, the administration's greatest budget balancer, testified. Under questioning by the Senator from Oklahoma (Mr. NICKLES), Mr. Stockman admitted that the administration would prefer to have the full $3.8 billion on budget.

Since the Energy Committee had not found a private financing plan, Mr. Stockman said it would be fine with him if the energy committee simply moved the whole SPRO account off-budget. Mr. Stockman told the committee:

> Let us face this problem for what it is: It is a bookkeeping argument. We have our auditors from the House and the Senate. Let us create a set of books that will allow us to go forward, to fill the strategic petroleum reserve, and do it in a way that does not disrupt the normal budget process.

Mr. Stockman, I say to you that if that is the way to balance the budget, then we should not have been hassling around here for months on end trying to balance the budget; we should have just put everything off budget and we would have totally solved the problem.

That would have been so simple. All we had to do, according to him, is create a set of books to allow us to go forward.

Wonderful, Mr. Stockman. Then the poor people of this country will not fail to get food and they will not fail to permit kids to go to college. And the senior citizens will not fail to get social security. And the women who are trying to find jobs and will not be able to because you are closing down the day-care centers—we can bring all of those things back with a simple bookkeeping entry.

Thank you, Mr. Stockman.

Mr. President, I find it astounding that the esteemed Director of the Office of Management and Budget would describe this issue as a mere "bookkeeping" argument. I find it hard to believe that he is so willing to acquiesce to congressional will in this matter, to not argue for the administration's position of keeping this on-budget. He certainly has not been so demure on other issues.

The fact is Mr. Stockman was encouraging the Energy Committee to take $3.8 billion and put it off budget because that is the only way that the administration will meet its total budget target of cutting $37 billion in 1982 and additional savings targets in the outyears.

Yes, Mr. President, the Energy Committee accepted the encouragement of Mr. Stockman, because the Energy Committee really had no choice. If it moved the $3.8 SPRO account on budget, the Energy Committee would need to cut even deeper into the Energy and Interior functions, which have already been cut substantially deeper than instructed.

But there is another choice. Dare we speak it? Dare we mention it? Yes, I think so. There is another choice—to be honest with the American people.

But do not say that too loudly. Do not be honest with the American people and say it too loudly.

Mr. President, we could tell them that the strategic petroleum reserve is vital to the national security of this country, just as vital as the $40 billion increase in defense spending that we have approved for fiscal year 1982. We could keep SPRO on-budget—just as the administration originally requested. We could keep it on-budget, just as we do with all but a few programs in the entire Federal Government.

But that means we would increase the deficit by an additional $3.8 billion. Yes, there is a price for being honest. We would have to admit that we are actually spending money.

Instead, by going off-budget, we are engaging in a subterfuge for purely political reasons.

The Congress and the administration know full well that we should not take SPRO off-budget. There is no sound justification. It violates the budget process and sets a bad precedent for future situations when we face equally tough choices.

We are not fooling the financial markets, Mr. President.

Mr. President, do you think that Wall Street does not know that on-budget and off-budget means the same Government burrowing through the Treasury in order to buy the oil to keep this country rolling? Do you think we are fooling anybody except ourselves and the American people?

Mr. President, I want to say that we have so many billions of dollars that are off-budget right now and this Congress has been unwilling to face up to that issue. We have talked about it. We have a special task force on the Budget Committee, we have attempted to move forward and, in all fairness, the Committee on the Budget has recognized the problem. Some of the strongest, most conservative spokespersons on the other side of the aisle have concerned themselves with this issue of going off-budget. But in this instance, we have to balance the budget. At least, we cannot afford to be more than $38 billion out of balance.

So what are we going to do, Mr. President? This cute game we are playing is we are going to bring it back into the picture for 1983 and 1984. But for 1982,

let it hang out there somewhere. Fool the American people. Kid them a little bit more.

It is time, Mr. President, to quit kidding the American people. It is time for us to bite the bullet. It is time for those who are always so ready to talk about cutting back on spending and those who are willing to talk about production incentives and those who are willing to talk about a thousand and one other issues to have some integrity in the process, and that means accepting this amendment to put the $3.8 billion appropriation for SPR on budget.

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

Mr. HOLLINGS. Will the distinguished Senator yield me a couple of minutes?

Mr. METZENBAUM. I certainly do.

Mr. HOLLINGS. Mr. President, the Senator from Ohio speaks with expertise. When I took over the Budget Committee a year ago from Senator Muskie, it was at that time that Senator METZENBAUM, in a bipartisan move, had taken over the study of off-budget accounts to determine how to bring them back on budget. In fact, Republicans, Democrats, all Members have been concerned with working in the budget process, including the distinguished Senator from Idaho, a former member of our committee, to get these off-budget accounts on-budget so we would have a panoramic view of all responsibilities and all costs to the Government. We continued that investigation when I took over the committee and the Senator from Ohio did an outstanding job as its chairman.

Also, the record should be corrected. The Budget Committee did not direct the Energy Committee to place SPRO off-budget. Three times, on the contrary, we have asked the Energy Committee to see about private financing for the particular program. But there has never been, if we are making a record of our Budget Committee and the budget process, a vote to get it off the budget.

The contrary is true and it has been summed up by the Senator from Ohio, and I implore the Senate to support his amendment.

The PRESIDING OFFICER. Who yields time?

The Senator from Idaho.

Mr. McCLURE. Mr. President, I rise in opposition to the amendment of the Senator from Ohio. I think the Senator from Ohio would know and the Senator from South Carolina would know that I understand this amendment. The amendment would return the strategic petroleum reserve on budget for fiscal year 1982.

As floor manager and chairman of the Committee on Energy and Natural Resources, I oppose the amendment for the following reasons:

First, without taking strategic petroleum reserve off budget, the committee would not meet its reconciliation instructions. This amendment does not change those instructions.

Second, the amendment does not change the functional totals of the first budget resolution for fiscal year 1982. Therefore, under section 305 of House Concurrent Resolution 115, the Appropriations Act, which would provide a final on-budget amount for strategic petroleum reserve, could not be enrolled until after the Congress has completed action on the second concurrent budget resolution for fiscal year 1982.

In other words, Mr. President, the Interior appropriations bill for fiscal year 1982 could not be enrolled until late this year. In fact, if there is any delay in getting the second resolution, the Interior appropriations bill could be a victim of this amendment. Consequently, all the provisions contained therein would be held hostage until final congressional action on the second concurrent resolution for fiscal year 1982.

Third, other bills of the Energy Committee and the Appropriations Committee could similarly be held hostage or made a victim of this amendment.

Mr. President, I say to the Senator from Ohio that the argument is a great one. I have made it myself. But the Senate voted otherwise, not once but three times. And now to come in here at this date and say, now put it back on-budget, when we have no opportunity to change the targets of the first concurrent resolution, no way to relieve ourselves of the absolutely mandatory provision of the Budget Act that says we cannot enroll the bills, simply says to the Interior Appropriations Subcommittee, "You are out of business for a year." That is not responsible legislation.

I sympathize with the Senator from Ohio. I understand the Senator from South Carolina. Those arguments could have prevailed earlier, at the time we were voting in the Senate as to whether or not to take them off budget. But we were instructed to take them off budget. The Senate voted to take it off budget. To put it back on budget now is simply to say SPR will not be filled. There will be no appropriation for SPR if this amendment is adopted. We could not even enroll it if we wanted to, under this amendment.

So let us not be fooled by what the effect of the amendment is. The emotion is right; the intellect is right—up to a point. That point fails when you fail to look at the effects of the Budget Act and the first concurrent resolution and the instructions contained in that first concurrent resolution, to which I have made reference, House Concurrent Resolution 115.

So, while I sympathize, while intellectually I agree, this cannot be done now. Simply, that is the fact.

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

The PRESIDING OFFICER. Who yields time?

Mr. METZENBAUM. Mr. President, I will respond briefly.

First of all, I point out that this matter can be handled, because we will get to the second budget resolution prior to the time the appropriations bill is finally brought to a conclusion. So we would not have any difficulty in achieving that objective.

Having said that, I emphasize to the Senator from Idaho that what we are really talking about is integrity. We are talking about honesty. He is the pinnacle of those words in the Senate, and for him now to be willing to accept this process bothers me, and I am sure it bothers him.

The fact is that we are talking about $3.8 billion being off budget. All the Senate said was that you should find a way in the Energy Committee to finance it off budget by private financing. But you have not done that, and cannot do it; and no matter how you slice it, it means going to the money markets and borrowing that $3.8 billion.

One of the major thrusts of this administration's program is to cut down borrowing so that, in turn, we can bring down the cost of money and, as a consequence, roll back the inflationary spiral. Senators who believe in doing that should vote "yes" for this amendment. Senators who believe in leveling with the American people should vote "yes" for this amendment.

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

Mr. McCLURE. Mr. President, again I say that I understand the Senator from Ohio. I have made those arguments, myself, in the past, both in the Budget Committee and on the floor.

However, I remind the Senator from Ohio and other Members of the Senate that efforts were made, when we had Senate Concurrent Resolution 9, the predecessor to House Concurrent Resolution 115, before us, to do just what he is trying now to do, and we failed. We tried three different times, on three different amendments.

The Senator from Alaska (Mr. STEVENS) offered an amendment which would have restored $1.5 billion to the budget for financing SPR. It was defeated by a vote of 23 to 71. I say to the Senator from Ohio that I voted for it.

The Bradley amendment would have added $3 billion to the budget for financing of SPR, and it was defeated by a vote of 17 to 81.

An amendment offered by me would have added $3 billion for financing SPR, with offsetting reductions elsewhere in the budget. I argued for it, and I voted for it. The Senate turned it down. The Senator from Ohio, I might add, voted against it.

So if we are talking about honesty and forthrightness, about being right up front, let us admit that the stage was set earlier, partly by the action of the Senator from Ohio, but obviously by a large majority of the Senate, to make it impossible for us to do what he now insists we should do.

So if we are going to be up front and honest and dare not tell the American people the truth, except in a whisper, let me whisper: There are those who voted against this proposal earlier and put us in the box we are in now.

That, I say to the Senator, is the truth.

I hope the Senate will join me in rejecting the amendment.

The PRESIDING OFFICER. Who yields time?

Mr. METZENBAUM. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. Fifteen seconds.

Mr. METZENBAUM. And the Senator from Idaho?

The PRESIDING OFFICER. Eight minutes and seven seconds.

Mr. METZENBAUM. If the Senator from Idaho is prepared to yield back the remainder of his time, I am prepared to ask for a rollcall vote.

Mr. McCLURE. I am prepared to yield back the remainder of my time.

Mr. METZENBAUM. Mr. President, I yield back the remainder of my time, 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. All time having been yielded back, the question is on agreeing to the amendment of the Senator from Ohio (UP No. 175) to the amendment of the Senator from Idaho (UP No. 174). On this question the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. STEVENS. I announce that the Senator from Arizona (Mr. GOLDWATER) and the Senator from Nevada (Mr. LAXALT) are necessarily absent.

I further announce that, if present and voting, the Senator from Arizona (Mr. GOLDWATER) would vote "nay."

Mr. CRANSTON. I announce that the Senator from Nevada (Mr. CANNON) is necessarily absent.

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

The PRESIDING OFFICER. Is there any Senator in the Chamber wishing to vote?

The result was announced—yeas 39, nays 58, as follows:

[Rollcall Vote No. 161 Leg.]

YEAS—39

Armstrong	Dixon	Mitchell
Baucus	Dodd	Moynihan
Bentsen	Exon	Nunn
Biden	Glenn	Pell
Boren	Grassley	Proxmire
Bradley	Hart	Pryor
Bumpers	Hatch	Randolph
Burdick	Hollings	Sarbanes
Byrd, Harry F., Jr.	Inouye	Stennis
	Kennedy	Tsongas
Byrd, Robert C.	Leahy	Williams
Chiles	Levin	Zorinsky
Cranston	Matsunaga	
DeConcini	Metzenbaum	

NAYS—58

Abdnor	Hayakawa	Percy
Andrews	Heflin	Pressler
Baker	Heinz	Quayle
Boschwitz	Helms	Riegle
Chafee	Huddleston	Roth
Cochran	Humphrey	Rudman
Cohen	Jackson	Sasser
D'Amato	Jepsen	Schmitt
Danforth	Johnston	Simpson
Denton	Kassebaum	Specter
Dole	Kasten	Stafford
Domenici	Long	Stevens
Durenberger	Lugar	Symms
Eagleton	Mathias	Thurmond
East	Mattingly	Tower
Ford	McClure	Wallop
Garn	Melcher	Warner
Gorton	Murkowski	Weicker
Hatfield	Nickles	
Hawkins	Packwood	

NOT VOTING—3

Cannon	Goldwater	Laxalt

So Mr. METZENBAUM's amendment (UP No. 175) was rejected.

Mr. McCLURE. Mr. President, I move to reconsider the vote by which the amendment was rejected.

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

The motion to lay on the table was agreed to.

UP AMENDMENT NO. 174

The PRESIDING OFFICER. The question recurs on the amendment of the Senator from Idaho. (Putting the question.)

The amendment (UP No. 174) was agreed to.

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

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

The motion to lay on the table was agreed to.

Mr. HOLLINGS. Mr. President, I yield 1 minute to the Senator from Washington.

Mr. JACKSON. Mr. President, the Senate is engaged in a process which is without precedent in our history and which, I believe, was not even remotely envisioned by the authors of the Congressional Budget Act of 1974. Yet, in broad political terms, what we are doing has almost overwhelming support among the public. The public appears ready to resort to radical reductions in Federal spending. They know that the economy is in trouble and they sense that we have to try something new to improve things. One of the things we are trying is cutting the budget. Indeed, this notion did not originate with President Reagan. Budget cutting was a major preoccupation of President Carter's administration.

I support cutting the budget. It is clear the Congress supports cutting the budget. We should get on with it, because we need to find out soon whether or not these radical cuts in Federal spending will lead to the kind of results in the economy we hope will come about.

However, there is no guarantee that what we are doing will make things better. We are in danger of losing sight of this. The bill before us goes far beyond simply cutting the budget in fiscal year 1982. If we adopt this bill we are locking into law binding spending ceilings not only for fiscal year 1982, but also for fiscal years 1983 and 1984. If what we are doing now does not make things better, we will be in a much weaker position to change directions in these out years even if the evidence shows us we should change.

This is my principal objection to the reconciliation bill before us. Perhaps my colleagues on the Budget Committee understand better than I do what the sources of our economic woes are, and, in addition, are better than I am at predicting the future. This reconciliation bill reflects much more certainly in these matters than I can accept.

I do not know what 1983 and 1984 are going to be like. I am sure that any projection we make now will be wrong. Therefore, I do not think it wise to establish binding limits on the Congress which can only be changed, in the worst instance, by a two-thirds vote of each House.

I do not consider the references in this bill to fiscal years 1983 and 1984 to be at all prudent or appropriate. We have rushed into this too precipitously and we will regret it.

I congratulate Senator McCLURE, the chairman of the Committee on Energy and Natural Resources, for his cautious approach to the reconciliation process. He has led the committee to as responsible a position as the constraints of the reconciliation process would permit.

Unfortunately, in the House the administration, through the Office of Management and Budget, is proposing changes in energy law which are far more radical than the ceilings set forth in the recommendations of the Senate Committee on Energy and Natural Resources. Moreover, these changes do not affect only fiscal years 1982 through 1984. They are permanent.

Under the OMB-designed "Broyhill substitute," which the House will consider within the next few weeks, massive, permanent alterations in our energy laws would be made. Most of these proposed alterations would totally repeal authority for programs encouraging energy conservation and the use of alternative energy resources. Changes in law would be made which have never been discussed in any hearing in the House or in the Senate.

In the form reported to the House Rules Committee, the Broyhill substitute:

Repeals the basic authority for the building energy performance standards (BEPS) for new residential and commercial buildings;

Repeals the basic authority to establish energy efficiency standards for new home appliances;

Repeals the authority for the residential conservation service, under which large utilities are required to offer conservation services to their residential customers;

Repeals the low income weatherization program;

Repeals the schools and hospitals weatherization grant and technical assistance program;

Repeals the energy extension service;

Repeals the electric and natural gas utility rate standards under the public Utilities Regulatory Policies Act (PURPA);

Repeals the authority for the program providing grants to States supporting State energy conservation programs and State energy offices;

Establishes a brand new 2-year energy conservation and supply block grant program funded at $200 million to replace all State grant programs. No hearings have been held in either House on this legislation. The programs replaced by the block grant were proposed to be funded at over twice this level by President Carter's fiscal year 1982 budget;

Repeals basic authority for commercialization, marketing and demonstration programs for electric and hybrid vehicles, ocean thermal energy conversion, photovoltaics and municipal waste energy, and

repeals basic authority for the small hydro and geothermal loan guarantee programs;

Limits funding for Department of Energy compliance activities so as to effectively preclude prosecution of major oil company overcharge cases;

Exempts new and existing hydroelectric projects under 15 megawatts from certain Federal Power Act licensing requirements, again, with absolutely no hearing record to justify the exemption;

Repeals the appropriate technology grants program;

Repeals section 301 of the Fuel Use Act, which prohibits electric utilities from using natural gas as a fuel after 1990; and

Significantly modifies nuclear power reactor licensing requirements.

Adoption of this substitute unamended by Congress would amount to a nearly complete turn away from past efforts to increase the efficiency with which we use energy in the United States and to incorporate new alternative sources of energy into our supply mix. It would make significant changes in laws affecting hydropower and electric utilities without anywhere near adequate congressional review of the proposed legislation. Some of these changes may be desirable, but under the procedure envisioned by OMB we will not get to discuss this until after the legislation is enacted.

The Senate ought to refuse to go along with this procedure. In the event that the House sees fit to adopt the Broyhill substitute or legislation similar to it, I will urge the Senate to insist on a conference and in conference refuse to accede to the adoption of provisions which repeal fundamental energy authorities.

I hope that my colleagues of the majority party will join me in pledging not to accept repeal of substantive energy laws in the reconciliation process. To do so is to invite fundamental weakening of the Senate's committee system, and ultimately a fundamental weakening of the role of Congress.

Mr. HOLLINGS. Mr. President, the Senator from New York, who disappeared——

Mr. DOMENICI. Mr. President, it has been agreed upon now that the next amendment will be an amendment offered by the distinguished senior Senator from New York with reference to some matters on finance, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

Mr. DOMENICI. I withhold that.

Mr. President, I believe the distinguished Senator from New York is here and I am prepared to yield to him.

Mr. President, could we have order?

The PRESIDING OFFICER. The Senate will be in order.

The Senator from New Mexico.

Mr. DOMENICI. Mr. President, I ask the distinguished Senator from New York if he intends to use the entire time that has been agreed upon for his amendment.

Mr. MOYNIHAN. Mr. President, may I ask the distinguished chairman, is the agreed-upon time the hour?

Mr. DOMENICI. Yes.

Mr. MOYNIHAN. Mr. President, I do not believe it will be necessary. There are a number of Senators who wish to speak; the distinguished Senator from Texas wishes to speak.

I wonder if I could ask the chairman if he would not allow us to make our case as succinctly as we feel necessary and to enable all those persons desiring to speak an opportunity to speak.

Mr. DOMENICI. Mr. President, I say to my good friend from New York that to the extent that he is able to do that in less than the allotted time, we will certainly attempt to do it in less than the time allotted in opposition.

Mr. MOYNIHAN addressed the Chair.

The PRESIDING OFFICER. The Senator from New York.

AMENDMENT NO. 100

(Purpose: To maintain current law with respect to child welfare services, adoption assistance, and foster care payments)

Mr. MOYNIHAN. Mr. President, I have amendment No. 100 at the desk and I ask for its immediate consideration. It is a technical amendment which I submitted earlier.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from New York (Mr. MOYNIHAN), for himself, Mr. CRANSTON, Mr. BRADLEY, and Mr. BOREN, proposes amendment numbered 100.

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

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

The amendment is as follows:

Strike out part I of title VII and insert in lieu thereof the following:

PART I—BLOCK GRANTS FOR SOCIAL SERVICES

SHORT TITLE

SEC. 781. This part may be cited as the "Social Services Block Grant Act."

TITLE XX BLOCK GRANTS

SEC. 782. (A) Title XX of the Social Security Act is amended to read as follows:

"TITLE XX—BLOCK GRANTS TO STATES FOR SOCIAL SERVICES

"PURPOSES OF TITLE; AUTHORIZATION OF APPROPRIATIONS

"SEC. 2001. For the purposes of consolidating Federal assistance to States for social services into a single grant, increasing State flexibility in using social service grants, and encouraging each State, as far as practicable under the conditions in that State, to furnish services directed at the goals of—

"(1) achieving or maintaining economic self-support to prevent, reduce, or eliminate dependency;

"(2) achieving or maintaining self-sufficiency, including reduction or prevention of dependency;

"(3) preventing or remedying neglect, abuse, or exploitation of children and adults unable to protect their own interests, or preserving rehabilitating, or reuniting families;

"(4) preventing or reducing inappropriate institutional care by providing for community-based care, home-based care, or other forms of less intensive care; and

"(5) securing referral or admission for institutional care when other forms of care are not appropriate, or providing services to individuals in institutions; there are authorized to be appropriate for each fiscal year such sums as may be necessary to carry out the purposes of this title.

"PAYMENTS TO STATES

"SEC. 2002. (a)(1) Each State shall be entitled to payment under this title for each fiscal year in an amount equal to its allotment for such fiscal year, to be used by such State for services directed at the goals set forth in section 2001, subject to the requirements of this title.

"(2) For purposes of paragraph (1)—

"(A) services which are directed at the goals set forth in section 2001 include, but are not limited to, child care services, protective services for children and adults, services for children and adults in foster care, services related to the management and maintenance of the home, day care services for adults, transportation services, family planning services, training and related services, employment services, information, referral, and counseling services, the preparation and delivery of meals, health support services and appropriate combinations of services designed to meet the special needs of children, the aged, the mentally retarded, the blind, the emotionally disturbed, the physically handicapped, and alcoholics and drug addicts; and

"(B) expenditures for such services may include expenditures for administration (including planning and evaluation) and personnel training and retraining directly related to the provision of those services (including both short- and long-term training at educational institutions through grants to such institutions or by direct financial assistance to students enrolled in such institutions).

"(b) The Secretary shall make payments in accordance with section 203 of the Intergovernmental Cooperation Act of 1968 (42 U.S.C. 4213) to each State from its allotment for use under this title.

"(c) Payments to a State from its allotment for any fiscal year must be expended by the State in such fiscal year or in the succeeding fiscal year.

"(d) A State may transfer up to 10 percent of its allotment under section 2003 for any fiscal year for its use for that year under other provisions of Federal law providing block grants for support of health services, health promotion, and disease prevention activities, or energy or emergency assistance (or any combination of those activities). Amounts allotted to a State under any provisions of Federal law referred to in the preceding sentence and transferred by a State for use in carrying out the purposes of this title shall be treated as if they were paid to the State under this title but shall not affect the computation of the State's allotment under this title. The State shall inform the Secretary of any such transfer of funds.

"(e) A State may use a portion of the amounts described in subsection (a) for the purpose of purchasing technical assistance from public or private entities if the State determines that such assistance is required in developing, implementing, or administering programs funded under this title.

"ALLOTMENTS

"SEC. 2003. The allotment for each State for any fiscal year shall be an amount which bears the same ratio to $2,243,000,000 as the total amount allotted to such State (without regard to any reallotment), or in the absence of an allotment, the total amount obligated to such State, or in the absence of such an allotment or obligation, the total amount paid to such State (as determined by the Secretary on the basis of claims for payment submitted by the State, and approved by the Secretary, on or before April 1, 1982) for fiscal year 1981 under this title (as in effect on September 30, 1981), and for social services in accordance with section 1108(a) of this Act, bears to the total amount so allotted, obligated, or paid to all States under those authorities for fiscal year 1981.

"STATE ADMINISTRATION

"SEC. 2004. Prior to expenditure by a State of payments made to it under section 2002 for any fiscal year, the State shall report on the intended use of the payments the State is to receive under this title, including information on the types of activities to be supported and the categories or characteristics of individuals to be served. The report shall be transmitted to the Secretary and made public within the State in such manner as to facilitate comment by any person (including any Federal or other public agency) during development of the report and after its completion. The report shall be revised throughout the year as may be necessary to reflect substantial changes in the activities assisted under this title, and any revision shall be subject to the requirements of the previous sentence.

"LIMITATIONS ON USE OF GRANTS

"SEC. 2005.(a) Except as provided in subsection (b), grants made under this title may not be used by the State, or by any other person with which the State makes arrangements to carry out the purposes of this title—

"(1) for the purchase or improvement of land, or the purchase, construction, or permanent improvement (other than minor remodeling) of any building or other facility;

"(2) for the provision of cash payments for costs of subsistence or for the provision of room and board (other than costs of subsistence during rehabilitation, room and board provided for a short term as an integral but subordinate part of a social service, or temporary emergency shelter provided as a protective service);

"(3) for payment of the wages of any individual as a social service (other than payment of the wages of welfare recipients employed in the provision of child day care services);

"(4) for the provision of medical care (other than family planning services, rehabilitation services, or initial detoxification of an alcoholic or drug dependent individual) unless it is an integral but subordinate part of a social service for which grants may be used under this title;

"(5) for social services (except to an alcoholic or drug dependent individual or rehabilitation services) provided in and by employees of any hospital, skilled nursing facility, intermediate care facility, or prison, to any individual living in such institution;

"(6) for the provision of any education service which the State makes generally available to its residents without cost and without regard to their income;

"(7) for any child day care services unless such services meet applicable standards of State and local law; or

"(8) for the provision of cash payments as a service (except as otherwise provided in this section).

"(b) The Secretary may waive the limitation contained in subsection (a) (1) and (4) upon the State's request for such a waiver if he finds that the request describes extraordinary circumstances to justify the waiver and that permitting the waiver will contribute to the State's ability to carry out the purposes of this title.

"REPORTS AND AUDITS

"SEC. 2006. (a) Each State shall prepare reports on its activities carried out with funds made available (or transferred for use) under this title. Reports shall be in such form, contain such information, and be of such frequency (but not less often than every two years) as the State finds necessary to provide an accurate description of such activities, to secure a complete record of the purpose for which funds were spent, and to determine the extent to which funds were spent in a manner consistent with the reports required by section 2004. The State shall make copies of the reports required by this section available for public inspection within the State and shall transmit a copy to the Secretary. Copies shall be provided, upon request, to any interested public agency, and each such agency may provide its views on these reports to the Congress.

"(b) Each State shall, not less often than every two years, audit its expenditures from amounts received (or transferred for use) under this title. Such State audits shall be conducted by an entity independent of any agency administering activities funded under this title, in accordance with generally accepted auditing principles. Within 30 days following the completion of each audit, the State shall submit a copy of that audit to the legislature of the State and to the Secretary. Each State shall repay to the United States amounts ultimately found not to have been expended in accordance with this title, or the Secretary may offset such amounts against any other amount to which the State is or may become entitled under this title.

"(e) For other provisions requiring States to account for Federal grants, see section 202 of the Intergovernmental Cooperation Act of 1968 (42 U.S.C. 4212).

"CHILD DAY CARE SERVICES

"SEC. 2007. (a) Subject to subsection (b), sums granted by a State to a qualified provider of child day care services (as defined in subsection (c)) to assist such provider in meeting its work incentive program expenses (as defined in subsection (c)) with respect to individuals employed in jobs related to the provision of child day care services in one or more child day care facilities of such provider, shall be deemed for purposes of section 2002 to constitute expenditures made by the State in accordance with the provisions of this title for the provision of child day care services.

"(b) The provisions of subsection (a) shall not be applicable with respect to any grant made to a particular qualified provider of child day care services to the extent that (as determined by the Secretary) such grant is or will be used to pay wages to any employee at an annual rate in excess of $6,000, in the case of a public or nonprofit private provider, or at an annual rate in excess of $5,000, or to pay more than 80 per centum of the wages of any employee, in the case of any other provider.

"(c) For purposes of this subsection—

"(1) the term 'qualified provider of child day care services', when used in reference to a recipient of a grant by a State, includes a provider of such services only if, of the total number of children receiving such services from such provider in the facility with respect to which the grant is made, at least 20 percent thereof have some or all of the costs for the child day care services so furnished to them by such provider paid for under a program conducted pursuant to this title; and

"(2) the term 'work incentive program expenses' means expenses of a qualified provider of child day care services which constitute work incentive program expenses as defined in section 50B(a)(1) of the Internal Revenue Code of 1954, or which would constitute work incentive program expenses as so defined if the provider were a taxpayer entitled to a credit (with respect to the wages involved) under section 40 of such Code.".

(b) Section 1101(a)(1) of such Act is amended by adding at the end thereof the following new sentence: "Such term when used in title XX also includes the Virgin Islands, American Samoa, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.".

CHILD WELFARE SERVICES AUTHORIZATION LEVELS

SEC. 783. (a) Section 420(a) of the Social Security Act is amended by striking out "$266,000,000" and inserting in lieu thereof "$122,250,000".

(b) Section 426(a)(1)(C) of such Act is amended by inserting before the semicolon at the end thereof the following: ", but the amount authorized for grants for training under this subparagraph shall not exceed $4,500,000 for any fiscal year".

CONFORMING AMENDMENTS TO THE SOCIAL SECURITY ACT

SEC. 784. (a)(1) Section 1 of the Social Security Act is amended—

(A) by inserting "and" before "(b)" the first time it appears, and

(B) by striking out "and (c)" and all that follows through "self-care,".

(2) Section 3(a) of such Act is amended—

(A) by amending paragraph (4) to read as follows:

"(4) in the case of any State, an amount equal to the sum of the following proportions of the total amounts expended during such quarter as found necessary by the Secretary of Health and Human Services for the proper and efficient administration of the State plan—

"(A) 75 per centum of so much of such expenditures as are for the training (including both short- and long-term training at educational institutions through grants to such institutions or by direct financial assistance to students enrolled in such institutions) of personnel employed or preparing for employment by the State agency or by the local agency administering the plan in the political subdivision; plus

"(B) one-half of the remainder of such expenditures."; and

(B) by striking out paragraph (5).

(3) Section 3(c) of such Act is repealed.

(b)(1) Sections 402(a)(5), 402(a)(13), 402(a)(14), 402(a)(15), 403(a)(3), 403(e), and 406(d) of such Act as in effect with respect to Puerto Rico, Guam, and the Virgin Islands are repealed.

(2) Sections 402(a)(5), 402(a)(15), and 403(a)(3) of such Act as they apply to the fifty States and the District of Columbia shall be applicable to Puerto Rico, Guam, and the Virgin Islands.

(3) Section 403(a)(3)(A) of such Act is amended by inserting "(or, in the case of Puerto Rico, Guam, and the Virgin Islands, 60 per centum)" after "75 per centum".

(4) Section 248(b) of the Social Security Amendments of 1967 (Public Law 90-248) is repealed.

(c) Section 402(a)(15) of such Act is amended—

(1) by striking out "as part of the program of the State for the provision of services under title XX"; and

(2) by striking out "or clause (14)".

(d) Section 403(a)(3) of such Act is further amended by striking out "service described in section 2002(a)(1)" and inserting in lieu thereof "service described in section 2002(a)".

(e)(1) Section 1001 of such Act is amended by striking out "and of encouraging each State" and all that follows through "self-care".

(2) Section 1003(a) of such Act is amended—

(A) by amending paragraph (3) to read as follows:

"(3) in the case of any State, an amount equal to the sum of the following proportions of the total amounts expended during such quarter as found necessary by the Secretary of Health and Human Services for the proper and efficient administration of the State plan—

"(A) 75 per centum of so much of such expenditures as are for the training (including both short- and long-term training at educational institutions through grants to such institutions or by direct financial assistance to students enrolled in such institutions) of personnel employed or preparing for employment by the State agency or by the local

agency administering the plan in the political subdivision; plus

"(B) one-half of the remainder of such expenditures."; and

(B) by striking out paragraph (4).

(3) Section 1003(c) of such Act is repealed.

(f) Section 1008(a) of such Act is amended in the matter preceding paragraph (1) to read as follows:

"(a) The total amount certified by the Secretary of Health and Human Services under titles I, X, XIV, and XVI, and under parts A and E of title IV (exclusive of any amounts on account of services and items to which subsection (b) applies)—".

(g) Section 1115(a) of such Act is amended—

(1) in the matter preceding paragraph (1), by striking out "XIX, or XX" and inserting in lieu thereof "or XIX";

(2) in paragraph (1), by striking out "1902, 2002, 2003, or 2004" and inserting in lieu thereof "or 1902"; and

(3) in paragraph (2)—

(A) by striking out "1903, or 2002" and inserting in lieu thereof "or 1903", and

(B) by striking out "or expenditures with respect to which payment shall be made under section 2002,".

(h) Section 116 of such Act is amended—

(1) in subsections (a)(1) and (b), by striking out "XIX, or XX" and inserting in lieu there of "or XIX";

(2) in subsection (a)(3), by striking out "1904, or 2003" and inserting in lieu thereof "or 1904"; and

(3) in subsection (d), by striking out "XIX, XX" and inserting in lieu thereof "or XIX".

(i) Section 1124(a) of such Act is amended—

(1) in paragraph (1), by striking out "XIX, and XX" each place it appears and inserting in lieu thereof "and XIX"; and

(2) in paragraph (2)—

(A) by inserting "or" after the semicolon at the end of subparagraph (B);

(B) by striking out "; or" at the end of subparagraph (C) and inserting in lieu thereof a period; and

(C) by striking out subparagraph (D).

(j) Section 1126(a) of such Act is amended by striking out "XIX, and XX" and inserting in lieu thereof "and XIX".

(k) Section 1128(a) of such Act is amended—

(1) in paragraph (2)(A), by striking out "or title XX,"; and

(2) in paragraph (2)(B), by striking out "or title XX".

(l)(1) Section 1401 of such Act is amended by striking out "and of encouraging each State" and all that follows through "self-care".

(2) Section 1403(a) of such Act is amended—

(A) by amending paragraph (3) to read as follows:

"(3) in the case of any State; an amount equal to the sum of the following proportions of the total amounts expended during such quarter as found necessary by the Secretary of Health and Human Services for the proper and efficient administration of the State plan—

"(A) 75 per centum of so much of such expenditures as are for the training (including both short- and long-term training at educational institutions through grants to such institutions or by direct financial assistance to students enrolled in such institutions) of personnel employed or preparing for employment by the State agency or by the local agency administering the plan in the political subdivisions; plus

"(B) one-half of the remainder of such expenditures."; and

(B) by striking out paragraph (4).

(3) Section 1403(c) of such Act is repealed.

(m)(1) Section 1601 of such Act is amended—

(A) by inserting "and" before "(b)" the first time it appears; and

(B) by striking out "and (c)" and all that follows through "self-care,".

(2) Section 1603(a) of such Act is amended—

(A) by inserting "and" after the semicolon at the end of paragraph (2)(B);

(B) by amending paragraph (4) to read as follows:

"(4) in the case of any State, an amount equal to the sum of the following proportions of the total amounts expended during such quarter as found necessary by the Secretary of Health and Human Services for the proper and efficient administration of the State plan—

"(A) 75 per centum of so much of such expenditures as are for the training (including both short- and long-term training at educational institutions through grants to such institutions or by direct financial assistance to students enrolled in such institutions) of personnel employed or preparing for employment by the State agency or by the local agency administering the plan in the political subdivision; plus

"(B) one-half of the remainder of such expenditures."; and

(C) by striking out paragraph (5).

(3) Section 1603(c) of such Act is repealed.

(n) Section 1616(e)(2) of such Act is amended by striking out ", as a part of the services program planning procedures established pursuant to section 2004 of this Act,".

(o) Section 1619 of such Act is amended—

(1) by striking out "titles XIX and XX" each place it appears and inserting in lieu thereof "title XIX", and

(2) by striking out "title XIX or XX" and inserting in lieu thereof "title XIX".

(p) Section 1620(c) of such Act is amended by striking out the matter following the end of paragraph (7).

OTHER CONFORMING AMENDMENTS

SEC. 785. Section 3(f) of the Social Security Amendments of 1974 (Public Law 93-647) is repealed.

EFFECTIVE DATE

SEC. 786. Except as otherwise explicitly provided, the provisions of this part, and the repeals and amendments made by this part, shall become effective on October 1, 1981.

STUDY OF STATE SOCIAL SERVICE PROGRAMS

SEC. 787. The Secretary of Health and Human Services shall conduct a study to identify criteria and mechanisms which may be useful for the States in assessing the effectiveness and efficiency of the State social service programs carried out with funds made available under title XX of the Social Security Act. The study shall include consideration of Federal incentive payments as an option in rewarding States having high performance social service programs. The Secretary shall report the results of such study to the Congress within one year after the date of the enactment of this Act.

Mr. MOYNIHAN. Mr. President, the purpose of this amendment is to restore to the Social Security Act titles IV(b) and IV(e) and the adoption assistance provisions which are law today and which provide for the care of children in foster homes, including orphanages of sizes under 25 persons.

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

The PRESIDING OFFICER. The Senate will be in order. The Senate is not in order. The Senate will be in order.

The Senator from New York.

Mr. MOYNIHAN. Mr. President, if I may repeat, these provisions are titles IV(b) and IV(e), which does today, as the Social Security Act has done since its enactment in 1935, provide that any child placed in foster care by a State agency is entitled, as a matter of right, to have a share of his or her maintenance paid for by the Federal Government in much the manner the Federal Government shares the cost of families of dependent children in what we more generally know as the AFDC program.

There are 110,000 of these children. Nearly 90 percent of them are minority children. Many of them, although not the larger number, are orphans.

Title IV(b) of the Social Security Act provides, as it has done since 1962, for child welfare services. These have a variety of purposes, one of which is to provide for the placement of children in foster homes but, simultaneously, to see if that cannot be avoided through the reestablishment of the original home environment or the successful adoption of a child for whom there are no parents.

In 1980, after 4 years of deliberation, this Senate, by voice vote—I believe there were no dissenting votes—established a new program called the child welfare adoption assistance program. Only two Members of the House of Representatives—a vote of 401 to 2—voted against that bill. We set about as a national goal minimizing the number of children placed in foster homes. Children get lost in foster homes. Perhaps it is something that cannot be helped, but it is increasingly a problem.

In a country, Mr. President, where 50 percent of the children born today will live in a one-parent family before they are 18, a third of the children born today will be on public assistance before they are 18, we set out to establish adoption allowances which would enable low-income families to adopt children. Rather more specifically, to enable families where a foster child has been brought in and, where an attraction or relationship arises, we set out to make adoption less burdensome. Before we passed Public Law 96-272 last year, for low-income families to adopt such a child meant to lose all such support that comes from State and local government. Adoption allowances enable that support to continue.

I know how strongly Members of this Senate feel that we should retain these rights for those persons who have as little voice and as little influence as any group you could describe in our society.

I know that the Senator from Texas, my friend and colleague on the Finance Committee, was as troubled as I was when this decision to repeal these important programs was made with but little debate and less notice. I believe that he would like to speak at this point to this matter. It is one that has to engage us all. We hope not to raise our voices but, rather, to speak quietly in the hope that the other Members in this Chamber would listen intently. I am happy to yield to the Senator from Texas.

Mr. BENTSEN. I am very pleased to join in this amendment with Senator MOYNIHAN and Senator BOREN.

I have not had any orphans call on me. I, actually, have not had any adoptive parents call. But I happen to feel very strongly that this is not the time—when we are concerned about parental guidance, family ties, and trying to give some direction to the life of children—to turn our backs on 100,000 plus children by putting a limitation on Federal assistance for foster care, adoption assistance, and child welfare services.

The passage 1 year ago of Public Law 96-272, the Adoption Assistance and Child Welfare Act of 1980, represented the culmination of several years of effort by individuals, agencies, and organizations who are deeply concerned about the state of the child welfare system in this country.

The law restructures Federal policy by providing States incentives to move away from a system that encouraged the use of foster care—expensive both financially and socially—to a system that encourages stability and permanency for eligible children. For the first time, through this piece of legislation, an adoption assistance program was established to help families meet the costs associated with adopting the hard to place, often handicapped, child. But perhaps the most innovative aspect of the law is the use of incentives to promote reform.

States are funded at an increased level so that they might institute mechanisms to identify children in foster care, follow each of these children during their attachment to the welfare system, establish a statewide information network to help place children, and develop preplacement services to assist the child and the family during a sometimes difficult transition period. Funding to the individual States is reduced if the requirements of the law go unmet.

The net effect of the changes made by 96-272 is to reorder priorities and restructure incentives with respect to the care of needy children. In essence, through enactment of the Adoption Assistance and Child Welfare Act, the Federal Government has made a commitment to keep children in their homes when feasible, to return them to their parents when possible, to facilitate adoption for children without parents or whose parents are unable to care for them, and to utilize foster care only as a temporary alternative until a more permanent arrangement can be made.

The reconciliation bill now before you threatens the very existence of these much needed reforms by altering the entitlement status of the program thus jeopardizing the incentive system: and by forcing fledgling children's services to compete for funding with other more well established programs combined into a social services block grant.

This particular program just will not survive if we do that.

Even the most fiscally minded Member of this Senate would acknowledge that there can be no more important pavoff in the investment of the taxpavers' money than that which we gain by providing parental guidance for these children, by helping the adoption procedure to see that these children are put in homes where they are loved, where they are cared for, where there are people who will give them family ties, and where they can be taught the basic values that are so necessary in our lives.

If we are to meet the challenges of our changing social structure where the value of human life is being debated in public forums: When the number of teenage girls having children is growing at an alarming rate—children bearing children—when changing standards are testing the very fabric of American home life; I believe we in the Congress cannot afford to step away from a national commitment to support those programs that strengthen families, encourage them to be cohesive and provide the kind of guidance our children need and desire.

Finally, Mr. President, as I said earlier, mine is a very personal interest in preserving the integrity of this legislation. As a parent who took an adoptive child—a chosen child—into my home more than 20 years ago, I urge each of my colleagues to lend their support to this amendment that the financial barriers to adoption might be reduced to enable the hard to place needy child and his parents to experience the extraordinary gift of love that a family fortunate enough to have a chosen child can experience.

As indicated earlier, CBO estimates the cost associated with passage of this amendment at $87 million, bringing the total anticipated expenditure for these programs to $467.5 million in fiscal year 1982. While most of us agree that reductions in Government spending are necessary, in my view the relatively modest increase in funding called for by this amendment is a small price to pay for what is surely an investment in the future of this Nation's most precious resources—its children.

I thank the Senator for yielding.

Mr. RANDOLPH. Will the Senator yield?

Mr. MOYNIHAN. I believe the Senator from Massachusetts has asked to speak next.

Mr. President, before the Senator from Massachusetts proceeds, I have two modifications at the desk.

Also, I ask that Senators KENNEDY, BOREN, CRANSTON, BRADLEY, BENTSEN, LEVIN, and our distinguished Democratic leader, Senator ROBERT C. BYRD, be added as cosponsors.

The PRESIDING OFFICER. The amendment will be so modified. Without objection, the additional cosponsors are noted.

The modification reads as follows:

Section 783(a) of such amendment is amended by striking out "Section 420(a) of the Social Security Act is amended by striking out $266,000,000 and inserting in lieu thereof $122,250,000" and inserting in lieu thereof "Section 420(a) of the Social Security Act is amended by striking out "for each fiscal year the sum of $266,000,000" and inserting in lieu thereof "for Fiscal Year 1982 the sum of $122,250,000 and such sums as may be necessary in succeeding fiscal years."

On page 19, after line 7 insert:

(q) Section 474(a) of such Act is amended by striking out "as defined in section 1905 (b)" each place it appears and inserting in lieu thereof "as determined for purposes of section 1118".

Mr. KENNEDY. Mr. President, I welcome the opportunity to join with my colleague, the Senator from New York, in urging that the Senate accept his amendment. I had intended to speak on this amendment, Mr. President, to give my reasons for supporting it. But I do not think the case can be any more eloquently or beautifully or compellingly made than it already has in a letter I received from Jim and Connie Moretz. I will ask the Senate's patience while I read this letter, which states the arguments on the amendment of the Senator from New York better than any prepared speech possibly could.

I commend the very important and eloquent remarks of my friend, the Senator from Texas, in support of this amendment as well.

APRIL 27, 1981.

DEAR SENATOR KENNEDY: I am writing to you concerning an issue that is very close to my heart. It involves P.L. 96-272, the Adoption Assistance and Child Welfare Act of 1980, and P.L. 95-266, The Adoption Opportunities Act of 1978, which is due to be re-authorized and refunded this spring.

The Reagan Budget includes this in a block grant and this program (P.L. 95-266) is not slated for refunding. P.L. 95-266 has been instrumental in finding permanent homes for some of our nation's 500,000 children in foster care, especially those children with special needs and/or of a minority.

In March 1980, my husband and I adopted this beautiful Hispanic little girl. She has multiple handicaps resulting from her being a fetal alcohol syndrome child. It was necessary for us to receive a monthly subsidy and also medical, psychological, and orthodontic subsidy in order to include Sarah into our family.

There are other families like ours who have the skills, love, and desire to include a special needs child in their families, but who cannot afford to do so without subsidy.

Many children will be forced to remain in the foster care system indefinitely if subsidy becomes unavailable to adoptive parents. Many children will spend 18 years in foster care—usually in many different homes. They will never have their own family, grandparents for their children, a home to return to for holidays, or a family to give them love and a support system throughout their lives. All of this often affects their ability to parent and to form lasting relationships, so the cycle continues.

And, Senator Kennedy, this beautiful little boy is our son, Nicholas. He came to us as a foster child and 15 months later, we joyfully adopted him. Nicholas has cystic fibrosis, and he may not live to be an adult. Nicholas has brought such love and joy to our family. All of the Nicholases of this world deserve a forever family. Children who are chronically ill need the stability of an adoptive family even more than a healthy child. However, these children are hard to place because of their illness/handicaps, the daily care needed, their prognosis, and the expenses involved in meeting their special needs.

Nicholas' adoption is also subsidized on a monthly basis and includes complete medical and dental coverage. Without this subsidy, we could not provide the services Nicholas needs to stay alive and to have his life be one of quality.

We have recently applied to adopt another non-Anglo special needs child. She will be our 6th child. Most likely, we will need subsidy for her also.

Please understand that my husband and I understand the realities of the foster care system very well. We have been specialized foster parents for over 4 years. We have cared for mildly to severely handicapped

children. We know that even the best foster home is no substitute for a permanent home.

Together P.L. 96-266 and P.L. 96-272 offer America's over half-million vulnerable children in foster care their best hope for permanency. Both of these programs will save tax dollars as well as children's lives!

Senator Kennedy, I urge you to encourage the removal of P.L. 96-266 and P.L. 96-272 from the block grant and to help them be funded as part of the federal budget for 1982.

Thank you for your time and your concern.

Sincerely,

JIM and CONNIE MORETZ.

Mr. President, I think that that letter probably states as well as it could be stated here, on the floor of the Senate, the reason for supporting this amendment. I have followed the very difficult times that parents have, particularly those with special needs of children. It makes no difference whether they are handicapped children or mentally retarded children. Without this direct kind of support and subsidy, families like Jim and Connie Moretz would not have been able to adopt Sarah and Nicholas. This program was supported overwhelmingly in recent years by Republicans as well as Democrats. If we fail to adopt Senator MOYNIHAN's proposal, I believe we shall undermine one of the very effective and important, humane, and decent actions that the Congress and the Government of the United States have taken in recent times. These programs permit families in this country to share their love and their affection with children who would otherwise be homeless. I hope that the Senate will support this compassionate and decent amendment.

Mr. MOYNIHAN. Mr. President, I thank very much the distinguished senior Senator from Massachusetts and I should like in particular to thank John and Connie Moretz, who wrote to him with such knowledge and conviction.

I make the point that this large new effort has only begun. It has not been put in place yet. Scarcely did we ever think of reconciliation legislation as a means to repeal one of the major pieces of social legislation of this time.

Mr. President, no Member can speak more eloquently of such matters than the senior Senator from West Virginia (Mr. RANDOLPH), to whom I yield such time as he may desire.

(Mr. WARNER assumed the chair.)

Mr. RANDOLPH. Mr. President, I am very grateful to my able colleague from New York (Mr. MOYNIHAN) for yielding to me at this time.

I gladly speak for his valid amendment, which I strongly support and cosponsor. I have discussed with other Members the rightness of our affirmative vote. Listening to our understanding colleague from Texas (Mr. BENTSEN), and our compassionate colleague from Massachusetts (Mr. KENNEDY), I too will be personal. The element of family, love in family, have been stressed.

A few months ago, Mr. President, Mary Randolph died, our helpmate who meant so much to me in our marriage lasting more than 48 years. For several years before 1933, when we were married, she worked in placement and adoption of children in foster homes. Her diaries, tell poigantly the experiences she had with children in need of permanent homes. In the early twenties in West Virginia, there were not as many bridges over streams as we would have liked—Mary would leave her little two-door car Ford, put on her swimsuit and walk waist deep or swim across those rivers in the hill country, to help a mother, in one instance, who had a husband who, for one reason or another, had left a mountain home without warning.

There were 11 children and no means by which this mother, although she loved them, could properly care for them. Mary worked to place those children in a proper environment.

It was not an easy or, let us say, a quickly accomplished task. Letters received from those children when they were older, told of the joy they had in the homes into which, by careful planning, they were given the opportunity to live and to learn and to believe and to contribute in the character and strength of their adoption families.

Mr. President, an honorary college degree was given to Mrs. Randolph in 1978 for public service. Mary Wood, remembering her girlhood problems and appreciation, came to be with Mrs. Randolph. She was grateful for the compassion and understanding as she was placed in the good surroundings, in a home of love. Mary Wood lives in the hill country of West Virginia. She and her husband have children. She expressed the fact—which is a beautiful fact—that had someone not cared, she would have had an unhappy life with, perhaps, an existence that would have been cold and possibly cruel. From a frightened little girl she grew to be a fine woman.

When the Senator talks (Mr. MOYNIHAN), with compassion and with judgment, we realize that this amendment helps us to do what we should do. Let us think of our responsibilities—not as Democrats or Republicans, but as fathers and mothers to help little children, to see that they smile again because of those caring elders.

Mr. President, this adoption policy can only be done when we, in a sense, will help to do away with haphazard placements. Let us have orderly process, the practical process, the compassionate process, embodied in this amendment.

Mr. MOYNIHAN. I thank the Senator for his beautiful statement in memory of his beloved lifetime companion, Mrs. Randolph. He can speak of a Mary Wood and the Moretzes can speak of the children they have adopted, but the children cannot speak for themselves.

I am sorry to say that the lobbies are empty today, the lobbies are empty. The distinguished Visitors' Gallery has no distinguished visitors. There are but few members in the Press Gallery, only a scattering of friends in the Senators' Gallery.

The children are not here. They cannot get here. They have not sent us telegrams. They have no law firms representing them.

Later today, we are taking up tax legislation. A quarter of the bar of Washington is outside the Senate Finance Committee room right now, attending, with the most meticulous concern, to the slightest change in the financial advantages of their clients.

There is not a person in that lobby thinking of these children. There have been three exceptions, and I should like to make their names known. The Junior League of America testified against this modification with compassion and understanding, as an organization of young mothers who are active in child adoption, welfare, and foster care. The other two organizations are the Children's Defense Fund and the Child Welfare League.

I am authorized to say by the National Governors Association and the National Association of Counties that they wish their support for this amendment to be known, simply to give this new law a chance, and not to rip from the Social Security Act the rights of children.

One of the more distinguished Governors to grace this body in our time has been the young and irresistably magnetic Governor of Oklahoma, who now is the junior Senator from Oklahoma. Here is a man who has dealt with this problem as the head of a State, as one who must make these hard, difficult decisions. I know that he wishes to be heard, and I believe this body wishes very much to hear him.

I am happy to yield 5 minutes to the Senator from Oklahoma.

Mr. BOREN. Mr. President, I thank my colleague from New York, and I appreciate very much his kind comments. I wish to pay tribute to him for the attention he has shown to this issue. Had it not been for the fact that he brought it to the attention, first, of the Finance Committee and now of the entire Senate, I am afraid that this change could have been made without due notice and due consideration.

I commend the Senator from New York for his sensitivity and his careful following of this issue and his sincere concern for the young people of our country, which this amendment certainly illustrates.

The PRESIDING OFFICER. The Chair is reluctant to interrupt; but, out of an abundance of caution, the Chair advises the distinguished Senator from New York that he has 27 seconds remaining but has yielded 5 minutes to the Senator from Oklahoma.

Mr. MOYNIHAN. I thank the Chair for his courtesy. The manager on the minority side asked me to handle the time, and I yield 5 minutes from the bill to the Senator from Oklahoma.

Mr. BOREN. I again thank the Senator from New York, and I thank the Chair.

Mr. President, I am proud to join in offering this amendment, which has been submitted by my friend and colleague, the Senator from New York.

As many of my colleagues are aware, I have long been supportive of the block grant approach to Federal funding of social programs. As the Senator from New York mentioned, I did have an opportunity to serve in the Governor's office in the State of Oklahoma; and as a former Governor, I am convinced that State governments, in most cases, can more effectively and compassionately ad-

minister Federal programs when free from Federal regulation.

Some Federal programs, however, are so important as to require funding outside the context of a single block grant approach. Three of these programs are foster care, adoption assistance, and child welfare services.

As my colleague from New York has already indicated, the foster care and adoption assistance programs were significantly strengthened by the enactment just last year of Public Law 96–272, under the leadership of the Senator from New York. As described in the conference report, that legislation, this act, known as the Adoption Assistance and Child Welfare Act of 1980, included incentives encouraging "greater efforts to find permanent homes for children either by making it possible for them to return to their own families or by placing them in adoptive homes."

This program has the potential to meet a long-standing need in our society by helping to provide a stable and loving home life to those children who would otherwise suffer uncertainty and isolation throughout their formative years. It would be a mistake, Mr. President, to suspend our support of this program before we have even had time to examine its effect. For this reason our amendment retains crucial elements of Public Law 96–272.

In order to continue to encourage adoption of these children, Mr. President, I urge adoption of this amendment.

Mr. President, the Senator from New York mentioned earlier that the National Governors Conference has endorsed this amendment. Again, that is a body composed of people who believe in local government, who, in most cases, believe that great flexibility should be given to local units of government. I am sure they adopted a resolution of support and took a position of support for the same reason I support this amendment.

All of us who have served as Governors, who have been seated in the Governor's chair, recognize that when you have limited funds, there are all sorts of pressures brought to bear for the expenditure of those funds. Groups are highly organized. The letter writing campaigns are waged. Media campaigns are waged.

It is my fear, Mr. President, that if we, in essence, leave the fate of the children of this country, the orphaned children, those in foster homes, those who should be considered for adoption, those who are badly in need of permanent homes as they grow up—if we leave their fate to the process of brokering between these highly organized groups, it is my fear that they will fall through the cracks.

In conscience, I cannot fail to support this amendment. I hope that every Member of this body, on both sides of the aisle, will pause to reflect on the meaning of this amendment, will think long and hard about the children who are affected by it. I know there is not a Member of this body who, if confronted with an individual or personal situation of a child in need, would not try to help that child.

I hope that we will look at this issue in a very personal way, that we will not look at it as statistics on a page, but that we will think of it in human terms, that we will think about that child tossed from one foster home to another, who needs a permanent home; that we will think about asking that child and his fate to compete with the organized groups in the country for the few dollars that are available in social services programs.

I believe that if each of us would pause to consider the issue in that light, this amendment would be adopted overwhelmingly.

There is a tendency, in considering issues such as this, to become partisan, to send out the word that we have a bill, that the bill overall is a good bill, and that, therefore, we should resist every amendment to it.

This is a great deliberative body, Mr. President, and to earn that title and to continue to earn that title, it is certainly imperative that we use our independent judgment, our sensitivities, and weigh each and every amendment ourselves.

I cannot help believe that if the President and members of this administration fully understand the import, the magnitude, and the effect of the change which has been proposed, they, also, would want to join the Senator from New York and others in supporting this amendment.

I urge each and every Member of the Senate to examine his or her own conscience, his or her individual conscience, think of these children who cannot be here who have not been able to wage a letter-writing campaign, who do not have computers at their disposal, who do not have the capability of holding press conferences in their own behalf, think of their welfare, think of their interests and support the amendment of the Senator from New York.

Mr. MOYNIHAN. I thank my friend from Oklahoma for his approving remarks.

Mr. President, I ask unanimous consent that the distinguished senior Senator from West Virginia (Mr. RANDOLPH) be added as a cosponsor of this legislation.

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

Mr. MOYNIHAN. I thank the Chair.

Mr. DANFORTH. Mr. President, I rise to oppose the amendment offered by the Senator from New York.

First, addressing myself to the very persuasive, even gripping arguments that were made by the Senators from New York, West Virginia, and Oklahoma, about the empty galleries, and so on, the Finance Committee has not proposed that suddenly adoption assistance or child welfare services or foster care be abolished, that Government no longer care about the children.

That has not been the point of the Finance Committee's position. Instead, the issue is whether or not a greater amount of flexibility is going to be allowed to State governments to address these three very important concerns.

As a matter of fact, in the bill as it stands now, the Finance Committee has mandated that as a condition for participating in the block grant program, the States will have to provide adoption assistance, child welfare services, and foster care.

So, Mr. President, really the question is not whether we are turning our backs on needy children. The question rather is at what level of Government will we vest the lead responsibility for caring for needy children.

So often, I think we have gotten ourselves in a trap of feeling that we in Washington have a monopoly on compassion, that we in Washington have a monopoly on providing for those who are in need, that we feel that if there is any problem that exists anywhere in the country come to Washington and get a solution for it and we will tell you in detail how to handle every problem there is.

Mr. President, I spent 8 years of my life in State government, serving as the attorney general of my State of Missouri, and spending a tremendous proportion of that time, I might add, in trying to deal with the Federal bureaucracy, and I did not notice any lack of compassion on the part of those who worked for the State of Missouri and Jefferson City, and I doubt if there is any lack of compassion among State officials in Albany. State legislators, as a matter of fact, are closer to their constituents than we can ever hope to be. They have smaller constituencies and their legislative bodies are located closer to the people and are more accessible to the people.

So I do not think that there is any reason to believe that somehow we in Washington are the compassionate people and those in Albany or Jefferson City, or wherever, somehow are cold hearted and unconcerned.

We have indicated in this legislation that we are going to insist as a condition of participating in the block grant program that States do conduct adoption assistance, child welfare services, and foster care programs.

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

Mr. DANFORTH. I yield.

Mr. MOYNIHAN. Is it not the case that the amounts of money provided are 25-percent less than had been provided before?

Mr. DANFORTH. That is correct.

Mr. MOYNIHAN. So that even if the programs should go forward in this general package they will be substantially reduced?

Mr. DANFORTH. I think that one thing that is offered by changing the form of grants from categorical to block grants is flexibility, flexibility for States to spend their funds that are available to them in ways that they believe are most effective in their own parts of the country.

What the Governors have told me and I am sure many other Members of the Senate when they have come here, and they have spent a lot of time here in the last 4 or 5 months, is "Look, if you are going to be restrictive in the Federal

budget, if you at the Federal level are going to be providing a tighter hand on the Federal dollar, if we are going to start moving out of the period of expansionism in Federal funding, then at least give us the latitude, give us the freedom at the State level to spend those funds that are available on purposes which we feel are important, rather than forcing us through categorical grant programs to divert the available funds on those programs that we think are relatively cost ineffective."

Mr. MOYNIHAN. May I ask one additional question of the distinguished Senator from Missouri?

Mr. DANFORTH. Yes.

Mr. MOYNIHAN. He has heard me state in this case the National Governors' Association has asked this amendment be supported. But also may I ask him: Did he hear me or any of us concerned about this matter speak of State governments as being characterized by a lack of compassion or concern? He did not, I think. I think we spoke to the fact that for a half century children in foster care have had in the Social Security Act an entitlement which now is to vanish. We did not speak with any intent to suggest an inadequate concern at the State level. As a matter of fact, foster care by definition only takes place when the State government places the child in that situation.

Mr. DANFORTH. I think that one of the basic arguments that is and may be the most prevalent basic argument that is made when categorical grants are debated as opposed to block grants is that if we are really going to care for needy children, if we are really going to care for children who are adopted, then of necessity it has to be in the form of categorical grants.

I can remember a debate which was held on the floor of the Senate last year concerning a bill that had been introduced by Senator CRANSTON relating to domestic violence, and in connection with that bill there was a debate as to whether or not instead of having yet another categorical grant program for domestic violence we should not shift exactly the same amount of funds into title 20 of the Social Security Act where the States are expressly given the option of running exactly the same kind of program.

The argument that waged for hours at that time was, "Well, if you really are concerned about battered wives and brutalized grandparents, and so on, we have to have a categorical grant program."

So the emotion-charged argument—and that was certainly going on without the last half-hour here on the floor of the Senate—is always made to champion the categorical grant program.

But I can tell you that as a child of the State government myself I can recount innumerable episodes when it was the State officials who were concerned about the needy and the oppressed and the disadvantaged, and where it was the Federal officials, through their manipulations, who were threatening not only the morale but the whole functioning of the State program.

So I hope the Senator from New York will agree with me that we are not talking indeed in context of this amendment about where the compassion is. I hope the Senator from New York will agree with me that it is equally possible to be compassionate and to favor the block grant concept as it is to favor the categorical grant concept.

Mr. MOYNIHAN. I respond to the Senator with the utmost brevity. I agree completely with him.

Yet it is the fact that last year we responded to a real need to change a situation in our country. The three provisions, three programs, involved here, adoption assistance, foster care maintenance, and child welfare services, all in combination were established. Before Congress acted only two States had all three, New York and California. That was the fact. Very few States had adoption assistance, for example.

I return to the proposition, and no more, that there is something noble about the Social Security Act having for a half century provided an entitlement to these children, and something unattractive about our taking it away.

I speak more to this body that what seemed appropriate in 1935 should not somehow seem unnecessary in 1981.

Mr. DANFORTH. Mr. President, I would like to make only two points and then yield some time to the Senator from New Mexico.

The first point is that, of course, under the legislation as it now stands there is in fact a mandate that States must assume responsibility within the context of the block grant for adoption assistance and child welfare services and foster care, so that the concern that Senator MOYNIHAN pointed out would be taken care of.

The second point, Mr. President, the final point I would like to make, is simply this: The classic argument in Government has been since before our country became a Republic where are governmental decisions to be made? That concern was the great consuming passion of our Founding Fathers. They were not so much concerned with the question of what decisions would be made by Government but they were concerned about the structure of decisionmaking. They were concerned about the relationship between the legislative, executive, and judicial branches, and they were concerned about the relationship between the Federal and State governments. In fact, the 10th amendment to the Constitution was expressly designed to try to assure the continuing role of State governments in making decisions, governmental decisions.

Somehow over a period of time we have lost sight of the question of a process, and we have concentrated so much on the results that we, at the Federal level, believe are important that we have preempted decisionmaking responsibility which we used to believe was important at the State level.

I would only say this, Mr. President, and that is that the whole question of the locus of decisionmaking has in itself been a matter of basic, fundamental value in this country, a matter of consuming passion on the part of those who established the kind of system we are to have, and that is the basic question, I think, of categorical grants versus block grants because in the form of categorical grants we have tended to make State governments and local governments not so much decisionmakers but rather implementers of programs which we devise here in Washington.

We make the decisions, we fund the programs, and we expect the local and State levels of government to, in turn, administer our programs under our terms.

One of the issues before the American people in the election last November had to do with the role and scope of the Federal Government. In fact, that might have been the most important issue that was faced by the American people. It was not simply a matter of the size of the bureaucracy or its cost or the amount of forms people have to fill out but, rather, it was a concern that the American people had that somehow they were losing control of what Government decided, and to the extent that we in Washington determined how every dollar is to be spent, to the extent that we develop hundreds of categorical programs with thousands and thousands of pages of regulations detailing precisely how the programs are to be operated, then we are exacerbating that concern; then we are making it increasingly obvious to the American people that we really did not hear the message of last November and that we in Washington intend to continue to manage their affairs.

The people at the State level and the people at the local level have just as much compassion as we have, and particularly at a time of budgetary stringency, economy as well as political philosophy mandate that we provide them at the State level with a greater amount of flexibility in making their own decisions.

Mr. President, I yield to the Senator from New Mexico.

Mr. DOMENICI. Mr. President, parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. DOMENICI. How much time remains for the proponents of this measure?

The PRESIDING OFFICER. There remain 11 seconds to the proponents.

Mr. DOMENICI. How much time do we have in opposition?

The PRESIDING OFFICER. Thirteen minutes and 40 seconds.

Mr. DOMENICI. I indicate that unless there is some objection from our side after a few more moments we are prepared to yield back our time.

Have the yeas and nays been ordered?

Mr. MOYNIHAN. Mr. President, I ask for the yeas and nays.

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

The yeas and nays were ordered.

Mr. HOLLINGS. Mr. President, if the distinguished chairman will yield, we are short a little time here. We need a

couple of minutes for the Senator from California and the Senator from Michigan. I can yield it off the time on the bill. While the Senator is arranging for the time will he yield it?

Mr. DOMENICI. It does not matter because it is going to come off the bill anyway. How much additional time would you like?

Mr. CRANSTON. Four minutes.

Mr. HOLLINGS. Four minutes for the Senator from California, and 3 minutes for the Senator from Michigan (Mr. LEVIN).

Mr. DOMENICI. I would suggest, then, if it is all right with the distinguished Senator from South Carolina, that we allow those Senators to speak, take it off my time in opposition, and then I will use whatever time remains.

Mr. HOLLINGS. I appreciate that very, very much. Thank you a lot.

Mr. CRANSTON. I appreciate the cooperation of all Senators.

Mr. President, I strongly support the amendment of the distinguished Senator from New York and the distinguished Senator from Oklahoma to strike the provisions of the Finance Committee's reconciliation legislation which repeal the adoption assistance and Child Welfare Act of 1980—the landmark foster care and adoption assistance legislation enacted last year.

Mr. President, this legislation was developed after years of careful study and deliberation. It represented a bipartisan effort to reform a foster care system that had gone astray from its original purpose—the temporary care of abused and neglected children. The foster care program had become a nightmare, a limbo where innocent children were taken from their families and left to drift for years on end. Children without families were left in cold, barren, and sometimes inhumane institutions while families willing and eager to open their homes and their hearts to these children were told there were no children available for adoption.

Mr. President, our foster care system—started with every good intention—has become a national disgrace. Countless studies by public agencies such as our own General Accounting Office and numerous private, blue ribbon commissions, have documented over and over the incredible abuses which permeate foster care in America.

Mr. President, I speak as one Senator who became personally and deeply committed to the effort to reform the foster care system and to free the thousands and thousands of young children caught in foster care limbo. In previous Congresses, I have chaired numerous hearings where witness after witness described the foster care system as:

A system where over half the children in foster care had been away from their families for more than 2 years and had in that period of time at least four different caseworkers;

A system where caseworkers too frequently did not even know where some foster children were or how long they had been there;

A system where, one GAO study found, 45 percent of the families of children in foster care had not even been visited by caseworkers; and

A system where some 50,000 children, legally free for adoption, are kept as wards of the State, not because there are no families willing to adopt them, but because no one has bothered to try to match these children with the thousands of families ready and willing to adopt even the most handicapped child.

Mr. President, I listened to witness after witness describe the efforts they had made to try to break through the system, to try to save a child who had touched their hearts and their lives, a child they wanted to love and to give a home. And I heard over and over how our foster care system keeps these children locked into the foster care limbo, how we pay unlimited amounts to keep children in foster care and nothing to help them move into adoptive homes, and how very few dollars are made available for services to help reunite children with their own families or help prevent their removal in the first place.

Mr. President, Congress acted last year to reform this system. We enacted a law aimed at breaking the cycle of long-term foster care, a law aimed at helping families stay together rather than needlessly breaking them up. It was a good law, a bipartisan law. Yet, the measure before us today would repeal that law, would strike from the United States Code the legislation that so many worked so hard to achieve—legislation that was and continues to be so urgently needed.

Mr. President, those who argue in favor of repealing this legislation justify their action under the guise of "budgetary" economies. What budgetary economies, I ask my colleagues, can justify this course of action? What savings will accrue from allowing families to be broken up and stay broken up?

The answer is none. Quite to the contrary, the evidence is overwhelming that implementation of Public Law 96-272 will result in enormous savings over time to the Federal taxpayers. Numerous demonstration projects which have operated throughout the Nation over the past few years have proven over and over that the approach utilized in Public Law 96-272 is not only humane, but is cost-effective.

Mr. President, in California, a pilot project operating in San Mateo County has in its first 2 years achieved a 33-percent reduction in foster care placements and a savings of $264,000. Similar projects in Nashville, Tenn., New York City, and in over a dozen other cities throughout the Nation have achieved similar results. Last fall, the Department of Health and Human Services projected that if Public Law 96-272 was implemented as scheduled, we would see nationwide a 30-percent reduction in foster care by fiscal year 1984 and a net savings of $1 billion over that period of time.

Mr. President, this is a highly cost-effective program—both in terms of the children and families involved and in terms of real dollars. I strongly urge that we do not undo the tremendous work that went into passage of Public Law 96-272. We owe it to the children whose lives will be so greatly affected by what we decide. For their sake, for their future, for our Nation's future welfare, I urge support of the amendment.

Mr. LEVIN addressed the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. DOMENICI. Mr. President, I yield 3 minutes of my time off the amendment to the Senator from Michigan.

Mr. LEVIN. Mr. President, I thank my friend from New Mexico for his generosity.

Mr. President, I support this amendment. We are talking about 110,000 children who are currently in AFDC foster care. These are what we call "special needs" children—they are older children, many have physical or mental handicaps. Unfortunately, these children—because of their special conditions—are the most likely to be placed in foster care and the least likely, in the absence of adoption assistance, to be placed in permanent homes.

Attempts to place these children in adoptive homes without a subsidy have often failed because many families cannot afford the expense required to adequately meet the special medical or other needs of such children.

Mr. President, with the present need to contain the Federal budget, this is an especially important program. The adoption assistance program not only redirects funds to a more efficient child placement scheme, it saves money; because the children who receive this assistance are children who otherwise would remain in more extensive foster care arrangements. As we all know, long-term foster and institutional care are much more costly than subsidized adoption programs and are also not nearly as good for children. The national average cost of maintaining a child in a foster care institution is over $7,000 a year. The national average foster care payment for children placed with families is about $1,500 a year.

Mr. President, last year, when I was actively involved in working out these provisions on the floor, I received many letters from people who were directly affected by it.

I would like, with the remainder of my time, to read a portion of one letter from a lady in Annandale, Va., dated October 22, 1979. She and her husband adopted seven special needs children. They had a total family of 12. She wrote as follows:

> Five years ago we adopted two teenagers who had spent six years in foster care. These children had experienced severe abuse and neglect and the transition to family life wasn't an easy one. Our son in particular required intensive counselling and psychiatric treatment. He was hospitalized for testing twice. For nearly a year my husband and I made twice monthly visits with our troubled son to a family therapist. The cost of transportation, time off from work and babysitting for our other children were added to the $40.00 per hour charge for the professional services. The total cost to our family ran to nearly $3,000.00 to care for our son's severe emotional problems. Yet, we have never received any kind of financial help. We quite literally spent our summer vacation money for two years to provide the treatment required.
>
> We are not alone in this predicament. Many concerned middle income families who

adopt find themselves "to rich" to qualify for adoption subsidy for their special child, but "too poor" to provide the special services their children frequently need to make the adoption successful. Yet, had these same children remained in foster care, they would have received all the necessary services through Medicaid. This makes no sense at all and acts as a serious barrier to adoption of waiting children.

Mr. President, I hope we can help a truly needy group and, in the process, help ourselves by reducing the costs of institutionalization of these children who so desperately need to find homes.

Again, I thank my friend from New Mexico and I thank the Chair.

Mr. DOMENICI addressed the Chair.

The PRESIDING OFFICER. The Senator from New Mexico.

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

The PRESIDING OFFICER. There are 4 minutes remaining on this amendment.

Mr. DOMENICI. Mr. President, I yield myself 2 minutes.

Mr. President, first, I wish to compliment the Finance Committee and Senator DANFORTH who spoke for them here today. That committee, in terms of the instructions that the Senate and the House gave to them, have done an admirable job, not only with reference to saving money but in the area that we are talking about today there can be no doubt that for years a block grant approach to social services has been recommended. This committee stopped talking about it and did it and I commend them for it.

Second, I am here listening to all the wonderful things that we do with the social programs and the implicit converse of all the terrible things we will do if we do not. I just wonder who is going to mention what has happened to the American taxpayer, what has happened to our Government's inability at the national level to deliver these hundreds and hundreds of programs with any kind of certainty, with any kind of frugality. Why is that not being talked about?

This budget that we are trying to save money on in this year will exceed $660 billion. I wonder how many speeches have been made on this floor over the past 25 years where we have found some social problem in America and we were certain a few hundred million dollars, a new Federal agency, and we would solve that. Well, the time has come when we know the delivery system is clogged. We cannot even deliver what we manage.

The PRESIDING OFFICER. The Senator's 2 minutes have expired.

Mr. DOMENICI. Mr. President, I yield myself 2 additional minutes.

But, in addition to that, this $660 billion, filled with all of these messages of solving problems for people, will now go to $740 billion, Mr. President, if we do not change laws like these—not this specific one, $70, $80, or $90 million, but if we do not change some laws, it will go from $660 to $740 billion.

There will be plenty of people who can come to the floor after that is all finished, if we did not save one penny, if we did not change one program, and they will find something wrong in America that they can invent a program for, that they can say to the taxpayers of this country, "Just a few hundred more million of your dollars and we will solve another problem."

So the time has come when we have to look at the basics—taxation at the highest level in history; spending at the highest level in history; and the American people saying, "Don't you know that you are not doing as much good as you think? Don't you want to trust someone else like our States? Give them a block grant. Let them try." But, most of all, they are saying, "If you don't cut something, look what is happening to us. Look what is happening to our country. Look what is happening to our tax bill. Look what is happening to our economy. Look what is happening to inflation."

So you cannot cut without cutting. You cannot reform without experimenting.

You cannot have block grants as good as this committee worked on it, careful, attentive, making sure that the States have certain guidelines—you cannot have it and not have it. That is what we have today. They want it, but not so sure about $80 million worth of it. "Yes, we want to save money, that 25 percent, but not in this program. We ought to leave it alone. It is sort of one of the latecomers to the big, big entourage of hundreds of programs."

So I would urge that here, again, we support the Finance Committee, in all deference to my good friend from New York. This is one that will save some dollars and that has little chance of harming anyone. If we compound it, amendment after amendment here, we will certainly conclude helping no one and hurting the taxpayer. We are here precisely to do the contrary. I yield back the remainder of my time.

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

Mr. DOMENICI. Have we any time remaining?

The PRESIDING OFFICER. The Senator has 30 seconds remaining.

Mr. MOYNIHAN. Will the Senator agree that the one new program, the adoption assistance, adopted for 1982, was for $10 million?

Mr. DOMENICI. I agree with the Senator.

Mr. BRADLEY. Mr. President, I am pleased to cosponsor the amendment offered by Senators MOYNIHAN and BOREN that would maintain foster care, adoption assistance and child welfare services as identifiable Federal programs.

Mr. President, last year the Congress passed the Adoption Assistance and Child Welfare Act of 1980 (Public Law 96-272) by an overwhelming majority. This landmark legislation is designed to improve the welfare of children in foster care, or at risk of foster care placement through greater emphasis on services to prevent or remedy the need for long-term foster care.

Surveys conducted for the Department of Health and Human Services indicate that there are about 500,000 children living in foster care in the United States, including 100,000 who have been separated from their families for more than 6 years. Studies have shown that if children remain in foster care for 1 to 2 years, the probability of their ever returning home decreases substantially. It is all too easy to understand why these children have come to be known as lost in foster care.

Why has this situation arisen? Foster care tends to be a crisis-oriented system in most States. The immediate problems of placing children in foster care receive the most attention. Also States have used most of their funds, including the Federal money provided under title IV-B child welfare services and AFDC foster care, to pay for the room and board of children in foster care.

Relatively few resources are left over for the critical counselling, day care and other services which could prevent the family crises which give rise to foster care placement in the first place. Nor are resources generally available for the services and personnel required to restore children to their families or, in cases where a return to the family will not be possible in the future, to arrange for their permanent placement in adoptive homes.

The legislation we passed last year was designed to remedy these problems by providing to the States additional resources for preventive services, services to return foster care children to their families when possible, and assistance to arrange for their adoption where a return to the family is impossible.

The legislation also created a new program to provide Federal financial assistance for the first time to families adopting hard-to-place AFDC and SSI eligible children, including older, handicapped, and minority children. Medicaid coverage for these children, which under the old law ended at the time of adoption, was continued, thereby easing some of the exceptional financial burdens for health care the adoptive family would otherwise face.

Mr. President, these changes—these innovations—have been widely hailed. They offer a real chance for improvements in the system of foster care and in the welfare of those children who are vulnerable to foster care placement. They must not be thrown away—lost in the oblivion of a large block grant.

More than $500 million in Federal-State money is now being spent to maintain children in foster care. It is estimated that implementation of the 1980 law will result in a significant reduction in the number of children in foster care and will promote permanent placements for children who do not have the possibility of returning to their homes. These are most humane objectives.

Mr. President, we owe it to these children to maintain these programs in their newly improved form.

I urge all my colleagues to join in support of this amendment.

The PRESIDING OFFICER. All time having expired, the question is on agreeing to the amendment of the Senator from New York. 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 Nevada (Mr. CANNON) and

the Senator from Massachusetts (Mr. TSONGAS) are necessarily absent.

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

The result was announced—yeas 46, nays 52, as follows:

[Rollcall Vote No. 162 Leg.]

YEAS—46

Baucus	Ford	Melcher
Bentsen	Glenn	Metzenbaum
Biden	Hart	Mitchell
Boren	Hatfield	Moynihan
Bradley	Heinz	Nunn
Bumpers	Hollings	Pell
Burdick	Huddleston	Pressler
Byrd, Robert C.	Inouye	Pryor
Chiles	Jackson	Randolph
Cranston	Johnston	Riegle
DeConcini	Kennedy	Sarbanes
Dixon	Leahy	Sasser
Dodd	Levin	Stennis
Durenberger	Long	Williams
Eagleton	Mathias	
Exon	Matsunaga	

NAYS—52

Abdnor	Gorton	Percy
Andrews	Grassley	Proxmire
Armstrong	Hatch	Quayle
Baker	Hawkins	Roth
Boschwitz	Hayakawa	Rudman
Byrd, Harry F., Jr.	Heflin	Schmitt
	Helms	Simpson
Chafee	Humphrey	Specter
Cochran	Jepsen	Stafford
Cohen	Kassebaum	Stevens
D'Amato	Kasten	Symms
Danforth	Laxalt	Thurmond
Denton	Lugar	Tower
Dole	Mattingly	Wallop
Domenici	McClure	Warner
East	Murkowski	Weicker
Garn	Nickles	Zorinsky
Goldwater	Packwood	

NOT VOTING—2

Cannon	Tsongas

So Mr. MOYNIHAN'S amendment (No. 100), as modified, was rejected.

Mr. DOMENICI. Mr. President, I move to reconsider the vote by which the amendment was rejected.

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

The motion to lay on the table was agreed to.

UP AMENDMENT NO. 176

(Purpose: Deletes language limiting obligations and prohibiting OMB apportionment of funds for D.C. capital improvement loans)

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

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

The PRESIDING OFFICER. The Senate will be in order.

The amendment will be stated.

The legislative clerk read as follows:

The Senator from Oregon (Mr. HATFIELD) proposes an unprinted amendment numbered 176:

On page 280, line 33, strike everything after "1983" through the quotation mark on line 38.

Mr. HATFIELD. Mr. President, this is a technical amendment which keeps the same commitment in the resolution on reconciliation. It strikes the language that relates to the role of the OMB in the matter of allocating these funds for the capital improvement loans for the District of Columbia.

I have checked this out with the subcommittee chairman on the Governmental Affairs Committee, Mr. MATHIAS, and with the chairman of the committee, Senator ROTH, as well as with the managers of the bill on the floor, Senator HOLLINGS and Senator DOMENICI, and I believe they are willing to accept it.

Mr. DOMENICI. Mr. President, we are prepared to accept the amendment. It has been worked out by the distinguished chairman of the Appropriations Committee with the chairman and ranking minority member of the authorizing committee. As I understand it, Senator HOLLINGS has no objection.

Mr. HOLLINGS. That is correct.

Mr. DOMENICI. We are prepared to accept it.

Mr. HATFIELD. I yield back my time.

Mr. DOMENICI. I yield back any time I have.

Mr. HOLLINGS. I yield back my time.

The PRESIDING OFFICER. All time having been yielded back, the question is on agreeing to the amendment (UP No. 176).

The amendment was agreed to.

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

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

The motion to lay on the table was agreed to.

UP AMENDMENT NO. 177

(Purpose: To delete language imposing obligation limitations on funds for Federal highway programs and insert authorization ceilings in lieu thereof.)

Mr. HATFIELD. Mr. President, I send a second amendment to the desk.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Oregon (Mr. HATFIELD) proposes an unprinted amendment numbered 177.

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

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

The amendment is as follows:

On page 184, strike lines 38 through 41, and on page 185, strike lines 1 and 2, and insert in lieu thereof the following:

SEC. 601. (a) Notwithstanding any other provision of law, there is authorized to be appropriated for Federal-aid highways and highway safety construction programs for fiscal year 1982 not to exceed $8,100,000,000, for fiscal year 1983 not to exceed $8,600,000,000, and for fiscal year 1984 not to exceed $8,800,000,000.

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

The PRESIDING OFFICER. The Senate will please come to order.

Mr. HATFIELD. Mr. President, this amendment does precisely the same thing as in the reconciliation resolution. It puts a limitation on the Federal highway and highway safety construction program for fiscal year 1982. The only thing that changes is that it does this with authorization language rather than the obligation limitation language. This keeps the traditional role of the Appropriations Committee.

I have checked on this with Senator RANDOLPH and with the leadership on both sides of the aisle, and it has been worked out to their satisfaction.

Mr. DOMENICI. Mr. President, I have no objection to this amendment.

I say for the record that when I previously mentioned that it had been worked out with the Senator from the Public Works Committee, I was in error. This is the amendment that was worked out with them. The previous amendment was worked out with the chairman and ranking minority member of the Committee on Governmental Affairs.

Mr. HOLLINGS. I have no objection.

Mr. BENTSEN. Mr. President, reserving the right to object, there has been too much noise over here for me to hear the Senator.

Will the Senator advise me what he has done with reference to the authorization obligation?

Mr. HATFIELD. What has been done in the reconciliation resolution is a redundancy. It has had an authorizing level and an obligation limitation.

In the appropriations process we do this anyway, but by the same token we feel that we need to maintain the Appropriations Committee's program by abiding by the authorization limitation but giving us the flexibility to work within that.

So, consequently, what we are doing is keeping the same precise figures, but we are removing the redundancy by giving both an authorizing level and an obligation level.

Mr. BENTSEN. I thank the distinguished Senator and withdraw my objection.

Mr. HATFIELD. Mr. President, I yield back the remainder of my time.

Mr. DOMENICI. Mr. President, I yield back my time.

The PRESIDING OFFICER. Is all time yielded back?

Mr. HOLLINGS. We yield back our time.

The PRESIDING OFFICER. All time having been yielded back, the question is on agreeing to the amendment of the Senator from Oregon.

The amendment (UP No. 177) was agreed to.

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

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

The motion to lay on the table was agreed to.

Mr. HATFIELD. Mr. President, I thank the Senator from New Mexico and the Senator from South Carolina for their assistance.

Mr. DOMENICI. I thank the Senator for the help he has been on this amendment and others for clarification.

UP AMENDMENT NO. 178

(Purpose: To delete the section of S. 1377 which would eliminate residential care institutions from eligibility for child nutrition programs)

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

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Vermont (Mr. LEAHY) for himself, Mr. BRADLEY, Mr. PRYOR, Mr. DIXON, and Mr. KENNEDY proposes unprinted amendment numbered 178:

On page 33, strike out lines 4 through 14; and redesignate sections 185 through 191 as sections 184 through 190, respectively.

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

Mr. LEAHY. I yield.

Mr. DOMENICI. I was wondering if the Senator from Vermont might share with us how much time he might require. Under the unanimous-consent agreement the Senator has 1 hour. I wonder if he thinks it will take that long.

Mr. LEAHY. I advise my friend from New Mexico that having heard the schedule of a number of Senators here I will try to be as brief as I can on this in the hope that we might be able to finish in anywhere from 5 or 10 minutes.

I wish to reserve my rights in case others want to speak. I intend to be quite brief about it.

Mr. DOMENICI. I say to the Senator whatever time he saves I will tell him we will save that much also by yielding our time so that we will save double.

I thank the Senator.

Mr. LEAHY. I thank the Senator.

Mr. President, I offer this amendment on behalf of myself, Mr. BRADLEY, Mr. PRYOR, Mr. DIXON, and Mr. KENNEDY. It is an amendment on residential child care institutions.

Mr. President, it is hard in these budget debates to see the human impact of our cuts. We talk about savings; we talk about reductions as we should. But in this rush to redirect the Federal budget, we must not lose sight of those most vulnerable, most in need of our support. The amendment Senator BRADLEY and I are proposing reaches out to a special group—children who are in orphanages, homes for the mentally retarded, emotionally disturbed or abused children, and hospitals for the chronically ill. This amendment, quite simply, would assure that these nonprofit children's institutions remain eligible to participate in child nutrition programs in fiscal year 1984 and beyond.

This reconciliation bill would terminate these institutions from participation in the school lunch and breakfast programs effective in fiscal year 1984. The fiscal year 1984 cost of this amendment is $73 million in budget authority and $69 million in outlays. The latest available data indicate that approximately 150,000 children are served by over 4,000 of these institutions.

The Committee on Agriculture, Nutrition, and Forestry voted to eliminate residential child care institutions from child nutrition programs only after it appeared that the committee would fall short of its overall targets for fiscal year 1984 authorization savings. The committee had already completed markup of child nutrition programs without this provision, achieving more savings in these programs than was assumed in the first concurrent resolution on the budget for fiscal year 1982.

As it turns out, the additional savings from this provision are not needed to meet the committee's reconciliation targets. In fiscal year 1984, the committee achieved a savings surplus of $91 million in business administration and $99 million in outlays more than enough to accommodate this amendment.

Residential child care institutions were made eligible for Federal child nutrition programs in 1975. The Senate report (Report No. 94-259) accompanying the legislation, stated the following:

Testimony received at the public hearings on the child nutrition legislation indicated that these children, who are often institutionalized through no fault of their own, receive less nutritional support than children attending public schools. The Committee believes that all children should have the same access to the child nutrition programs.

Most of the children in these institutions would be eligible for free or reduced price lunches under the National School Lunch Act if they attended public schools. Termination of these institutions from participation in child nutrition programs would result in these children, who are among the most troubled, abused, and neglected in the country, receiving less support from the Federal Government than almost all other children.

The major justification provided for eliminating Federal assistance for these institutions is the States should resume the responsibility for feeding these children that they had prior to 1975. There are several responses to this argument:

First, a major reason why Federal assistance was extended to these institutions in 1975 was evidence that children in these institutions were not being well fed. In many instances, children were receiving substandard meals and the quality of meals and services in these institutions were seen as steadily declining.

Second, there is good reason to believe that the States would be able to provide less assistance in 1984 than they did in 1975. Not only are many State budgets in far worse shape now than they were in 1975, but the budget adopted by Congress for fiscal year 1982 and future years would result in deep deductions in Federal support to States for social programs. Given the many cutbacks in benefits and services which States will have to implement, it cannot be assumed that adequate funds will be found to support food services at these institutions.

Third, the National Governors' Association opposes the termination of assistance to residential child care institutions. In a May 19, 1981, letter to Senator HELMS, Gov. James B. Hunt, chairman of the Committee on Human Resources, stated the following:

It is our understanding the Committee also may consider eliminating federal support for child nutrition programs providing meals to children in residential child care institutions. Some states will be unable to secure funds to provide similar support for private nonprofit child care institutions. Further, the elimination of federal funding for these programs in state-funded institutions generally will necessitate the reduction of funding for other aspects of residential services for the unfortunate children residing in these institutions in order to make up the loss. At a time when inflation and other budgetary pressures already are creating serious problems for child care institutions, this would be a painful additional blow.

Finally, Mr. President, the elimination of residential child care institutions was not recommended by the Reagan administration.

These nonprofit institutions provide a valuable service and deserve our support. I personally know of the fine work being done by the New England Kurn Hattin Homes in Westminster and Saxtons River, Vt. This outstanding institution provides special care for neglected and handicapped children. To throw other homes, such as Kurn Hattin, off the national school lunch and school breakfast program would work a cruel hardship on these most vulnerable children. It is a mistake. And I urge adoption of this amendment.

Mr. President, I yield to the Senator from Massachusetts.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized.

Mr. KENNEDY. Mr. President, I rise to support the amendment of the Senator from Vermont to strike the provisions that prohibit residential institutions caring for the orphan, handicapped, and abused children from participating in the child nutrition program.

The cost of this amendment in a budget that cuts some $50 billion next year is small. It would add, as the Senator from Vermont has pointed out, only $69 million in outlays in 1984. But the implications of not making this change are significant.

First, these savings are not needed. The committee only agreed to this change, after first rejecting it, when it appeared that the budget targets could not be met. If the $69 million were added to the Agriculture Committee they would still exceed their goal by some $30 million. But even more important, by accepting this unnecessary change in the Senate will send a chilling message to every corner of this country. We will say to thousands of children forced to live in institutions that we no longer care about them; that we are writing them off.

If these same children were living at at home and attending public schools they would get a free or reduced-price lunch. But, because they are in an institution, shut away from the rest of us, we turn our backs.

Some say that the State should provide for these children, but let us look at the record. The States have had their chance. Until 1975 the States were responsible and the overwhelming evidence, collected through days of hearings, is that these children were not well fed. Many were living in substandard conditions and were fed poor quality food. Nothing indicates that the States are prepared to do a better job today.

Governor Hunt on behalf of the National Governors' Association wrote Senator HELMS to indicate his deep concern. He predicts that many States will just cut back on other much needed services for these children to make up for the loss of Federal help.

So. Mr. President. I hope that the amendment by the Senator from Vermont will be accepted.

Mr. DOMENICI. Mr. President. I yield to the distinguished chairman of the Ag-

riculture Committee as much time as he needs on this amendment.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BRADLEY. 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. BRADLEY. Mr. President, I am pleased to cosponsor Senator LEAHY's amendment to restore fiscal year 1984 funding for nutrition programs in orphanages and institutions for mentally retarded and disabled children.

A provision has been included in the omnibus reconciliation bill that would eliminate these residential child care institutions from participation in the school lunch and breakfast programs beginning in fiscal year 1984.

Approximately 150,000 children currently reside in over 4,000 of these institutions. They would be the big losers if this shortsighted provision is not struck from this bill.

Residential child care institutions were made eligible for Federal child nutrition programs in 1975. Congress provided for their participation in light of evidence that these children, who are often institutionalized through no fault of their own, received less Federal nutritional support than children attending the public schools.

Moreover, most of these children would have been eligible for free or reduced price lunches under the National School Lunch Act if they attended public schools.

By the 1975 vote, Congress intended to assure that these children would have the same access to the child nutrition programs as those benefiting from the school lunch program in the public schools.

What, then, is the justification for this provision to eliminate Federal nutrition assistance for these institutions? The principal reason is budgetary. The Committee on Agriculture voted the provision only after it appeared that the committee would not achieve the spending reductions required under the reconciliation instructions for fiscal year 1984.

However, as it turns out, the additional savings from this provision are not needed to reach the fiscal year 1984 totals. In fact, the committee has accumulated an excess of savings over the instructions level of $91 million in budget authority and $99 million in outlays in fiscal year 1984, more than enough to accommodate this amendment, with costs of $73 million in budget authority and $69 million in outlays. Budgetary arguments no longer stand against this amendment.

Some would argue that these excess savings should nonetheless be preserved, using the same justification initially advanced for eliminating Federal nutrition assistance for children in these institutions:

That the States should resume the responsibility they had prior to 1975 for feeding these children. While it is not surprising to hear this refrain when shifting funding burdens back to the States is so popular, I find its application to programs providing nutrition aid to this population of troubled, abused and neglected children unconscionable.

A major reason for extending Federal assistance to children in these institutions in 1975 was the evidence that these children were receiving meals that were substandard in nutritional quality and that continued tightening in State budgets offered little prospect of improvement.

There is good reason to believe that the States will be even less able to provide adequate nutritional assistance in 1984 than they did in 1975.

Not only are many State budgets in far worse shape today than they were 6 years ago, but the legislative changes contained in this bill will mean dramatic reductions in Federal support to States for all social and health programs.

Given the many cutbacks in benefits and services which States will have to make, we cannot assume that funds will be reallocated from other purposes to replace the lost child nutrition moneys for these institutions. To make up the loss, or at least part of it, State governments will have to reduce funding for other services for children residing in these institutions.

Finally, Mr. President, not even the administration, with its passion for budget-cutting, has recommended the elimination of Federal support for child nutrition programs in residential child care institutions.

Mr. President, the merits of providing nutrition assistance to children in orphanages and in homes for the emotionally disturbed, mentally retarded, and disabled are clear.

The budgetary arguments for eliminating these institutions from the school lunch program are no longer valid. Because these children deserve our support, I urge all my colleagues to join in voting for this amendment.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. HELMS. Mr. President, I ask unanimous consent that the order for the quorum call be dispensed with.

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

Mr. HELMS. Mr. President, I think the distinguished Senator from Oklahoma (Mr. BOREN) has a modification of the Leahy amendment which he may wish to propound at this time. For that purpose, I yield to the able Senator.

Mr. BOREN. I thank my colleague from North Carolina.

Mr. President, I would, if it is agreeable to the Senator from Vermont, like to ask him to modify his amendment and to insert into his amendment the provision of an amendment which I intended to offer later which would have the effect of exempting from the changes in the eligibility standard the disabled and the elderly over age 60.

This would assure that the cuts we are making in the program would not apply to those two categories, the elderly and disabled, since they really have no way of going out and seeking work to protect themselves.

I would like to ask the Senator from Vermont, with leave from the Senator from North Carolina who yielded to me, if that would be agreeable to him to so modify his amendment.

Mr. LEAHY. Mr. President, as I understand it, this is the amendment the distinguished Senator from Oklahoma had earlier on the original authorization bill.

Mr. BOREN. The Senator is correct. It would be exactly the same amendment.

Mr. LEAHY. Mr. President, I move to modify my amendment to include the amendment of the distinguished Senator from Oklahoma. I would send that modification to the desk.

Mr. DOMENICI. Would the Senator withhold on that?

The PRESIDING OFFICER. The Senator has a right to modify his amendment.

Mr. DOMENICI. I understand that.

Mr. LEAHY. Mr. President, I am perfectly willing to withhold for a moment.

Mr. DOMENICI. Mr. President, I just do not want to have the amendment as modified be subject to a point of order. I would like somebody to make sure that the modified amendment is still technically correct.

Mr. LEAHY. Mr. President, I ask unanimous consent that the amendment as modified be germane.

Mr. DOMENICI. Mr. President, reserving the right to object, and I do not intend to object, I would ask the distinguished Senator from Vermont if he would withdraw his unanimous-consent request and submit his modification. I do not intend to raise any technical issues with reference to it.

Mr. LEAHY. Mr. President, I withdraw the unanimous-consent request. I hereby modify my amendment to include the amendment by the distinguished Senator from Oklahoma.

The PRESIDING OFFICER. The amendment is so modified.

The amendment (UP No. 178), as modified, is as follows:

On page 33, strike out lines 4 through 14; and redesignate sections 185 through 191 as sections 184 through 190, respectively.

On page 15, strike out lines 2 through 9 and insert in lieu thereof the following:

"SEC. 155. (a) Section 5 of the Food Stamp Act of 1977 is amended by—

"(1) striking out everything before 'adjusted annually' in the first sentence of subsection (c) and inserting the following:

'The income standards of eligibility shall be—

'(1) for households containing a member who is sixty years of age or over or a member who receives supplemental security income benefits under title XVI of the Social Security Act or disability and blindness payments under titles I, II, X, XIV, and XVI of the Social Security Act, 100 per centum, and

'(2) for all other households, 130 per centum, of the nonfarm income poverty

guidelines prescribed by the Office of Management and Budget'; and

"(2) inserting 'for purposes of determining eligibility and benefit levels for households described in subsection (c)(1) and determining benefit levels only for all other household after 'household income.' in the first sentence of subsection (e).".

Mr. BOREN. Mr. President, this amendment would exempt the elderly and disabled from income eligibility guideline changes included in the Omnibus Reconciliation Act of 1981. The Senate has already gone on record agreeing to this amendment during the floor consideration of the food stamp and commodity distribution amendments of 1981.

Thus, the amendment I offer today is simply a technical amendment conforming to the Senate's prior decision.

I am pleased that my colleagues, Senator PRYOR, of Arkansas, and Senator LEAHY, of Vermont, are joining me as cosponsors of my amendment.

According to CBO's estimate, this amendment would cost only $20 million in fiscal year 1982. Even with this exemption, savings in food stamps would exceed those assumed in this legislation.

Since the Agriculture Committee has more than met its budget requirements, there should be no reason to oppose this amendment because of the cost.

The cost has already been well compensated for. Indeed, an amendment I proposed and the Agriculture Committee adopted calling for a reduction in staff in the Department of Agriculture will save $66 million in fiscal year 1982. This provision alone pays for the much needed exemption for the elderly and disabled.

It is essential that we maintain current eligibility guidelines for the elderly and disabled. I do not believe that the citizens of my State or the citizens of this country want us to remove over 67,000 elderly and disabled persons from the food stamp program.

While I do believe there is much fraud and abuse in this program and while I feel that the able-bodied persons should work, I do not believe we should pull the rug out from under those persons who cannot go out and get a job to make up for cuts in this program. The citizens of this country expect us to see that those who are truly needy have an adequate diet.

I would urge my colleagues to realize that this amendment is fiscally responsible and it is offered in a spirit of budgetary conservatism, but it is what I would call compassionate conservatism. I think that is what the people of the country are calling for and that is what the hour calls for.

I would urge the adoption of this amendment.

Mr. PRYOR. Mr. President, the Senate Committee on Agriculture, Nutrition, and Forestry has worked diligently to reduce spending in the food stamp program. We all accept the fact that reductions in our Federal programs must be made if we are to come to grips with the inflationary spiral which currently plagues our country. The committee spent many hours to insure that waste is curtailed in the food stamp program. I fully supported the committee's efforts and applaud our distinguished chairman for his conscientious leadership.

On June 10, 1981, during Senate debate on the reauthorization of the food stamp program, I joined with Senator BOREN in sponsoring an amendment which would exclude the elderly and disabled from the 130-percent gross income eligibility limit which was agreed upon by the Agriculture Committee and subsequently adopted by the Senate.

Mr. President, of the more than 22 million persons enrolled in the food stamp program, approximately 1.9 million, or 9.1 percent, are aged 60 or over.

I believe we all agree that this group is among the most needy of the recipients of food stamp benefits. The elderly and disabled have been crippled by rapid rises in the cost of food, energy, and health care.

Operating on a fixed income, it is becoming increasingly difficult for many of our elderly to make ends meet. I do not believe it is the intent of the Senate or of the citizens of this country, to place an undue burden on the one segment of our society which can least afford it.

Should our elderly and disabled be forced to adhere to the new income eligibility standards many of these citizens would become ineligible for food stamp benefits. The new gross income limit for a two-person household for receipt of food stamps is $616. This limit will place an unnecessary and, in many cases, insurmountable burden on the elderly and disabled living on fixed incomes.

It is expected that the new income eligibility standards will remove approximately 5 percent of all individuals from the food stamp roles. Our best estimates suggest that, with no exclusions, this 5 percent will include approximately 140,000 elderly and disabled individuals—the two groups most ill prepared to face such drastic benefit reductions.

Mr. President, this amendment was agreed to by the Senate during discussion on this topic and I now encourage the Senate to include this amendment in the budget reconciliation package to reflect the wishes of the Senate.

Mr. HELMS addressed the Chair.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. HELMS. Mr. President, the Boren language which just has been incorporated into the Leahy amendment is essentially a conforming one to insure that the provisions affecting food stamps contained within the reconciliation legislation are the same as those contained within S. 1007 which passed the Senate on June 10.

At that time the Senator from Oklahoma offered a similar amendment which we accepted. I am pleased to again accept the amendment to exempt the elderly, blind, and disabled from the gross income limit of 130 percent of poverty which is established for all other households.

Elderly, blind, and disabled households would continue to have their eligibility determined by using the deductions to which they are entitled.

The Congressional Budget Office has estimated that the lost savings due to exempting the elderly, blind, and disabled will be $20 million, $21 million, and $22 million in fiscal years 1982–1984. Without the exemption, the savings would have been $130 million or more in each fiscal year.

This is a conforming amendment with which we are in agreement.

Mr. BRADLEY addressed the Chair.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. BRADLEY. Mr. President, I ask for the yeas and nays on the underlying Leahy amendment.

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

The yeas and nays were ordered.

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

The PRESIDING OFFICER. The Senator will state it.

Mr. LEAHY. Does that mean the vote would be on my amendment as modified?

The PRESIDING OFFICER. The Senator is correct. The vote would be on the Leahy amendment as modified.

Mr. LEAHY. Mr. President, my understanding is that the two amendments combined are virtually within the budget. I would ask the distinguished Senator from New Mexico if that is correct.

Mr. DOMENICI. Mr. President, before I respond, let me ask my good friend from Vermont, I really did not understand that this was going to be the procedure. It is, obviously, any Senator's right to ask for a rollcall vote.

Mr. LEAHY. I am perfectly willing to have gone through it by voice vote.

Mr. DOMENICI. Mr. President, the purpose for negotiating was to work out an arrangement wherein we had an amendment that was acceptable. That is why we did that. Now I understand we are going to have a rollcall. I ask the Senator from New Jersey if that is correct.

Mr. BRADLEY. Mr. President, I did ask for the yeas and nays, but I will suggest the absence of a quorum and we can talk about it.

Mr. LEAHY. Mr. President, if the Senator would withhold for a moment just to make sure technically we have this correct. I ask unanimous consent that the Senator from Oklahoma (Mr. BOREN) be added as a cosponsor of the overall amendment.

Mr. DOMENICI. I have no objection.

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

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

The PRESIDING OFFICER. On whose time?

Mr. HOLLINGS. Both sides.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. BRADLEY. Mr. President, I withdraw my request for the yeas and nays on the underlying Leahy amendment.

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

Mr. DOMENICI. Mr. President, I wonder if the distinguished Senator from Vermont will tell us how much time he would need on his amendment, and perhaps the Senator from Oklahoma will also.

Mr. LEAHY. Mr. President, I will just take a minute, if I can have recognition.

Mr. DOMENICI. I yield the floor.

Mr. LEAHY. Mr. President, I think the special two amendments I have in mind are very important. We are speaking about the handicapped, the elderly, those within orphanages, at a time when we are, through a number of other social programs, quite properly trying to encourage adoption, quite properly trying to encourage the care and help for the handicapped, especially the handicapped children. This is just one small step that will make that possible. I would hope, Mr. President, that the Leahy amendment, as amended by Senators BOREN, BRADLEY, KENNEDY, and others, would be accepted by the Senate. I am prepared to yield back the remainder of my time.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Mr. President, I commend the Senator from Vermont and the Senator from Oklahoma. We are willing to accept the amendment.

As to the Boren amendment, the Senate is well aware of it. It is the same amendment that he successfully applied on the food stamp, which eliminates work requirements for handicapped and senior citizens. I understand that is acceptable to the chairman of the Agriculture Committee.

The basic Leahy amendment, as reconciled, would have changed the program in 1984, not for the years 1982 and 1983. It is our understanding that when you combine the two there is very little variance from the instruction to the Agriculture Committee. That occurs only in 1984 and it is a very small amount. It is budget authority only. We will recap that on numbers, but we are satisfied that that is the case. Based on that, the majority is willing to accept the amendment, as modified. I yield back the remainder of my time.

The PRESIDING OFFICER. Is all time yielded back?

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

Mr. HOLLINGS. We yield back the remainder of our time.

The PRESIDING OFFICER. All time has been yielded back. Without objection, the amendment is agreed to.

The amendment (UP No. 178), as modified, was agreed to.

Mr. LEAHY. I move to reconsider the vote by which the amendment was agreed to.

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

The motion to lay on the table was agreed to.

DISCRETION FOR SBA GUARANTEED LOANS

Mr. BOSCHWITZ. Mr. President, over the last 10 years the Federal Government has become a greater participant in the credit markets as a lender. The Government's largest involvement has been through guaranteed loans. One of the major goals of the economic recovery program is to reduce the Government's role in the credit markets. The budget cuts we are considering today, among other things, reduce the amount of loans guaranteed by the Government.

The Small Business Administration will be doing its part. In fact, the Small Business Committee has reported legislation which will reduce SBA's loan-guarantee authority by nearly 25 percent to $4 billion for each of the fiscal years 1982 through 1984.

Concern has been expressed that reducing the level of guarantee authority will result in a corresponding reduction in the number of loans to small businesses. In light of this budget crunch, it may be possible for SBA to make an equal, or even greater, number of loans, if the SBA guarantees a lesser percentage of the loans.

Under current law, SBA has the discretion to guarantee up to 90 percent of a loan it makes. This guarantee percentage is a maximum, presumably for use in limited, but necessary, cases. Unfortunately, a 90-percent guarantee appears to be more the rule than the exception.

The following shows the percentage SBA has guaranteed of loans made:

	Percent
1971	83.6
1976	86.3
1977	86.5
1978	86.7
1979	87.0
1980	87.4

This shows that SBA has been increasing the amount of loans it guarantees, and thus expanding its role in the credit market.

I firmly believe that every effort should be made for agencies like SBA to be fiscally responsible. One such effort would be reduce the percentage of a loan guaranteed. At this point, I am not suggesting that the maximum guarantee of 90 percent be lowered by statute; there have been no hearings or debate in the Senate on this idea. Before the maximum guarantee percentage is lowered, or a minimum guarantee percentage is required, the Small Business Committee should thoroughly examine the idea so a reasoned recommendation can be made.

In the meantime, SBA should use its discretion under its existing authority to reduce the guarantee percentage to the extent feasible. The judicious exercise of this discretion will allow SBA to help meet the credit needs of small businesses in the smaller credit markets of rural areas, while retaining flexibility for businesses in areas with larger credit markets. By so doing, risk can be appropriately shared by SBA, lenders, and borrowers. Mr. President, I am confident that many of my colleagues on the Small Business Committee, and in the full Senate, recognize the need for this discretion.

Mr. NICKLES. Mr. President, the Small Business Administration business loan program, particularly guaranteed loans are a prime example of a cooperative effort between the public and private sector. It is the largest and oldest Small Business Administration loan program. Since its inception, basic lending purposes have remained virtually unchanged. However, loan ceilings, maximum maturity, interest rates, and the guaranteed loan level have varied to adapt to economic conditions and the needs of small business.

This flexibility in setting these loan specifications has been the responsibility of the agency. It is important that we continue to allow the Small Business Administration to set these specifications, particularly the guaranteed loan rate.

If we are to maintain our Small Business Administration business loan program and afford the guaranteed loans to an expanding small business community, it is imperative that we give the Small Business Administration the ability to regulate the level at which guaranteed loans are guaranteed.

The responsibility of meeting the credit needs of small business should remain in the private sector through commercial lending institutions.

In the Senate Small Business Committee March 15 report to the Budget Committee, it was stated that the Small Business Administration must be strengthened and restructured to utilize its available resources in more effective and efficient ways. This can be achieved by shifting to the private sector a greater portion of the responsibility for administering nondisaster loan assistance and reallocating a greater portion of the agency's resources in the nonlending activities. In addition, the committee encourages modest shifts from direct lending to guarantee lending programs.

By shifting from direct loans and guaranteed loans, the Small Business Administration can better facilitate the credit market by freeing-up funds for private use. Additionally, direct loan servicing has added to administrative costs and reduced the effectiveness of the Small Business Administration.

I fully support the current policy which allows the Small Business Administration to set the levels at which loans are guaranteed. Further, I encourage the Budget Committee and the conferees to adhere to this policy during conference and establish a workable guaranteed loan program.

SMALL BUSINESS COMMITTEE RECONCILIATION LEGISLATION

Mr. BOSCHWITZ. Mr. President, the Small Business Committee has reported legislation, included in the Omnibus Reconciliation Act, which achieves the savings required by the reconciliation instructions. The committee achieved these savings by making some hard choices on SBA programs. The committee included a provision which I believe will substantially affect the actual spending required by SBA.

While I do not believe that the provision should be included in the Reconciliation Act, it is not technically in violation of the instructions. I do feel, however, that my colleagues in the Senate, as well as the Members of the House of Representatives, should be aware of the effect of that provision. For that reason, I ask unanimous consent that the additional views in the report of the Small Business Committee be included in the RECORD.

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

ADDITIONAL VIEWS ON SMALL BUSINESS COMMITTEE RECONCILIATION INSTRUCTIONS

The Committee's decision to report the Pryor bill (S. 865) as part of the reconciliation package violates the spirit of the Budget Act and the nation's expectations of fiscal responsibility.

The Committee was required by the reconciliation instructions to report legislation which would achieve the following reductions, in millions:

	Budget authority	Outlays
1981	−97	−67
1982	−526	−309
1983	−564	−541
1984	−554	−533

The Committee has met this requirement by making some difficult decisions for changes in existing SBA programs. The largest amount of these reductions are achieved from changes in the disaster loan program and substantial reductions in direct loan programs. We concur in these difficult decisions.

However, the Committee approved an additional measure, the Pryor bill, which has the practical effect of offsetting the reductions achieved. The Pryor bill would change the disaster regulations published by SBA on March 19, 1981. This bill is not an attempt to achieve the reductions required by the reconciliation, but rather to address regulations which are perceived as inequitable. We believe that the equities of the regulations should be addressed separately and prevail on their own merits. We do not believe the bill should be considered as part of the reconciliation package.

We are also concerned about the impact the Pryor bill will have on spending by SBA. An estimated $573 million would be needed in FY 1981 to fund additional obligations if the bill is enacted. However, this $573 million does not show up as additional spending in this bill because of a technicality. The "baseline" for FY 1981, from which we are to subtract our savings, was estimated some time ago, and includes $780 million for a supplemental request that subsequently was withdrawn. Even though this money has remained in the baseline, it was not expected to be spent. The Pryor bill, however, has the effect of taking up most of this un-allocated $780 million and means that we now in fact will have to spend this money.

The bottom line is that the Pryor bill will require SBA to spend money it otherwise would not have spent. Of the $2,030 million SBA has available to fund disaster loans, all but $143 million has been obligated or will be needed to fund loans for disasters that have already been declared. The $143 million remaining is a "reserve" for future disasters and is available to fund obligations under the Pryor bill. Once this "reserve" is depleted, additional appropriations will be necessary. Any additional appropriations, for SBA or any other agency, will exceed the binding budget ceiling for FY 1981. It will also require additional reductions in SBA's direct loan programs for FY 1982 that would result in a 68 percent reduction in direct loans for FY 1982. For these reasons, we feel that the Pryor bill should not be approved, nor included, as part of the reconciliation package.

HEALTH SERVICES BLOCK GRANT REPORT LANGUAGE IN S. 1377

Mr. STAFFORD. Mr. President, I would like to call the attention of the Senate to a printer's error on page 874 of Senate Report 97-139 which is accompanying the Omnibus Reconciliation Act of 1981, S. 1377.

This part of the report deals with the health services block grant that was adopted by the Labor and Human Resources Committee as part of its reconciliation proposal.

In the second paragraph of the report language submitted by the Committee on Labor and Human Resources the following sentence is incorrect and misleading as to the intent of the committee:

In requiring that States must make a grant to existing centers for fiscal years 1982 and 1983, the committee intends to give States broad flexibility as a "back door" means of arbitrarily causing an existing center to close.

The sentence as submitted to the printer and stating the committee intent reads as follows:

In requiring that States must make a grant to existing centers for fiscal years 1982 and 1983, the committee intends to give States broad flexibility in determining the grant amount. However, the States may not use this flexibility as a "back door" means of arbitrarily causing an existing center to close.

Mr. President, this is an important point which I feel should be corrected before we pass S. 1377.

ORDER OF PROCEDURE

The PRESIDING OFFICER. Who seeks recognition?

Mr. BAKER. Mr. President, I seek recognition.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. BAKER. I thank the Chair.

Mr. President. I would like to inquire of the distinguished managers of the bill, and other Senators who may be on the floor, as to what amendments are available now and perhaps might be offered if we stay, so that we can try to establish a time to recess the Senate over tonight and reconvene in the morning.

Before Senators answer, I might say that it appears that the Senate will need to convene at 8 o'clock in the morning. There are a number of special orders. I very much want to get back to the consideration of this bill at 9 o'clock.

Might I inquire of Senators how many amendments they have and if any of them might be disposed of in a brief time tonight, or if they have a preference for them to go over until the morning?

Mr. DOMENICI. Will the Senator yield?

Mr. BAKER. I yield.

Mr. DOMENICI. Might I first inquire of the Chair how much time of the 20 hours has expired?

The PRESIDING OFFICER. Six hours have been used in debate as of now.

Mr. DOMENICI. Mr. President, in response to the question of the majority leader, in behalf of Senator HATCH and others, he would like to offer two amendments, a technical amendment, which I believe has been circulated, and a substantive amendment with reference to outyear student aid programing. I have agreed with him that he could take both of those up. the one being technical as the first matter of business in the morning. I would like to share that information with the majority leader. I made that agreement.

Mr. BAKER. Do any other Senators have amendments that might be considered this evening?

Mr. LEAHY. Mr. President, I had a series of actually three amendments. We have just had two that were accepted. Because they were accepted, it puts a slightly different light on the third one, which is the summer feeding program. Ordinarily, I would not have brought that one up tonight. Maybe it would be better to bring it up tomorrow. It will involve some debate. I suspect there may be some slight changes made in it tonight. As to my own requirement for time, I will not take more than 10 or 12 minutes on it when I do bring it up, but I prefer to bring it up tomorrow.

Mr. BAKER. Could I inquire of the distinguished managers on both sides whether they would rather proceed tonight with the suggested amendment by the Senator from Vermont or the first thing in the morning.

Mr. HOLLINGS. I thank the distinguished majority leader. Mr. President, tomorrow morning would be preferable. We have been shoving to keep the consideration going here in the Senate. The combination of the last two amendments sort of leaves us emptyhanded for a moment. I did have a long list.

Incidentally, the list consists of some 40 amendments from both sides. We are combining some of them, like a couple of amendments a minute ago by the distinguished Senator from Oregon on the part of the Appropriations Committee, and I am sure that some of these can be combined. But we do have a number of amendments that will come on Conrail, on EDA, and Cuban and Haitian refugees. I have a lot of notes for tomorrow. I am sure we can line them up for the morning.

Maybe the majority and minority leaders would like to discuss further time limitations. We only have 14 hours left. Six hours have been consumed and we have 14 hours for 40 amendments.

Mr. BAKER. Mr. President, I thank the Senator from South Carolina. I get the impression that the Senate would be better served if we go out shortly and come in early in the morning.

Let me say, by the way, that I have had conversations today with the distinguished minority leader, with the minority manager of the bill, and the majority manager of the bill about the possibility of reducing time on amendments from 60 minutes, which is the unanimous-consent limitation now in effect, to 40 minutes. I will not now put that request because, to be absolutely candid about it, I had neglected to clear that through our process on this side.

Senators should be on notice now that, in the morning, before we turn to consideration of this bill, I should like to put that request so anyone who has an objection to it should let us know before 9 o'clock in the morning.

ROUTINE MORNING BUSINESS

Mr. BAKER. Mr. President, before we proceed, so that this time we are now using not be charged against the bill, I ask unanimous consent that there now be

a brief period for the transaction of routine morning business to extend not more than 15 minutes, in which Senators may speak.

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

ORDERS FOR WEDNESDAY

ORDER FOR RECESS UNTIL 8 A.M. TOMORROW

Mr. BAKER. Mr. President, if there are no other amendments to be offered tonight, I ask unanimous consent that when the Senate completes its business tonight, it stand in recess until the hour of 8 o'clock in the morning.

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

Mr. BAKER. Mr. President, are there special orders for the recognition of Senators in the morning?

The PRESIDING OFFICER. There are orders for the recognition of 10 Senators.

CHANGE IN ORDER FOR RECOGNITION OF CERTAIN SENATORS TOMORROW

Mr. BAKER. Mr. President, are there 15 minutes allocated to each Senator under special orders?

The PRESIDING OFFICER. That is correct.

Mr. BAKER. Mr. President, I am advised by a written memorandum that all Senators except the Senator from Oklahoma (Mr. BOREN), the Senator from West Virginia, the distinguished minority leader (Mr. ROBERT C. BYRD), the Senator from Arkansas (Mr. BUMPERS), and the Senator from Florida (Mr. CHILES) are willing to have their special orders vitiated.

Mr. President, I ask unanimous consent—and I have just concluded an informal conversation with the minority leader and I believe he agrees with this request—that the special orders for the recognition of Senators in the morning be vitiated with the exception of the Senator from Oklahoma (Mr. BOREN), the Senator from West Virginia (Mr. ROBERT C. BYRD), the Senator from Arkansas (Mr. BUMPERS), and the Senator from Florida (Mr. CHILES), and that the time allocated to those Senators be aggregated and assigned to the control of the Senator from Oklahoma (Mr. BOREN).

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

REDUCTION OF LEADERSHIP TIME TOMORROW

Mr. BAKER. Mr. President, I ask unanimous consent that the time for recognition of the two leaders under the standing order be reduced to 2 minutes each on tomorrow.

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

ORDER OF PROCEDURE TOMORROW

Mr. BAKER. Mr. President, I inquire of the Chair, after the discussion of the special orders just provided for, is it the opinion of the Chair that the Senate will automatically resume consideration of the pending measure?

The PRESIDING OFFICER. The Senate would resume consideration of the pending measure.

Mr. BAKER. Mr. President, I yield to the Senator from New Mexico.

Mr. DOMENICI. Mr. President, I wonder if I might ask the distinguished minority leader if they might help Senator HOLLINGS and me in this manner: When we do come back to the bill, as I understand it, there will be a technical amendment by Senator HATCH. I do not think that will take very long. Then there is a student assistance amendment and I assume that will take perhaps the full hour. Then Senator LEAHY would like us to consider his summer feeding amendment.

Beyond that, we have no one who has indicated that they are ready precisely after that to go. We would like the leaders to encourage the Senators to start telling us which ones are then ready, not by way of agreeing tonight, but so we shall know.

Mr. BAKER. Mr. President, I assure the Senator from New Mexico that I shall certainly assist in that. I advise the cloakroom on our side to notify Senators that there are 14 hours remaining for debate on the bill and that if there are amendments to be offered, they should offer them tomorrow and not wait until the following day—as a matter of fact, there might not be a following day—and that they should do them in the morning and not in the afternoon. I, for one, do not want to be in the unhappy position of having Senators come and very properly complain that there is no time left.

So I hope, Mr. President, that Senators will present themselves promptly and offer their amendments as soon as possible, and certainly do so in cooperation with the two managers of the bill, the first thing in the morning.

RETIREMENT OF JUSTICE POTTER STEWART

Mr. KENNEDY. Mr. President, Justice Potter Stewart's announcement last week that he would retire from the Supreme Court signals the close of a remarkable judicial career on the Nation's highest court.

He was the first of his World War II generation to reach the Supreme Court. For more than two decades, Justice Stewart's presence has graced the Court and brought his special abilities of insight and understanding to bear on many of the Nation's most challenging issues. Throughout these years, he has made lasting contributions to American constitutional law, particularly in the critical and complex areas of civil rights and civil liberties under the first amendment and the 14th amendment.

In so many ways, the judicial career of Potter Stewart has reflected the Supreme Court at its best. His opinions were often widely publicized and quoted—probably no other Justice found his words cited more often by the New York Times in its "Quotation of the Day." With his brilliant legal mind, his rare gift of expression, and his remarkable common touch, Justice Stewart had an uncommonly persuasive capacity to make the law both right and seen to be right.

His legal abilities were matched by a personal warmth and engaging sense of humor that enabled him to play a skillful mediating role in the controversies of the Court, and that earned him countless friends in the larger world beyond the Court. He was a very human Justice who never let the beginning of a new October term intrude on the start of a world's series in which his Cincinnati Reds were playing.

Most of all, Potter Stewart will be remembered as a Justice who loved the law and who skillfully helped to steer the Court, the Constitution, and the country safely through the difficult passages of the past two decades. I wish him a long and happy life in his retirement and with his family. And I also hope that President Reagan may find a way in the future to draw on his talents in further service to the Nation that he has already served so well.

BAN ON SATURDAY NIGHT SPECIALS UNDER THE HANDGUN CRIME CONTROL ACT

Mr. KENNEDY. Mr. President, the Handgun Crime Control Act of 1981—which I have introduced in the Senate (S. 974) and which Chairman RODINO of the House Judiciary Committee has introduced in the House of Representatives (H.R. 3200)—contains provisions that ban the manufacture, assembly, and sale in the United States of Saturday night specials, the cheap handguns often used by criminals whose only purpose is to kill or maim another human being.

The bill accomplishes this result by extending the ban on importation of such handguns under the existing law to the domestic manufacture, assembly, or sale of these weapons.

Thus, the bill would close the loophole in current law that permit parts for Saturday night specials to be imported into the United States for later assembly and sale in this country. It also prohibits the domestic manufacture and sale of such weapons.

The bill makes no change in the definition of Saturday night specials under existing Federal law and regulations, which have worked well in the limited area of preventing the importation of these weapons. The time has come to close the loopholes that still permit such weapons to be manufactured and sold in the United States, or to be assembled and sold here from foreign-made parts. That goal can be achieved by applying the familiar and workable provisions and procedures of existing law on imported Saturday night specials to all such weapons.

I ask unanimous consent that a background memorandum on the application of the law to Saturday night specials be printed in the RECORD.

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

BACKGROUND MEMORANDUM ON THE APPLICATION OF THE HANDGUN CRIME CONTROL ACT OF 1981 (S. 974/H.R. 3200) TO SATURDAY NIGHT SPECIALS

The procedures under the Kennedy-Rodino "Handgun Crime Control Act of 1981" (S. 974/H.R. 3200) for banning the manufacture, assembly, and distribution of Saturday Night Specials are identical to the pro-

cedures under existing federal law and regulations for banning the importation of such weapons. The effect of the Kennedy-Rodino bill in this area is to extend the import ban to the two types of Saturday Night Specials not covered by law—(1) those manufactured and sold in the United States, and (2) those assembled in this country from imported parts.[1]

Specifically, section 102(i) of the bill amends chapter 44 of title 18 of the United States Code [2] by adding a new provision that bans the further manufacture or transfer of any handgun (other than a curio or relic) unless it is a model that has been approved by the Attorney General. The transfer prohibition applies both to commercial and private transfers. Section 105 of the bill, amending the same statute, adds a new section 930 to title 18 with the following principal provision:

The Attorney General shall approve for manufacture, assembly, importation, sale, or transfer any handgun model if the Attorney General has caused to be evaluated and tested representative samples of such handgun model, and has found that such handgun model is *generally recognized as particularly suitable for or readily adaptable to sporting purposes.* (Emphasis added.)

In its essential feature, the "sporting purpose" standard, the bill is identical to the provision in existing law that prohibits the importation of such weapons.[3]

The bill provides that in the case of handguns acquired by law enforcement agencies the sporting purpose test may be waived, and it sets forth certain procedures regarding notification to Federal licenses, and to the general public, of determinations made under the provision. The Attorney General is specified as the official responsible for defining handguns subject to the prohibition, since a separate provision of the bill would transfer the authority for enforcing most Federal firearms controls from the Treasury Department to the Justice Department.

[1] Domestic manufacturers produced 2,167,000 handguns in the United States in 1979. Approximately ten percent of this production consisted of handguns assembled from foreign parts on a domestic frame or receiver. Table I provides data on the source of these parts for the period 1976–1980.

[2] Title IV of the Omnibus Crime Control and Safe Streets Act of 1968, as amended by Title I of the Gun Control Act of 1968; 18 U.S.C. 921 *et seq.*

[3] The 1968 legislation bans the importation of firearms across the board but permits the Secretary of the Treasury to exempt any firearm that "is generally recognized as particularly suitable for or readily adaptable to sporting purposes", 18 U.S.C. 925 (d)(3). The legislative history indicates that Congress intended the Secretary to exercise his statutory prerogative to ban the importation of handguns that do not meet this test.

Thus, the Kennedy-Rodino bill would carry forward the set of criteria used to define Saturday Night Specials under existing law. While complex, this definition is familiar, workable, and widely understood

The term "Saturday Night Special" has been used for many years to refer to handguns that are cheap, inaccurate, unsafe, easily concealed, and widely used in the commission of crime. While not mentioned in the legislation itself, the term received consideration of gun control legislation in 1967 and 1968. It is mentioned several times in the Senate report on the Omnibus Crime Control and Safe Streets Act of 1968 in connection with the firearm import prohibition of the Act. In fact, the report itself clearly identified the type of handguns to which the import ban would apply as Saturday Night Specials:

Substantial numbers of firearms that are sold via the mail-order route in the United States are foreign imported firearms, either of the military surplus category or the category of inexpensive, small-caliber firearms, which have been termed "unsafe" and as "Saturday night specials."

Our law enforcement officials have testified that from 50 to 80 percent of the crime guns that are confiscated each year are foreign imports of either of the above categories of weapons.[4]

Although neither the House nor the Senate report on the Gun Control Act of 1968 explicitly referred to Saturday Night Specials, the section-by-section analysis in the Senate report recalls the reasoning behind the import restrictions established by the Safe Streets Act and retained by the Gun Control Act.

The standards set forth in this subsection for the importation of firearms are designed and intended to provide for the importation of quality-made sporting firearms, including pistols, rifles, and shotguns, such as those manufactured and imported by Browning and other such manufacturers and importers of firearms.

It was made clear at the hearings that the imports which provided perhaps the greatest aggravation to big city crime were extremely cheap .22-caliber revolvers made largely in Europe for the US market. The difficulty of defining weapons characteristics to meet this target, without discriminating against sporting quality firearms, was a major reason why the Secretary of the Treasury has been given fairly broad discretion in defining and administering the import prohibition.[5]

The tests now used by the Department of the Treasury to determine whether a handgun is suitable for sporting purposes, and therefore may be imported, were developed by a panel of experts appointed by the Secretary of the Treasury after enactment of the 1968 legislation. These tests, which are referred to as "factoring criteria" or the "point system" (see Table II), are applied in a two-step procedure.

[4] S. Rept. 1097, 90th Congress, p. 78.

[5] S. Rept. 1501, 90th Congress, p. 38.

First the handgun must fulfill certain prerequisites relating to physical dimensions and safety features.

Second, the handgun is rated according to numerous specific characteristics such as length, weight, caliber, frame construction, and safety features. For each of these characteristics, the handgun is assigned a certain number of points. To qualify under the test, a pistol must receive a total of 75 points and a revolver must receive a total of 45 points.

Although cost is not one of the specific characteristics by which handguns are tested, higher-priced weapons tend to be assigned a larger number of points.

In addition to the factoring criteria used by the Treasury Department under current law, two other definitions of Saturday Night Special should be noted—one devised by the Treasury Department's Bureau of Alcohol, Tobacco, and Firearms and one employed in a bill once sponsored by Representative Dingell.

The Bureau of Alcohol, Tobacco, and Firearms adopted a three-factor test for its 1979 Firearms Trace Project, which traced handguns used in crimes in eighteen major metropolitan areas during the period January 1 to September 30, 1979. Under this test, a Saturday Night Special was defined as a handgun "with a barrel length of 3 inches or less, a caliber of .32 or less, and an initial cost factor of $50 or less." The results of the project (see Table III) showed that of 20,201 handguns used in crimes during the period studied, 5,418, or 27 percent, were Saturday Night Specials. Among the jurisdictions in the study, the percentage ranged from 13 percent in Denver to 39 percent in Rochester.

The Dingell handgun control bill, which was first introduced in the 91st Congress, would have prohibited the manufacture, importation, or sale of any handgun failing to meet certain requirements for the metal used in the weapon's construction. Under the bill, any handgun whose basic structural components had any of the following characteristics would have come under the prohibition:

Made of any material with a melting point less than 1,000 degrees Farenheit;

Made of any material with an ultimate tensile strength less than 55,000 pounds per square inch; and

Made of any powdered metal with a density less than 7.5 grams per cubic centimeter.

This approach was based on the view that most cheap handguns would meet one of these three descriptions. Several states have enacted laws using these or similar criteria in restricting handgun commerce.

TABLE I.—U.S. IMPORTS OF HANDGUN PARTS, 1976–80

Source	1976	1977	1978	1979	1980
West Germany	$605,000	$1,085,000	$2,050,000	$2,824,000	$2,610,000
Italy	795,000	1,235,000	1,248,000	1,670,000	2,203,000
Brazil	2,000	1,000	89,000	364,000	799,000
Spain	142,000	108,000	196,000	240,000	394,000
Belgium	164,000	143,000	237,000	127,000	80,000
Japan		16,000	90,000	48,000	42,000
Philippines	49,000	76,000	127,000	63,000	40,000
India				(1)	9,000
Other	49,000	16,000	46,000	23,000	25,000
Total	1,806,000	2,680,000	4,082,000	5,360,000	6,200,000

[1] Less than $500.

Source: Compiled by the U.S. International Trade Commission from official statistics of the U.S. Department of Commerce.

TABLE II.—FACTORING CRITERIA FOR HANDGUNS USED BY THE BUREAU OF ALCOHOL, TOBACCO, AND FIREARMS IN THE DEPARTMENT OF THE TREASURY

PISTOL

PREREQUISITES

1. The pistol must have a positive manually operated safety device.
2. The combined length and height must not be less than 10 in with the height (right angle measurement to barrel without magazine or extension) being at least 4 in and the length being at least 6 in.

Individual characteristics (qualifying score is 75 points)	Point value
Overall length: For each ¼ in over 6 in	1
Frame construction:	
Investment cast steel or forged steel	15
Investment cast high tensile strength alloy or forged high tensile strength alloy	20
Weapon weight with magazine in place and weapon unloaded: Per ounce	1
Caliber:	
.22 short and .25 automatic	0
.22 long rifle and 7.65 mm to .380 automatic	3
9-mm parabellum and over	10
Safety features:	
Locked breech mechanism	5
Loaded chamber indicator	5
Grip safety	3
Magazine safety	5
Firing pin block or lock	10
Miscellaneous equipment:	
External hammer	2
Double action	10
Drift adjustable target sight	5
Click adjustable target sight	10
Target grips	5
Target trigger	2

REVOLVER

PREREQUISITES

1. Must pass safety test.
2. Must have overall frame (with conventional grips) length (not diagonal) of 4½ in minimum.
3. Must have a barrel length of at least 3 in.

Individual characteristics (qualifying score is 45 points)	Point value
Barrel length (muzzle to cylinder face):	
Less than 4 in	0
For each ¼ in over 4 in	½
Frame construction:	
Investment cast steel or forged steel	15
Investment cast high tensile strength alloy or forged high tensile strength alloy	20
Weapon weight (unloaded): Per ounce	1
Caliber:	
.22 short to .25 ACP	0
.22 long rifle and .33 to .38 S. & W	3
.38 special	4
.357 magnum and over	5
Miscellaneous equipment:	
Adjustable target sights (drift or click)	5
Target grips	5
Target hammer and target trigger	5

Safety (drop) test: A double action revolver must have a safety feature which automatically (or in a single action revolver by manual operation) causes the hammer to retract to a point where the firing pin does not rest upon the primer of the cartridge. The safety device must withstand the impact of a weight equal to the weight of the revolver dropping from a distance of 36 in in a line parallel to the barrel upon the rear of the hammer spur, a total of 5 times.

Source: ATF form 4590 (5 74).

Note: The Bureau of Alcohol, Tobacco and Firearms reserves the right to preclude importation of any revolver or pistol which achieves an apparent qualifying score but does not adhere to the provisions of 18 U.S.C. 925(d)(3).

TABLE III.—HANDGUNS USED IN CRIMES

[Percent in parenthesis]

Metropolitan area	Total handguns	Type[1]		Caliber		Barrel length		Retail cost			Saturday Night Specials[2]
		Revolvers	Pistols	.32 or less	Over .32	3 in. or less	Over 3 in.	Under $50	$50 to $100	Over $100	
All jurisdictions	20,201(100)	14,979(74)	5,252(26)	9,747(48)	10,454(52)	14,728(73)	5,473(27)	8,551(42)	4,330(22)	7,320(36)	5,418(27)
Atlanta	512(100)	417(81)	95(19)	263(51)	249(49)	363(70)	149(30)	278(54)	80(16)	154(30)	176(34)
Boston	445(100)	296(67)	149(33)	225(51)	220(49)	316(71)	129(29)	143(32)	88(20)	214(48)	93(21)
Chicago	7,963(100)	5,888(74)	2,075(26)	3,885(49)	4,078(51)	5,905(74)	2,058(26)	3,410(43)	1,900(24)	2,653(33)	2,232(28)
Cincinnati	934(100)	715(77)	219(23)	548(59)	386(41)	729(78)	205(22)	490(52)	212(23)	232(25)	320(34)
Cleveland	332(100)	252(76)	80(24)	106(32)	226(68)	233(70)	99(30)	118(36)	80(24)	134(40)	49(15)
Dallas	538(100)	418(78)	120(22)	275(51)	263(49)	424(79)	114(21)	330(61)	58(11)	150(28)	200(37)
Denver	60(100)	38(63)	22(37)	20(33)	40(67)	27(45)	33(55)	16(27)	7(12)	37(61)	8(13)
Detroit	2,173(100)	1,683(77)	490(23)	1,009(46)	1,164(54)	1,492(69)	681(31)	874(40)	438(20)	861(40)	548(25)
Kansas City	598(100)	414(69)	184(31)	317(53)	281(47)	408(68)	190(32)	267(45)	104(17)	227(38)	168(28)
Miami	1,177(100)	844(72)	333(28)	398(34)	779(66)	1,035(88)	142(12)	430(37)	203(17)	544(46)	238(20)
New Orleans	577(100)	437(76)	140(24)	240(42)	337(58)	374(65)	203(35)	293(51)	108(19)	176(30)	151(26)
New York City	888(100)	617(69)	271(31)	467(53)	421(47)	758(85)	130(15)	409(46)	173(20)	306(34)	287(32)
Philadelphia	1,037(100)	762(73)	275(27)	550(53)	487(47)	747(72)	290(28)	368(36)	282(27)	387(37)	249(24)
Rochester	204(100)	155(76)	49(24)	128(63)	76(37)	152(75)	52(25)	109(53)	32(16)	63(31)	79(39)
St. Louis	1,373(100)	1,076(78)	297(22)	661(48)	712(52)	837(61)	536(39)	556(41)	280(20)	537(39)	318(23)
San Francisco	230(100)	157(68)	73(32)	106(46)	124(54)	192(83)	38(17)	81(35)	55(24)	94(41)	53(23)
Santa Ana	167(100)	91(54)	76(46)	78(47)	89(53)	134(80)	33(20)	54(32)	32(19)	81(49)	37(22)
Washington, D.C	993(100)	689(69)	304(31)	471(47)	522(53)	602(61)	391(39)	325(33)	198(20)	470(47)	212(21)

[1] For this study, handguns with a rotating cylinder are classified as revolvers; all others are classified as pistols.

[2] For this study, a Saturday Night Special was defined as a handgun with (1) a barrel length of 3 in. or less; (2) a caliber of .32 or less; and (3) a retail cost of $50 or less.

Source: Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, "1979 Firearms Trace Project" (July 7, 1980).

MESSAGE FROM THE HOUSE

At 3:54 p.m., a message from the House of Representatives, delivered by Mr. Gregory, one of its reading clerks, announced that the House has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 3991. An act to amend the Food Stamp Act of 1977 to increase the authorization for appropriations for fiscal year 1981, and to amend Public Law 93-233 to continue, through August 1, 1981, the cash-out of food stamp program benefits of certain recipients of Supplemental Security Income.

HOUSE BILL PLACED ON CALENDAR

The following bill was read the first and second times by unanimous consent, and placed on the calendar:

H.R. 3991. An act to amend the Food Stamp Act of 1977 to increase the authorization for appropriations for fiscal year 1981, and to amend Public Law 93-233 to continue through August 1, 1981, the cash-out of food stamp program benefits of certain recipients of Supplemental Security Income.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC-1454. A communication from the Assistant Secretary of Defense (Comptroller), transmitting, pursuant to law, amendments to the report on contract award dates for the period May 15 through August 15, 1981; to the Committee on Armed Services.

EC-1455. A communication from the Acting Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics), transmitting pursuant to law, a report concerning the Selected Reserve recruiting and retention incentives contained in certain sections of the United States Code; to the Committee on Armed Services.

EC-1456. A communication from the Acting Comptroller General of the United States, transmitting, pursuant to law, a report entitled "Food For Development Program Constrained By Unresolved Management and Policy Questions"; to the Committee on Agriculture, Nutrition, and Forestry.

EC-1457. A communication from the Secretary of Agriculture, transmitting, pursuant to law, a report on the status of a report concerning the need for and condition of housing available for migrant and settled farmworkers; to the Committee on Banking, Housing, and Urban Affairs.

EC-1458. A communication from the Secretary of Transportation, transmitting, pursuant to law, proposed rules regarding the retrofitting of certain railroad cars; to the Committee on Commerce, Science, and Transportation.

EC-1459. A communication from the Secretary of Transportation, transmitting a draft of proposed legislation to terminate certain functions of the Civil Aeronautics Board, to transfer other functions of the Board to the Secretary of Transportation, and for other purposes; to the Committee on Commerce, Science, and Transportation.

EC-1460. A communication from the Acting Administrator of the Energy Information Administration, Department of Energy, transmitting, pursuant to law, a report on sales of refined petroleum products and sales of retail gasoline for March 1981; to the Committee on Energy and Natural Resources.

EC-1461. A communication from the General Counsel of the Department of Energy, transmitting, pursuant to law, notice of a meeting related to the International Energy

Program; to the Committee on Energy and Natural Resources.

EC-1462. A communication from the Under Secretary of the Interior, transmitting, pursuant to law, notice of leasing system for Oil and Gas Lease Sale No. A66, Gulf of Mexico; to the Committee on Energy and Natural Resources.

EC-1463. A communication from the Secretary of Transportation, transmitting, pursuant to law, a biennial report on activities on Railroad-Highway Demonstration Projects, dated December 1980; to the Committee on Environment and Public Works.

EC-1464. A communication from the Acting Assistant Legal Advisor for Treaty Affairs of the Department of State, transmitting, pursuant to law, a report on international agreements, other than treaties, entered into by the United States in the sixty day period prior to June 18, 1981; to the Committee on Foreign Relations.

EC-1465. A communication from the Deputy Assistant Secretary of Defense (Administration), transmitting, pursuant to law, notice of a new Privacy Act system of records; to the Committee on Governmental Affairs.

EC-1466. A communication from the Deputy Assistant Secretary of the Interior, transmitting, pursuant to law, a report on a new Privacy Act system of records; to the Committee on Governmental Affairs.

EC-1467. A communication from the Assistant Secretary of Health and Human Services, transmitting, pursuant to law, a report on a new Privacy Act system of records; to the Committee on Governmental Affairs.

EC-1468. A communication from the Assistant Secretary of Health and Human Services, transmitting, pursuant to law, a report on a new Privacy Act system of records; to the Committee on Governmental Affairs.

EC-1469. A communication from the Acting Comptroller General of the United States, transmitting, pursuant to law, a report entitled "Civil Servants and Contract Employees: Who Should do What for the Federal Government"; to the Committee on Governmental Affairs.

EC-1470. A communication from the Chairman of the United States Civil Rights Commission, transmitting, pursuant to law, a report of the Ohio Advisory Committee evaluating the policies and practices of the Cincinnati Police Department; to the Committee on the Judiciary.

EC-1471. A communication from the Director of the National Institute of Corrections, transmitting, pursuant to law, the fifth annual report of the Institute; to the Committee on the Judiciary.

EC-1472. A communication from the General Counsel of the Legal Services Corporation, transmitting, pursuant to law, the calendar year 1980 report of the Corporation under the Freedom of Information Act to the Committee on the Judiciary.

EC-1473. A communication from the Acting Comptroller General of the United States, transmitting, pursuant to law, recommending favorable consideration of claims by certain employees of the Pearl Harbor Naval Shipyard; to the Committee on the Judiciary.

EC-1474. A communication from the Acting Commissioner of the Immigration and Naturalization Service, transmitting, pursuant to law, 703 reports on visas accorded third and sixth preference classification; to the Committee on the Judiciary.

EC-1475. A communication from the Acting Comptroller General of the United States, transmitting, pursuant to law, a report entitled "Health Systems Plans: A Poor Framework for Promoting Health Care Improvements"; to the Committee on Labor and Human Resources.

EC-1476. A communication from the Chief Scout Executive, transmitting, pursuant to law, the 1980 Annual Report to Congress of the Boy Scouts of America; to the Committee on Labor and Human Resources.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. DURENBERGER, from the Committee on Governmental Affairs, without amendment:

S. Res. 160. An original resolution waiving section 402(a) of the Congressional Budget Act of 1974 with repect to the consideration of S. 43; referred to the Committee on the Budget.

By Mr. DURENBERGER, from the Committee on Governmental Affairs, without amendment:

S. 43. A bill to amend the Congressional Budget Act of 1974 to require the Director of the Congressional Budget Office to prepare and submit, for every bill or resolution reported in the House or the Senate which has certain specific economic consequences, an estimate of the cost which would be incurred by State and local governments in carrying out or complying with such bill or resolution (Rept. No. 97-142); referred to the Committee on the Budget for not to exceed thirty days of continuous session.

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. ROTH, from the Committee on Governmental Affairs:

James A. Belson, of the District of Columbia, to be an Associate Judge of the District of Columbia Court of Appeals for the term of fifteen years;

Warren Roger King, of the District of Columbia, to be an Associate Judge of the Superior Court of the District of Columbia for a term of fifteen years;

Richard Stephen Salzman, of the District of Columbia, to be an Associate Judge of the Superior Court of the District of Columbia for a term of fifteen years; and

Reggie Barnett Walton, of the District of Columbia, to be an Associate Judge of the Superior Court of the District of Columbia for a term of fifteen years.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

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

By Mr. WALLOP:

S. 1409. A bill to authorize the Secretary of the Interior to construct, operate, and maintain modifications of the existing Buffalo Bill Dam and Reservoir, Shoshone project, Pick-Sloan Missouri Basin program, Wyoming, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. WALLOP (for himself and Mr. D'AMATO):

S. 1410. A bill to amend the Internal Revenue Code of 1954 to treat deductions for research and experimental expenses attributable to activities conducted in the United States as allocable to income from sources within the United States; to the Committee on Finance.

By Mr. THURMOND:

S. 1411. A bill to amend subchapter II of chapter 73 of title 10, United States Code, to eliminate certain inequities in the Survivor Benefit Plan provided for under such subchapter, to improve such plan by authorizing certain new options for participants in such plan, and for other purposes; to the Committee on Armed Services.

By Mr. D'AMATO (for himself and Mr. HAYAKAWA):

S. 1412. A bill to amend the Internal Revenue Code of 1954 to make permanent certain rules relating to travel expenses of State legislators; to the Committee on Finance.

By Mr. TSONGAS:

S. 1413. A bill to provide flexibility to the Federal Deposit Insurance Corporation, the Federal Savings and Loan Insurance Corporation and the Federal supervisory agencies to deal with financially distressed depository institutions, and to increase the lending, investment, and operating authority of Federal mutual savings banks; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. CRANSTON (for himself, Mr. CANNON, Mr. HAYAKAWA, and Mr. LAXALT):

S. 1414. A bill to clear title to certain lands along the California-Nevada boundary; to the Committee on the Judiciary.

By Mr. JEPSEN:

S. 1415. A bill to preserve and protect the free choice of individual employees to form, join, or assist labor organizations, or to refrain from such activities; to the Committee on Labor and Human Resources.

S. 1416. A bill to amend the National Labor Relations Act to provide for a freedom of choice in labor relations for full-time and part-time secondary and college students by exempting them from compulsory union membership, and for other purposes; to the Committee on Labor and Human Resources.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. WALLOP:

S. 1409. A bill to authorize the Secretary of the Interior to construct, operate, and maintain modifications of the existing Buffalo Bill Dam and Reservoir, Shoshone project, Pick-Sloan Missouri Basin program, Wyoming, and for other purposes; to the Committee on Energy and Natural Resources.

IMPROVEMENTS TO BUFFALO BILL DAM AND RESERVOIR, WYOMING

Mr. WALLOP. Mr. President, today I am introducing a bill which would authorize substantial improvements to Buffalo Bill dam in northwest Wyoming. When first constructed, between 1905 and 1910, it was the highest dam in the world and was named a National Engineering Landmark. Now, more than 70 years later, we are seeking to take advantage of modern technology by raising the dam an additional 25 feet and increasing the firm yield by 74,000 acre feet annually.

This is not a new proposal. After 1969, when Congress authorized the Department of Interior to study the feasibility of modifying Buffalo Bill dam, the project was caught in the web of bureaucracy and suffered like so many other proposals of the seventies from a paralysis by analysis. The study was substantially completed in May, 1974, but by August 1975, it was still under review and had not yet been transmitted to Congress. It had by that time, however, become stale and needed to be revised. A partial report was issued by 1977, but the bulk of the report still has not been completed even though more than 10 years have been passed since its authorization.

I firmly believe that the raising of the Buffalo Bill dam is an economic and environmentally sound water storage project. Congressionally authorized water projects are under bitter attack as being pork-barrel and an example of unnecessary Federal expense. Yet, as recently noted in the June 8 edition of U.S. News and World Report, the cost of the subway system now under construction in this

city is $10 billion, which is about $1 billion more than has been spent on western water projects in the past 80 years.

I support Congress pledge for fiscal responsibility but this does not mean that Congress is trying to eliminate Federal spending entirely. Rather, Congress should be encouraging projects which will maximize the Federal investment. I believe that this project is consistent with that goal.

While the project will generally benefit agriculture, it will also profit the entire area. This bill does not authorize the construction of a new project; instead it develops the full potential of an already existing facility. The primary objective of this bill is to raise the dam by 25 feet, permitting the storage of excessive spring runoff. Active conservation storage would be increased by over 270,000-acre feet, providing a firm yield of 74,000-acre feet annually which will be used for irrigation, outdoor recreation, fish and wildlife conservation, and for municipal and industrial purposes.

The State of Wyoming has on a number of occasions expressed an interest in acquiring water for municipal and industrial development. The Cody Canal Irrigation District and the Shoshone River water users have discussed the possibility of contracting for a water supply with the Bureau of Reclamation. In accordance with reclamation laws, repayment contracts for reimbursable costs must be negotiated prior to the initiation of construction of the facilities.

In studying the feasibility of this project, several alternatives were considered including nondevelopment. The findings concluded that the most efficient use of the resource would be to increase the storage by raising the dam. The total demand for anticipated water uses will require all the additional water which can be supplied from the existing facility. It was also determined that it would not be possible to provide an equal amount of additional storage in the same locality at the same costs.

Another element of the project is the rehabilitation of the hydroelectric generating plant located at the dam site. The existing five megawatt powerplant is obsolete. The new megawatt plant will increase power production to 20 million kilowatt hours annually. The raising of the dam itself, will increase the production potential of the new equipment by 17 percent. Energy exploration and development, specifically harnessing our available resources, will top the list on the domestic agenda for the rest of the century. Water has tremendous existing potential for generating electric power. Upgrading and retrofitting existing plants, rather than building new ones, is a very sound approach considering our current budget-trimming atmosphere.

A benefit which is impossible to measure precisely is that of mitigation of the effects of future droughts. This winter was unseasonably dry for most of the United States, but for westerners, who are no strangers to the problem, the prospect of a drought is especially disasterous. The detriments resulting from the lack of water can be avoided through the wise and efficient use of the resources such as will be provided by this proposal.

The increased reservoir size will require the construction of dust control dikes to maintain environmental quality and saddle dikes to prevent unnecessary flooding. The construction of a visitors center would be authorized on the left abutment of the dam. In addition to being included on the National Register of Historic Places, and being declared a National Historic Civil Engineering Landmark by the American Society of Civil Engineers, Buffalo Bill dam is located along a major access route to Yellowstone National Park. Over 500,000 visitors enter the park through this entrance every year. The National Park Service has recommended that the size of the visitors center be adequate to handle the peak day of 1,350 visitors. The extension of the existing dam, and construction of the visitors center may be done in such a way as to not detract from the architecture of the original structure, nor from its spectacular setting in the gorge.

The modifications included in this bill have been supported by the people of Wyoming for many years. They represent an economic and environmentally sound approach to the development of additional water and hydropower. This is exactly the type of project we need to support in these days of fiscal austerity.

By Mr. WALLOP (for himself and Mr. D'AMATO):

S. 1410. A bill to amend the Internal Revenue Code of 1954 to treat deductions for research and experimental expenses attributable to activities conducted in the United States as allocable to income from sources within the United States; to the Committee on Finance.

ALLOCATION OF RESEARCH AND EXPERIMENTAL EXPENDITURES

Mr. WALLOP. Mr. President, I am today introducing a bill to amend section 861 of the Internal Revenue Code providing that all R. & D. expenses made in the United States shall be allocated to U.S. source income rather than being allocated in part to foreign source income. This legislation would remove an artificial disincentive that encourages U.S. corporations to transfer part of their R. & D. activities from the U.S. to foreign countries.

Presently sections 861 and 862 provide for the allocation of deductions between United States and foreign source income to calculate taxable income from each such source. To the extent deductions are allocated to and reduce foreign source income, they reduce allowable foreign tax credits. Regulations issued by the Internal Revenue Service under sections 861 and 862 provide complex and highly theoretical rules respecting the allocation of R. & D. expenditures incurred in the United States to foreign source income.

However, the allocation of these expenditures are not recognized in the foreign jurisdictions from which the foreign source income is derived. The result, therefore, is often double taxation of such foreign source income and, more significantly, a disincentive to the expansion of R. & D. activities in the United States. There are several reasons for this result.

First, no other country in the world requires its taxpayers to allocate expenses incurred in the home country to foreign source income to determine the amount of foreign tax credit allowable. Hence foreign companies, unlike U.S. companies, are not subject to comparable double taxation. This gives them a significant competitive advantage over U.S. companies and provides an incentive for locating R. & D. overseas.

In the case of R. & D. expenses, the operation of these two basic disadvantages is particularly costly to companies, especially high technology, state-of-the-art companies, and runs counter to the national interest. Subjecting companies to double taxation with respect to a portion of their R. & D. expenditures because of a quirk in the U.S. law stands in shocking contrast with the widespread concern over the inadequate levels of R. & D. being performed in the United States and the concern over sagging U.S. productivity in the face of foreign competition.

Furthermore, very attractive incentive programs offered by many foreign countries attract R. & D. from the United States. For example, Japan targets high potential industries with developmental subsidies, accelerated depreciation and soft loans for R. & D. All businesses are allowed a 20-percent tax credit for R. & D. increases. Germany grants low interest loans for R. & D. tax free cash grants for investment in R. & D. facilities, and special depreciation for R. & D. plants and equipment.

The point is that sections 861 and 862 presently are an incentive for transferring R. & D. to foreign countries, since by doing so, a U.S. taxpayer can avoid double taxation and benefit from R. & D. incentives offered by many countries. The combination, therefore, of the disincentive to do R. & D. in the United States, because a portion of it will give rise to double taxation, combined with the incentives to do R. & D. abroad creates a situation where U.S. companies must weigh carefully some of the nonfinancial advantages of continuing to concentrate all their R. & D. in the United States against the clear financial advantage of transferring some of their R. & D. abroad.

Second, the decrease in allowable foreign tax credit (double taxation) which results from the allocation of U.S. R. & D. expenses to foreign source income under sections 861 and 862 cannot be mitigated under any existing tax treaty. The result is that U.S. taxpayers are subject to double taxation.

The U.S. Department confirms the serious problem involved here. A paper published by Treasury's Office of Tax Analysis in December 1980 states in part:

By denying U.S. corporations a full deduction for domestic R & D expenses against domestic income and by assigning some portion to foreign source income, where it often is not allowed as a deduction by foreign

tax authorities, the apportionment can effectively deny any tax deduction for a part of R & D expenses. Corporations engaging extensively in international business or in the production of technology-intensive products may, in some cases, be subject to a significantly higher over-all tax on their worldwide income.

Another extremely serious problem is the difficulty inherent in developing basic guidelines for applying in an equitable manner the very general allocation principles of sections 861 and 862 to the millions of international transactions that thousands of U.S. companies engage in over many years. In fact, equity is impossible to achieve unless each set of transactions is treated as a separate case.

For example, under the current section 861 regulations, R. & D. must also be calculated using broad product categories, so that, to illustrate, R. & D. on intercontinental ballistic missiles can be allocated to the dividend income of a foreign subsidiary producing engine valves, because both fall in the transportation category.

Two other results of this particular deficiency are important to note. First, the cost of maintaining the accounting system required to meet the sections 861 and 862 requirements runs in to the millions of dollars for a company of any significant size. Second, the cost to the Government of auditing this one section of the law must also run into the millions of dollars. This cost to the Government is particularly questionable, because the revenue gain from the application of sections 861 and 862 is relatively very small.

In fact, Treasury claimed there would be no gain in revenues when the present rules were put into effect in 1977, and a recent estimate from the Joint Committee on Taxation of the revenue loss resulting from the allocation of all U.S. R. & D. against U.S. source income, as proposed in this bill was only $108 million in fiscal 1982, increasing gradually to $136 million in 1985.

In light of this kind of cost/benefit situation as well as the disincentive for domestic research and development, section 861 should be amended. This bill does so by simply excluding domestically performed R. & D. from the application of section 861. All R. & D. which is conducted in the United States would be deducted solely from U.S. source income. I feel that the need to remove this R. & D. handicap is so urgent in light of the need to support increases in U.S. technology, economic growth, productivity and foreign trade, that action should be taken immediately to correct this situation. I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 1410

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 861 of the Internal Revenue Code of 1954 (relating to income from sources within the United States) is amended by adding at the end thereof the following new subsection:

"(g) ALLOCATION OF RESEARCH AND EXPERIMENTAL EXPENDITURES.—

"(1) IN GENERAL.—For purposes of subsection (b) and section 862(b), all amounts allowable as a deduction for qualified research and experimental expenditures shall be allocated to income from sources within the United States and deducted from such income in determining the amount of taxable income from sources within the United States.

"(2) QUALIFIED RESEARCH AND EXPERIMENTAL EXPENDITURES.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'qualified research and experimental expenditures' means amounts—

"(i) which are research or experimental expenditures within the meaning of section 174, and

"(ii) which are attributable to activities conducted in the United States.

"(B) TREATMENT OF DEPRECIATION, ETC.—Rules similar to the rules of subsection (c) of section 174 shall apply."

(b) The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 1980.

By Mr. THURMOND:

S. 1411. A bill to amend subchapter II of chapter 73 of title 10, United States Code, to eliminate certain inequities in the Survivor Benefit Plan provided under such subchapter, to improve such plan by authorizing certain new options for participants in such plan, and for other purposes; to the Committee on Armed Services.

MILITARY SURVIVOR BENEFIT PLAN

Mr. THURMOND. Mr. President, last year the U.S. Congress and the American public became aware of the serious career personnel retention crisis in our Armed Forces. I am pleased to state that the Senate Armed Services Committee initiated the legislation which dramatically increased the basic pay and allowances of our armed services personnel to attract and retain qualified individuals in our services. The level of military compensation had fallen so far below the accepted cost of living, as measured by the Consumer Price Index in today's era of inflation, that this year we must again look seriously at military compensation and make appropriate adjustments.

We have not yet resolved our military personnel retention problem; we have just taken the initial steps to assure that the American military man and his family receive a standard of living equal to that of other Americans. Already, in this Congress, numerous measures, including my own S. 7, have been introduced. S. 7 will provide an educational benefit incentive program designed to make military service attractive to our youth and retain those trained and experienced noncommissioned and petty officers who form the hard core of our dedicated military force.

Mr. President, there remains one element of the military compensation package that demands equitable correction despite our past efforts. I speak to the issue of the military Survivor Benefit Plan (SBP). The 92d Congress enacted landmark legislation in establishing the military survivor benefit plan with the passage of Public Law 92-425 on September 21, 1972. The new law gave military careerists survivor benefits on a cost-sharing basis for the first time. Civilian employees of the government had enjoyed these benefits for the previous 24 years.

The military survivor benefit plan was patterned afer the civil service program. Supposedly, the two plans were equitable. But, from the beginning, the military plan contained inequities due to the uniqueness of a military career and the difficulties in comparing benefits between the two groups of Federal employees.

Mr. President, I sincerely believe if we are to achieve a career force of highly trained, experienced and dedicated personnel we must address all facets of military compensation. The assurance of an equitable survivor benefit plan is not the least of the elements of the compensation package which would retain the desired career personnel.

The greatest single problem facing the armed forces today is the loss of middle managers—senior NCO's and junior officers. The survivor benefit plan was originally established to help stem this flow out of the service, characterized by defense spokesmen as a hemorrhage, which is critically incapacitating the services. In light of this fact, I most urgently request support for my proposal to remove more inequities by reconstituting the military survivor benefit plan as a meaningful incentive for military careerists.

The Congress has endeavored to resolve the basic inequities of Public Law 92-425. In 1976, the House of Representatives sent us a bill which would have corrected most of the flaws. Unfortunately, it was received shortly before adjournment and too late for adequate study. As a result, only two provisions, which had previously been made law for civil service retirees, were passed.

Mr. President, in September 1977, the Senate received another bill from the House. It was received more than a year before the adjournment of the 95th Congress. In this case, the Senate had ample time to act; however, the Armed Services Committee could not schedule hearings until August 17, 1978. This left insufficient time to resolve discrepancies in cost estimates submitted by the Office of the Secretary of Defense and by the Congressional Budget Office. Once again, the inequities in the survivor benefit plan were only partly resolved with the passage of Public Law 95-397.

In the 96th Congress, the distinguished former chairman of the Subcommittee on Manpower and Personnel, Senator NUNN, endeavored to address these inequities by scheduling further hearings on my bill, S. 91. Senator NUNN requested that the Department of Defense prepare a study, including an independent actuarial analysis and cost estimates for specified provisions and other data by a civilian firm of actuaries. He set the deadline for submission of that report as no later than February 1, 1979. The subcommittee received the independent actuary's report on May 16, 1979.

Further, the previous administration recommended that a new actuarially neutral survivor benefit plan be established for military personnel. This recommendation set off a new subcommit-

tee study of the current plan which again resulted in a piecemeal action on the correction of the inequities addressed in my bill by the passage of Public Law 96–402 on October 9, 1980. Only a few of the inequities were removed.

Mr. President, to enable the Congress to finally correct the remaining inadequacies in the survivor benefit plan for military widows/widowers, I am introducing a bill which addresses these remaining deficiencies. This bill contains provisions from several bills I have introduced in the past, plus a few additional minor provisions. These provisions include those elements in previous Senate and House bills which were not accepted in previous sessions of Congress due primarily to the lack of time and because of cost discrepancies. Several of the provisions are directly related to the inequitable integration of the military member's militarily earned social security with his survivor's benefit annuity.

ELIMINATE SOCIAL SECURITY OFFSET BASED ON WIDOW'S OWN EARNINGS

Mr. President, this bill would eliminate the offset entirely for widows who receive social security payments based on their own earnings. It just does not make sense to impose the offset when widows have earned social security benefits on their own by many years of hard work, and they are drawing nothing from entitlement based on the active duty of their husbands.

ELIMINATE OFFSET FOR WIDOW WITH ONE CHILD

It would also eliminate the offset when there is one dependent child. This seems only fair because existing law exempts widows with two or more children.

In the passage of Public Law 95–397 in 1978, the Congress approved a provision whereby the social security offset would not be implemented in the instance where the military widow continues to work after attaining age 62. Therefore, I cannot rationalize why a nonworking widow or widower and one child should endure the loss of income due to the offset.

LIMIT SOCIAL SECURITY OFFSET TO 50 PERCENT WITH 40-PERCENT CAP

Mr. President, in the last session of Congress one of the inequities which caused the greatest dilemma was the 100 percent social security offset to the survivor benefit plan for the widow at age 62. My bill, S. 91, in the last session of Congress would have reduced this offset to 50 percent. After extensive hearings and study, the Subcommittee on Manpower and Personnel reached a compromise, whereby the social security offset would not reduce the survivor benefit plan by more than 40 percent. This provision became a part of Public Law 96–402.

Although this 40-percent cap helped some and should be retained, it still causes an inequity to a great many retirees. A combination of the 50-percent offset with a 40-percent cap will provide a more equitable solution.

Mr. President, when the military SBP was established in 1972, the Department of Defense recommended a 50-percent offset, arguing that the service member's contribution to social security should be returned to his survivor, under any circumstances. Eight years of experience have proven the Defense Department's recommendation to be correct.

The military survivor benefit plan was adapted from the civil service survivor plan with an implied cost-sharing formula of 60 percent by the individual and 40 percent to be borne by the Government. Until SBP was modified in the last Congress, certain noncommissioned officer participants were paying over 300 percent of the cost because of the effect of the social security offset, and many officer participants were paying almost 200 percent. Even with the modification, a guarantee that beneficiaries will receive not less than 60 percent of the full annuity for which their sponsors paid, E–7's are paying over 70 percent of the cost, and O–5's are paying 98 percent. Due to the indexing now applied to the social security program, by the year 2000 some participants will be paying well over 100 percent of the cost.

Since 1972, the survivor benefit plan has acquired over one and a quarter billion dollars in revenue for the U.S. Treasury. In other words, the Government has been making a profit from the military survivor benefit plan. Consequently, costs involved in removing inequities will not be excessive.

Nearly one-half of all military retirees do not participate in the survivor benefit plan. Many who elect not to participate do so with the realization that their survivor's annuity will be reduced, and in some cases almost nullified, by an offset of 100 percent of social security benefits attributed to military service. The bill I am introducing will reduce the offset to 50 percent of the militarily earned social security benefits while maintaining the 40 percent cap.

OPTION IN REINSTATING SBP COVERAGE FOR NEW SPOUSES

The present survivor benefit plan provides for a suspension of deductions from retired pay in the event of divorce or death of a spouse. But, in the event of remarriage, the coverage is automatically restored by operation of law whether or not the military retiree requires or desires it. The 95th Congress recognized that another marriage, occurring later in life, would probably take place under significantly different circumstances. In Public Law 95–317, the civil service retiree was given the option to elect, 1 year after remarriage, whether or not to reinstate survivor coverage for his new spouse. This seems to be a highly desirable provision, and it is incorporated in my bill.

OPTION TO WITHDRAW WHEN THERE IS NO LONGER A SPOUSE BENEFICIARY

Another curious result occurs when a retiree changes from spouse and child coverage to child only coverage in the event of divorce or death of a spouse. The Comptroller General has held that when this occurs, the deduction must be recomputed on an actuarial basis using the member's age and that of the youngest child. This has resulted in very large increases, as much as 60 percent, in the required deduction from retired pay. In situations such as this, where the retiree clearly did not expect such a result, the Secretaries of the Military Departments should be given authority to permit withdrawal from the plan. My bill will also authorize a participant to redesignate an insurable interest beneficiary, if the current beneficiary predeceases the participant.

ELIMINATE SOCIAL SECURITY OFFSET BEING DEDUCTED TWICE FROM SBP

It concerns me that double jeopardy exists for certain widows of military retirees who qualify for their own government pension after December, 1982. Section 334 of the Social Security Amendments of 1977 (Public Law 95–216) directs the reduction in the social security benefit of a wife or widow on a dollar-for-dollar basis by the amount of any public retirement benefit she receives based on her own public employment (Federal, State, local) that is not covered by social security.

Section 1451(a), title 10, United States Code (Public Law 95–425) requires a reduction in a widow's SBP annuity when she reaches age 62 and is entitled to a social security survivor payment. An earlier date applies when a widow has one dependent child in her care. The reduction is, of course, based only on active military service performed by her late husband after December 31, 1956.

There are an unknown number of wives/widows who will qualify for a government pension after December, 1982. Many of these have husbands who retired from active service after 1956, and who have elected coverage under the survivor benefit plan. In these situations, their widows' social security survivor benefit will be reduced (in most cases eliminated) because of the 1977 Social Security Amendments. In addition, their SBP annuity will be offset because of the social security survivor entitlement which will not exist. It is my understanding that the SBP offset will be required under the present wording of 10 U.S.C. 1451. Therefore, my bill proposes to amend the law to prevent double jeopardy in such cases.

ELIMINATE OFFSET FOR RESERVISTS PRIOR TO OCTOBER 9, 1980

My bill also corrects the treatment of the social security offset for the Reservist whose active duty is for less than a thirty-day period. Public Law 96–402 removes this offset for the future. I cannot, in all equity, understand why it should not also be applied to the previous service by Reservists.

Mr. President, Public Law 96–402 eliminates from the computation of social security offset under the survivor benefit plan (for widow or widower of a reservist) any periods of active duty of 30 or less continuous days for which the Reservist received a refund of social security taxes (excess FICA) because of maximum social security coverage (based on maximum taxable earnings) from private employment.

The Public Law 96–402 covers only periods of active duty performed subsequent to effective date of the law, October 9, 1980.

Reservists who performed periods of active duty of 30 consecutive days or less, subsequent to 1956 up to the effective

date of Public Law 96-402, are not covered under this new provision of the law. Consequently, their survivors are subject to the social security offset based on military earnings for that period, despite the fact that they paid FICA on the maximum taxable earnings in private employment.

Mr. President, to make the law equitable to all reservists, the social security offset against SBP should be eliminated from all Reserve survivor benefit plan annuities for periods of active duty of 30 continuous days or less, regardless of when the duty was performed. Revised payments should be effective from the date of enactment, with no retroactive provisions to repay the offsets applied to annuities prior to that date. The bill which I am introducing today will remove this inequity.

I remind my distinguished colleagues, as I did 4 years ago, that my proposal will merely improve the existing survivor benefit plan, so that it will provide widows, or widowers, of military retirees with a program equivalent to the one provided for survivors of decreased civil service retirees. These are widows who suffered the rigors of military life, who made the necessary sacrifices, met the challenges and kept the family together while their husbands served in wars and emergencies.

Mr. President, I believe it is incumbent on the Congress to assure military personnel that a military career can be as rewarding and satisfying as a career in the private sector. To do this, we must not only provide for equitable pay and allowances now; we must provide the careerist with meaningful benefits in retirement. The assurance that the careerists's surviving spouse will receive an equitable portion of the careerist's retired pay will be a most meaningful retention tool.

Mr. President, I urge my distinguished colleagues to join me in removing the inequities in the survivor benefit plan in the first session of the 97th Congress.

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

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

S. 1411

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 1450 of title 10, United States Code, is amended—

(1) by inserting "subsection (l) and" before "section 1449"; and

(2) by adding at the end thereof the following new subsections:

"(l) In any case in which the marriage of a person participating in the Plan is dissolved by divorce, or in which the spouse of such person dies, and such person subsequently remarries, such person may irrevocably elect, within one year after the date on which such person is remarried, whether or not to provide an annuity for the new spouse. An election under this paragraph to provide a new spouse an annuity shall be effective on the first day of the first month beginning one year after the date of the remarriage.

"(m) In any case in which a participant in the Plan has elected under section 1448(b) of this title to provide an annuity to a natural person with an insurable interest in the participant and such person predeceases the participant, the participant may designate another natural person with an insurable interest in the participant as beneficiary under the Plan if the participant (1) has no spouse or dependent child, and (2) notifies the Secretary concerned in writing within 90 days after the death of the first named beneficiary that the participant wishes to name a new beneficiary and provides such other information as the Secretary concerned may require.".

SEC. 2. (a) Section 1451(a) of title 10, United States Code, is amended by striking out paragraphs (2), (3), and (4) and inserting in lieu thereof the following.

"(2) Except as provided in paragraph (3), when the widow or widower reaches age 62, the monthly annuity shall be reduced by an amount equal to 50 percent of the amount of any survivor benefit to which the widow or widower is entitled under title II of the Social Security Act (42 U.S.C. 401 et seq.) based solely upon service by the person concerned as described in section 210(l)(1) of such Act (42 U.S.C. 410(l)(1)) and calculated assuming the person concerned lives to age 65, except that in no case may the monthly annuity be reduced below an amount equal to 60 percent of the monthly annuity as determined under paragraph (1).

"(3) No reduction shall be made under paragraph (2) in the amount of the monthly annuity payable to any widow or widower under this subchapter if a reduction is being made under section 202(b)(4) of the Social Security Act (42 U.S.C. 402(b)(4)) in any monthly periodic benefit payable to such widow or widower which is based upon such widow's or widower's earnings while in the service of the Federal Government or any State (or political subdivision thereof).

"(4) In the computation of any reduction made under paragraph (2), there shall be excluded any period of service described in section 210(l)(1) of the Social Security Act (42 U.S.C. 410(l)(1)) which involved periods of service of less than 30 continuous days for which the person concerned is entitled to receive a refund under section 6413(c) of the Internal Revenue Code of 1954 (26 U.S.C. 6413(c)) of the social security tax which such person had paid.".

(b) No person shall be entitled, by virtue of the amendment made by subsection (a), to any refund of reductions which were made before the effective date of this Act in the amount of the monthly annuity paid under subchapter II of chapter 73 of title 10, United States Code, and which were made on account of periods of military service of less than 30 continuous days for which the person concerned was entitled to receive a refund under section 6413(c) of the Internal Revenue Code of 1954 (26 U.S.C. 6413(b)) of the social security tax which the person concerned had paid.

SEC. 3. Subsection (b) of section 1452 of title 10, United States Code, is amended—

(1) by striking out "The" at the beginning of such subsection and inserting in lieu thereof "(1) Subject to the provisions of paragraph (2), the"; and

(2) by adding at the end thereof the following new paragraph:

"(2) Notwithstanding any other provision of this subchapter, any person who has a dependent child, but does not have an eligible spouse, may discontinue participation in the Plan if such person formerly had a spouse who was eligible for an annuity under this subchapter and such spouse is dead or the marriage between such spouse and such person has been dissolved by divorce or annulment. The Secretary concerned shall discontinue the participation of any such person in the Plan upon receipt of a written request from such person containing such information as the Secretary concerned shall prescribe.".

SEC. 4. The amendments made by this Act shall become effective on the first day of the second calendar month following the month in which this Act is enacted.

By Mr. D'AMATO (for himself and Mr. HAYAKAWA):

S. 1412. A bill to amend the Internal Revenue Code of 1954 to make permanent certain rules relating to travel expenses of State legislators; to the Committee on Finance.

TRAVEL EXPENSES OF STATE LEGISLATORS

● Mr. D'AMATO. Mr. President, today I am introducing a bill to restore and make permanent expired provisions of the Internal Revenue Code relating to the travel expenses of State legislators. Mr. HAYAKAWA has joined me as a cosponsor of this legislation.

Prior to January 1, 1981, State legislators were able to treat their legislative district as their tax home. This entitled State legislators to deductions for living expenses on legislative days when the legislator was required to stay away from home overnight on legislative business. With the expiration of this provision, however, the tax home for State legislators will be defined as their principal place of business. For most State legislators this is their State capital. Thus, their travel and living expenses necessary to the performance of their duties would no longer be deductible.

This situation is unfair treatment of our fellow legislators. I have, therefore, introduced a bill to modify and make permanent the expired provisions of the Internal Revenue Code. Under my bill a State legislator could elect to consider his or her legislative district as a tax home. A legislator making such an election would be treated as having expended an amount equal to the greater of his or her State per diem or the Federal per diem in that State capital on each legislative day. The maximum deduction, however, would be 110 percent of the Federal per diem. The bill would also deem an electing legislator to be away from home on legislative business on each legislative day.

Finally, my bill would apply retroactively to January 1, 1973. This would eliminate the confusion over these provisions created by the recent tax court decision in the case of *Eugene A. Chappie* v. *Commissioner*, 73 T.C. 823 (1980).

Mr. President, this bill is necessary to restore fair and just tax treatment to our fellow legislators. I urge that it be passed without delay. I also ask unanimous consent that my bill be printed in full at the close of my statement.

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

S. 1412

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 162 of the Internal Revenue Code of 1954 (relating to trade or business expenses) is amended by redesignating subsection (h) as subsection (i) and by inserting after subsection (g) the following new subsection:

"(h) STATE LEGISLATORS' TRAVEL EXPENSES AWAY FROM HOME.—

"(1) IN GENERAL.—For purposes of subsection (a), in the case of any individual who is a State legislator at any time during the taxable year and who makes an election under this subsection for the taxable year—

"(A) the place of residence of such individual within the legislative district which he represented shall be considered his home.

"(B) he shall be deemed to have expended for living expenses (in connection with his trade or business as a legislator) an amount equal to the sum of the amounts determined by multiplying each legislative day of such individual during the taxable year by the greater of—

"(i) the amount generally allowable with respect to such day to employees of the State of which he is a legislator for per diem while away from home, to the extent such amount does not exceed 110 percent of the amount described in clause (ii) with respect to such day, or

"(ii) the amount generally allowable with respect to such day to employees of the executive branch of the Federal Government for per diem while away from home but serving in the United States, and

"(C) he shall be deemed to be away from home in the pursuit of a trade or business on each legislative day.

"(2) LEGISLATIVE DAYS.—For purposes of paragraph (1), a legislative day during any taxable year for any individual shall be any day during such year on which—

"(A) the legislature was in session (including any day in which the legislature was not in session for a period of 4 consecutive days or less), or

"(B) the legislature was not in session but the physical presence of the individual was formally recorded at a meeting of a committee of such legislature.

"(3) ELECTION.—An election under this subsection for any taxable year shall be made at such time and in such manner as the Secretary shall by regulations prescribe."

(b) The amendment made by subsection (a) shall apply to taxable years beginning on or after January 1, 1973.●

By Mr. TSONGAS:

S. 1413. A bill to provide flexibility to the Federal Deposit Insurance Corporation, the Federal Savings and Loan Insurance Corporation, and the Federal supervisory agencies to deal with financially distressed depository institutions, and to increase the lending, investment, and operating authority of Federal mutual savings banks; to the Committee on Banking, Housing, and Urban Affairs.

REGULATORY FLEXIBILITY AND EXPANDED POWERS ACT OF 1981

(The remarks of Mr. TSONGAS on this legislation appear earlier in today's RECORD.)

By Mr. CRANSTON (for himself, Mr. CANNON, Mr. HAYAKAWA, and Mr. LAXALT):

S. 1414. A bill to clear title to certain lands along the California-Nevada boundary; to the Committee on the Judiciary.

CLEAR TITLE TO CERTAIN LANDS ALONG THE CALIFORNIA-NEVADA BOUNDARY

Mr. CRANSTON. Mr. President, on behalf of Senator CANNON, Senator HAYAKAWA, Senator LAXALT and myself, I am introducing a bill to clear up land title questions related to the California-Nevada boundary.

By way of background, Mr. President, there are certain lands in the vicinity of the California-Nevada border which were granted to the States by the Federal Government. Most of the lands have long since passed from the States to private owners and many of them have been developed. For more than a century, everyone—including the Federal Government—has assumed and relied upon the validity of the land titles.

However, as a result of the 1980 U.S. Supreme Court decision in the case of California against Nevada relocating the California-Nevada interstate boundary, these lands now fall within the other State. Serious questions are being raised about the legality of these titles which are based on a State's grant of land subsequently determined to be outside its jurisdiction.

I understand that altogether there are an estimated 11,115 acres affected by the Supreme Court decision. The vast majority of the land is now located in California, and the most valuable property—involving 2,458 separate parcels and 1,265 acres—is in the Lake Tahoe Basin.

Both the California Department of Justice and the California Land Title Association have advised me that litigation to resolve this question would likely be protracted and costly and hardly desirable. Instead, they have requested the legislation I am introducing today.

The bill would validate the States' transfers of lands subsequently determined to be outside their boundaries and confirm the land grants as having been properly made. There are no known situations in which California and Nevada separately conveyed the same parcel of land to different owners.

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

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

S. 1414

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

(1) thousands of acres of real property transferred by the United States to California or to Nevada on or before July 7, 1980, are now located within the other State according to the boundary between them established by the United States Supreme Court in the case of *California* v. *Nevada*, 433 U.S. 918 (1980).;

(2) each State has accepted such transfers as valid, and commencing some one hundred and twenty-five years ago conveyed substantially all of the property into private ownership;

(3) the original title of each State and political subdivision thereof and subsequent private parties has been treated as good and valid for all governmental and private purposes;

(4) it is imperative that certainty of title to and ownership of the real property be established as soon as practicable in order to avoid any undue hardship on the States of California and Nevada and affected private parties; and

(5) litigation is not an appropriate means of resolving the above questions of title and ownership of the affected real property in that it would result in unprecedented and unnecessary burdens and expenses on the courts of the United States, California and Nevada, as well as on private property owners.

SEC. 2. Grants and all other transfers of all real property to California by the United States on or before July 7, 1980, by a statute, clear lists, selection, patent, or any other means, pursuant to any statute listed or referred to in section 4 of this Act, which real property is located in the State of Nevada according to the boundary between California and Nevada as defined in the case of *California* v. *Nevada*, 433 U.S. 918 (1980), are hereby confirmed, from and after the date of any such grants or other transfers, as having been made properly.

SEC. 3. Grants and all other transfers of all real property to Nevada by the United States on or before July 7, 1980, by a statute, clear list, selection, patent, or any other means, pursuant to any statute listed or referred to in section 4 of this Act, which real property is located in the State of California according to the boundary between California and Nevada as defined in the case of *California* v. *Nevada* 433 U.S. 918 (1980), are hereby confirmed, from and after the date of any such grants or other transfers, as having been made properly.

SEC. 4. Statutes of the United States pursuant to which real property has been granted or otherwise transferred by the United States to one or both of California and Nevada include the Acts of Congress approved September 4, 1841 (5 Stat. 453); September 28, 1850 (9 Stat. 519); March 3, 1853 (10 Stat. 244); July 2, 1862 (12 Stat. 503); March 21, 1864 (13 Stat. 30); July 4, 1866 (14 Stat. 85); March 2, 1867 (14 Stat. 541); June 16, 1880 (21 Stat. 287); August 19, 1894 (28 Stat. 422); and any other Act of Congress pursuant to which such a grant or other transfer was made.

By Mr. JEPSEN:

S. 1415. A bill to preserve and protect the free choice of individual employees to form, join, or assist labor organizations or to refrain from such activities; to the Committee on Labor and Human Resources.

RIGHTS OF WORKERS

Mr. JEPSEN. Mr. President, I send a bill to the desk and ask that it be read and referred to the appropriate committee.

The bill I am introducing today amends section 7 of the National Labor Relations Act and section 2 of the Railway Labor Act by deleting provisions which mandate an individual to join or pay money to a labor organization in order to obtain or maintain employment.

Mr. President, the issue of "right to work" is not new to this Chamber, the Congress, or the American people. The issue centers on the question about whether, as a condition of employment, an individual must join an organization; specifically a union organization. The greater question is whether individual liberty really prevails in America for the American worker.

The right to work issue is not an attack on the labor movement, nor is it intended to hinder the livelihood of the American labor movement or the great achievements that American workers have contributed to the growth and productivity of the U.S. economy.

Labor unions, along with the cooperation of management, have done a great deal to improve the quality and safety of the workplace. More importantly, many of the achievements and advances in labor have been accomplished because of the organization, power, and determination of the people associated with the labor movement.

Nevertheless, one of the major flaws within the labor movement is their uncompromising and steadfast belief and practice that the American worker not only has the right to join a labor union,

but must be compelled to join a labor union as a condition of employment or continued employment.

The right to work, although it is not a constitutionally protected right, is nevertheless, a right a society such as ours must preserve and protect. The right of association and the freedom to associate or not to associate are protected and guaranteed by the first amendment to the U.S. Constitution. Unfortunately, the opponents of right to work are of the opinion that this constitutional right, this fundamental guarantee, does not apply to those who seek employment in America.

In deference to the opponents of right to work, there was a time when public labor policy considered nearly anything and everything a union did as either illegal or prohibitive.

Today, however, we are faced with the fact that many people believe that unions have become uniquely privileged institutions to which the general rules of laws do not apply.

Mr. President, presently 20 States which have right-to-work laws, including: Alabama, Arizona, Arkansas, Florida, Georgia, Iowa, Kansas, Louisiana, Mississippi, Nebraska, Nevada, North Carolina, North Dakota, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, and Wyoming. Other States lean toward the right-to-work issue, including: Delaware, Idaho, New Hampshire, New Mexico, and Vermont.

Ironically, in the 20 right-to-work States, the AFL–CIO is doing proportionately better in terms of attracting new members and sustaining its membership compared to the old line industrial States in which right-to-work laws are not in effect. The right-to-work law not only protects an individual's right, but in those States which support right-to-work laws, the economy is generally healthier.

Collectively, the 20 right-to-work States had, as of 1978, an average unemployment rate of 5 percent, while the average rate for the remaining States was 6.2 percent. My home State of Iowa, which has had a right-to-work statute since April of 1947, is a good example. Between 1969 and 1979, manufacturing employment in my State increased by 14.2 percent, adding approximately 33,300 jobs. In contrast, construction employment in Iowa added over 6,000 jobs for a gain of more than 14 percent. In nonagricultural employment from 1967 and 1977, Iowa experienced a 30-percent increase in employment. During that same period, an Iowan's per capita personal income increased $4,000 for an increase of 123 percent.

According to the National Right-to-Work Committee, compulsory unionism States are continuing to lose jobs. Specifically:

> In 30 states wage earners are still not protected against compulsory unionism. Union officials in those states possess vast powers to force workers to pay money to the union in order to keep their jobs.
>
> But workers in those states have lost more than their freedom alone. They're losing jobs, too. Every year. By the thousands.
>
> Between 1969 and 1979, compulsory unionism states endured a net loss of 271,000 manufacturing jobs. (Bureau of Labor Statistics, U.S. Department of Labor) that's over a quarter of a million workers without jobs—and the loss of almost $4 billion dollars which they would have earned in 1979 alone.

Furthermore, the National Right to Work Committee noted that—

> New York led the list of compulsory unionism losses with a deficit of 371,900 jobs. That amounts to a loss of one out of every five manufacturing jobs that existed in 1969—a loss due largely to compulsory unionism and its attendant burdens.
>
> Over the same period workers in Pennsylvania, New Jersey, Maryland and Illinois—all compulsory unionism states—suffered the loss of more than one out of every ten manufacturing jobs.
>
> But workers in all 20 right to work States have enjoyed dramatic increases in manufacturing jobs during the last decade. Five right to work States have seen job increases of over 50 percent, and nearly half of all right to work States have increased manufacturing employment by over one-third.

Mr. President, I reemphasize again: our laws protect the issue of association and fundamental freedom under our Constitution.

In regard to economic growth, productivity and prosperity in general, freedom is essential if such prosperity is to long endure.

Employees in right-to-work States have found that freedom and prosperity go hand in hand. Specifically, according to the Bureau of Labor Statistics, U.S. Department of Labor, "from 1969 to 1979, right to work States created a net total of 1,087,000 manufacturing jobs," kept their jobless rate nearly 2 percentage points below compulsory unionism States throughout the seventies and posted a net population gain of over 9 million Americans between 1970 and 1979.

Right-to-work States have produced lower unemployment, a lower cost of living and increased job opportunities which translate into more jobs, improved employee benefits, and greater prosperity for individual workers.

According to the National Right to Work Committee and data from the Department of Labor, Bureau of Labor Statistics, the following States had either a net gain or net loss in manufacturing jobs between 1969 and 1979. I ask that this table of statistics comparing the gain of jobs in right-to-work States with the loss of jobs in compulsory unionism States be inserted into the RECORD.

RIGHT TO WORK STATES

Texas, up	269,500
Florida, up	109,400
North Carolina, up	104,700
Tennessee, up	59,400
South Carolina, up	57,000
Mississippi, up	53,100
Georgia, up	50,800
Kansas, up	50,400
Alabama, up	50,000
Arkansas, up	48,800
Arizona, up	48,200
Virginia, up	42,100
Iowa, up	33,300
Utah, up	33,100
Louisiana, up	32,400
Nebraska, up	12,400
Nevada, up	11,500
South Dakota, up	11,000
North Dakota, up	7,600
Wyoming, up	2,900
Total gain, jobs	1,087,600

COMPULSORY UNION STATES

California, up	339,300
Wisconsin, up	71,600
Colorado, up	65,600
Oklahoma, up	53,400
Minnesota, up	50,600
Kentucky, up	47,100
Oregon, up	46,900
Washington, up	27,100
Idaho, up	18,700
New Hampshire, up	18,100
New Mexico, up	14,400
Vermont, up	7,400
Arkansas, up	5,300
Rhode Island, up	4,400
Montana, up	2,800
Hawaii, down	1,600
Maine, down	1,700
Missouri, down	2,500
Delaware, down	3,400
West Virginia, down	5,000
Indiana, down	11,400
Maine, down	12,300
Connecticut, down	37,300
Maryland/District of Columbia, down	40,600
Minnesota, down	42,000
Ohio, down	88,200
New Jersey, down	93,200
Illinois, down	138,600
Pennsylvania, down	193,400
New York, down	371,900
Total loss of jobs	271,000

Finally, according to the 1980 Opinion Research Corp. poll, 73.8 percent of the American people surveyed favored a right-to-work proposal. That is nearly three-quarters of the American people who agree that it is wrong to force workers to join or support a labor union against their will. It is wrong because it violates the fundamental principle of individual liberty and freedom of choice. The American people, true to their heritage and national pride, remain dedicated to the principles of individual freedom regardless of whether it is practicing one's religion or exercising one's right to work.

Therefore, I strongly urge serious consideration of this bill. With the new leadership in the Senate and the new sense of direction now in the Congress and the administration, we can greatly facilitate passage of this much-needed law.

Mr. President, I send to the desk various articles and additional commentary on the issue of right to work for insertions into the RECORD, which was provided to me by the National Right to Work Committee. Mr. President, this material was submitted to me in 1979, therefore some of the references may be out of date.

Mr. President, I ask unanimous consent that the bill be printed in the RECORD along with the previously mentioned material.

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

S. 1415

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 7 of the National Labor Relations Act is amended by striking out "except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3)".

(b) Section 8(a)(3) of such Act is amended by striking out all of section 8(a)(3) after "labor organization" the first time it appears and substituting a semicolon.

(c) Section 8(b)(2) of such Act is amended by striking out everything after "subsection (a)(3)" and substituting a semicolon.

(d) Section 8(f) of such Act is amended by striking out clause (2), and by redesignating clauses (3) and (4) as (2) and (3), respectively.

SEC. 2. The Railway Labor Act is amended by striking out section 2, Eleventh, thereof.

CALIFORNIA

Teachers forced to pay retroactive "agency shop" fees for a ten month period for which there was no collective bargaining agreement.

Union officials sue three employees who refused to pay "agency shop" fees.

CLEAR EXTORTION—RETROACTIVE "AGENCY SHOP"

The NEA knows no limit when it comes to extorting money.

Three Los Altos, California, teachers have filed charges against the Los Altos Teachers Association (LATA) and the Los Altos School District, for having been forced as a condition of continued employment to pay "agency shop" fees for a ten-month period for which there was no collective bargaining contract!

Even though the union contract was not agreed to until May 16, 1977, the NEA affiliate demanded teachers John Broadwood, Beverly Chamberlain, and Barbara Nutt to pay "agency shop" fees dating back to July 1, 1976.

Forced to financially support this unwanted representative, the three teachers agreed to pay fees incurred from the day the master contract took effect, but contend that a retroactive "agency shop" is a mockery of their freedom of association and forces them to finance union operations against their will.

The National Right to Work Legal Defense Foundation, a non-profit organization which provides free legal aid to victims of compulsory unionism, has entered the case on the teachers' behalf and filed unfair labor practices with the California Educational Employment Relations Board.

"This is a clearcut case of union greed run amuck," National Right to Work Legal Defense Foundation Chairman Thomas J. Harris said. "Repeatedly, the National Labor Relations Board has established the fact that retroactive fees are illegal. Yet here we are again with a money-hungry teacher's union using its compulsory unionism wedge to separate employees from their hard-earned money."

NEA-UNION RETROACTIVE "AGENCY SHOP" FEE BANNED

SACRAMENTO, CALIF.—As a result of a National Right to Work Legal Defense Foundation lawsuit, a Hearing Officer of the California Public Employment Relations Board (CPERB) has ruled against NEA-Union officials for forcing teachers to pay retroactive "agency shop" fees.

The case arose May 16, 1977, when the Los Altos Teachers Association-Union (LSTA), an NEA-Union affiliate, and Los Altos School District concluded an "agency shop" contract requiring teachers to pay compulsory union fees dating back to July 1, 1976.

Teachers, John Broadwood, Beverly Chamberlain, and Barbara Nutt, paid the union $10.07 as the prorated portion of the "agency shop" fee for the period May 16, 1977 to June 30, 1977, but refused to knuckle under to the union's back-dues scam. When the School District threatened to fire them, the teachers paid the fees under protest and sought the aid of the Foundation, an organization that protects individuals from union extortion.

Citing Colonie Fibre Co., Inc. 71 NLRB 354 at 356 (1946), CPERB Hearing Officer, Gerald Becker, ruled, "to require payment of past dues as a condition of employment would have a seriously detrimental effect upon freedom of organization . . . Legalization of this practice would provide a device for effectively constraining those who would not have remained members . . . at a time when they are under no obligation to do so.

COURT RULES IN FAVOR OF "RIGHT TO CHOOSE"

SACRAMENTO, CALIF.—A Superior Court Judge has ruled that Lemoore and Avenal High School employees do not have to pay union officials for their jobs.

Earlier this year, the California School Employees Association-Union (CSEA) sued three employees for refusing to pay "agency shop" fees, which were not authorized under the collective bargaining agreement.

Citing the ambiguity of the contract, the judge wrote that the case "must be resolved in favor of the persons (non-members) who are not parties to the agreement and who did not participate in or have any say in the drafting of said agreement."

Because it "deprives the employee of the right to choose whether he desired to capitulate and pay a service fee or terminate his employment," the court concluded that the labor agreement is "unenforceable."

ILLINOIS

"Outstanding" teacher fired for refusing to support the local NEA affiliate.

ILLINOIS TEACHER ILLEGALLY FIRED FOR REFUSING TO PAY "AGENCY SHOP" FEES

The Illinois Office of Education has ruled that the concerted action between a school board and union in firing a teacher who refused to pay "agency shop" fees was illegal and unconstitutional under state law.

Mrs. Susan LaVine, a foreign language teacher, had been fired March 21, 1977, by the Lyons Township Board of Education on the trumped-up charges of "deficient and unsatisfactory performance as a teacher."

James Stack, a hearing officer called in to decide the dispute overturned the firing because LaVine had really been charged with not forking over illegal "agency shop" fees to the Lyons Township Faculty Association-Union (LTFA), an affiliate of the National Education Associate-Union (NEA).

NEA-union affiliate imposed illegal and unwanted representation

Stack ruled that "The Board, by reason of the School Code and Constitution, was wholly without authority of jurisdiction to discharge LaVine . . . That the Board has recognized the Association as the agent for all its certified employees is in fact, in law, a nullity unless the Board had the authority to recognize the Association," which it did not.

The union-school ploy was further exposed when it was revealed that complimentary evaluations had been written about LaVine by the head of the foreign language department. Stack also characterized the Board as having assumed that the union had the power to force its representation on teachers.

LaVine rejected NEA-union compulsion

LaVine had been a voluntary member of the union, but resigned when its officials demanded to be paid tribute. The union then went after her to collect compulsory "agency shop" fees equal to full union dues. Of the $122 coerced fee, $84 was given to the Illinois Education Association-Union (IEA), $30 to the NEA-Union, while only $8 was retained by the local LTFA.

"A crushing defeat for the NEA-union"

Susan Staub, Staff Director of Concerned Educators Against Forced Unionism (CEAFU), said, "The citizens of Lyons Township should be shocked that their school board worked in cahoots with union officials to deprive them and their children of LaVine's teaching.

"If the school board isn't going to protect its teachers from union racketeering, it may as well hand over the town's children to them, too.

"It's a crushing defeat for the NEA-Union because they used LaVine as a test case for forcing the rest of the state's teachers to support them. And they found out that they're not going to get away with it!"

MAINE

Teachers win state Supreme Court ruling banning "agency shop" fees.

COURT BANS AGENCY SHOP FOR TEACHERS

The Main Supreme Court has ruled that public employees who choose not to join a municipal union can't be forced to pay the equivalent of union dues.

The decision struck down the use of most "agency shop" clauses in state municipal contracts.

In an agency shop, employees do not have to join a union, but they must pay the union the cost of being represented in contract negotiations. That cost has generally been figured as the same as the dues that union members pay.

The court's decision Friday, written by retired Chief Justice Armand A. Dufresne (doo frain') Jr., stemmed from a dispute in Fairfield between the Teachers Association and the district's board of directors.

The teachers' contract included an agency shop clause under which the school board—after receiving authorization from a nonmember of the teachers' union—would deduct the equivalent of dues from the teacher's salary and turn it over to the union.

But several teachers who had refused to join the union also refused to hand over any money. The teachers' union demanded that the board fire the recalcitrant teachers, but the board refused.

Dufresne wrote that the "forced payment of dues or their equivalent under an agency shop clause is tantamount to coercion" toward union membership.

From an article appearing in the Evening Express, Portland, Maine, November 19, 1977.

MASSACHUSETTS

Teachers forced to pay for union officials' entertainment.

"AGENCY SHOP": A FREEWHEELING EXPENSE ACCOUNT

MASSACHUSETTS.—Excessive "agency shop" fees are being pocketed by officials of the Education Association-Union of Worcester (EAW) in violation of that state's General Laws that limit compulsory fees to an amount "proportionately commensurate with the cost of collective bargaining and contract administration".

Officials of the Massachusetts Teachers Association-Union (MTA) and National Education Association-Union (NEA) are living high on the hog and shoving the expenses to EAW "non-members" who must help pick up the tab as a condition of employment. "Non-members" are assessed EAW "agency shop" fees, full dues of the MTA and NEA as well as everything else from airplane tickets to a parking ticket.

A prohibited practices suit has been lodged against the union with the state's Labor Relations Commission by the National Right to Work Legal Defense Foundation, an organization that protects individuals from extortion stemming out of compulsory unionism.

The tables show what "non-members" are paying for; what the union's officials call "justified" collective bargaining and contract administration costs:

$114.00, individual MTA & NEA union dues. Dues are used for the training and staffing of NEA UNISERV, legislative efforts, political action, public relations, and legal defense.

1975–1976

$1,392.00, advertising: Worcester Telegram & Gazette.

$998.00, annual MTA meeting: Sheraton-Boston Hotel.

$64,224.00 automobile depreciation: To maintain a fleet of 50 cars for the MTA staff. Cars are allowed to be used privately, without restriction, throughout New England.

$391,888.00, building expenses: Maintenance on the MTA's headquarters, yet 4 floors of the MTA building are rented out. "Agency shop" payers are also assessed for EAW's rent and building maintenance.

$5.00, central district court: Parking ticket.

$5,375.00, convention & travel expenses: Airplane tickets, room and board, $650 apiece for six EAW teachers and one administrator to attend the NEA Convention.

498,000, Polish Naturalization Independence Club: EAW meeting for political candidates.

$32,650.00, salary: Gerald E. Coleman, EAW Executive Secretary.

$109,000.00, strike expenses: MTA assistance to New Bedford Education Association-Union (NBEA).

Susan Staub, Staff Director of Concerned Educators Against Forced Unionism (CEAFU), said "the Worcester situation typifies the abuse that 'non-union' teachers are forced to face throughout the nation."

Said Staub, "It's time that legislators proned to granting the NEA 'agency shop' legislation in return for campaign support wake up to the fact that 'agency shop' is a personal welfare scheme".

MICHIGAN

Veteran Detroit Educator Fired at AFT demand.

Eastern Michigan University employee fired over non-union support.

Two Garden City teachers forced to pay illegal political and strike fees.

Tenured teacher appeals firing to Tenure Commission.

Substitute teachers blackballed.

Teacher, head football coach, next in line to be fired.

VETERAN MICHIGAN TEACHER FIRED FOR REFUSING TO PAY UNION DUES

To ensure school boards don't forget who runs education, the Detroit Federation of Teachers-Union (DFT AFL-CIO) forced the Detroit Board of Education to fire a teacher for refusing to pay them "agency shop" (non-member) fees.

Dr. Parks was a tenured teacher with more than 40 years experience. The fact that she loved her students, obtained a doctorate to better serve them, and stayed in Detroit when many of her colleagues fled to the suburbs, meant nothing under the agency shop provision of the contract.

Under that contract, Detroit's teachers must pay fees to union officials for the privilege of teaching as a condition of employment. The legislature gave the DFT-Union the power to "exclusively" represent every teacher in the city, and subsequently denied individual employees the right to bargain and represent themselves.

Dr. Parks, a counselor at Cody High School, had been a voluntary member of the National Education Association-Union (NEA) during the 1960's and even served on the board of its Detroit affiliate.

Then, in 1969, the DFT-Union won the "exclusive" rights to Detroit's teachers. And, in 1970, the president of the NEA-Union declared his union's intention to "control who enters, who stays, and who leaves the profession." That goal was further strengthened in 1972 by his successor, who bragged of raising a political war chest of $5-$10 million. She said, "Put this money with our people and we would not only be compatible with any existing political force, but we would be the greatest of political forces. . . . We are the biggest striking force in this country, and we are determined to control the directions of education."

As both the NEA and DFT Unions made it clear that the school boards and taxpayers were to stay out of the education business, Dr. Parks resigned from her union in protest.

Six hundred Detroit teachers joined her in challenging the DFT-Union's demand for compulsory unionism. They filed suit and enlisted the aid of the National Right to Work Legal Defense Foundation—an organization that protects individuals from extortion stemming from compulsory unionism.

In May, 1977, their case reached the United States Supreme Court, which ruled unanimously that "non-members" cannot be forced to fund a union's political and ideological initiatives. The Court then sent the case back to the Michigan courts for the fashioning of relief for non-members.

Dr. Parks said that she would comply with the Court's decision by paying the forced fees in escrow while the Wayne County Circuit Court determined the real cost of collective bargaining. But the DFT-Union officials refused to wait and demanded that the Board fire Dr. Parks—which it did on March 11, 1978.

Dr. Parks, an Advisory Board member of Concerned Educators Against Forced Unionism, had her firing appealed to the Michigan Tenure Commission, as neither her qualifications nor her ability had been questioned in relation to the School Code.

The Commission ruled that the Tenure Act was indeed passed to "prevent the wholesale dismissal of teachers or even individual replacement of a teacher as a result of a whim or caprice," such as agency shop firings.

However, no sooner had the Commission made its ruling than the NEA-Union appealed the decision on the grounds that the Michigan Employment Relations Act, which authorizes compulsory unionism, should be controlling every aspect of education. Dr. Parks is still "fired."

Responding to the situation, Dr. Parks has stated:

"The bottom line of the 'agency shop' issue is whether the public or whether union officials control our schools. A person should have the right to join or not to join an organization and no private organization should have the right to force payment from a public employee. Educators must not be denied their freedom of choice.

"I'm saddened somewhat for myself, because working with Detroit's children has been an important part of my life. But more importantly, I'm saddened for my profession.

"If Union officials—who function outside the control of the public—can determine who has the privilege of teaching America's young, where then, is democracy, where is responsibility, where is academic freedom? We can't surrender our schools to the dictates of union bossism and then expect our children to respect individual human rights."

The firing of Dr. Parks is a blatant warning by union officials that public school teachers are to be responsible to them—not to taxpayer elected school officials. We believe that private organizations should not be funded at the taxpayer's expense.

School board negotiators must not give in to demands for "agency shop" no matter how much union officials are willing to trade off in order to attain it. Our schools and teachers should not be for sale.

FOUNDATION LAWSUIT WINS BENEFITS FOR VICTIM OF COMPULSORY UNIONISM

As a result of a National Right to Work Legal Defense Foundation lawsuit, the Michigan Employment Security Commission (MESC) has ruled that refusal to pay "agency shop" fees does not constitute "misconduct connected with work."

The case involved Ruth Alford, a curator of herbarium and insects at Eastern Michigan University, who was fired for refusing to support the United Auto Workers Union (UAW) in 1976. The University then attempted to block Alford from receiving unemployment benefits, contending that she voluntarily quit her job or was guilty of misconduct.

Benefits awarded to fired Alford

The MESC, however, ruled that Alford was entitled to unemployment benefits because she did not "voluntarily quit" her job and that she was not guilty of misconduct by breaking the compulsory unionism provisions of her contract.

Alford, rated an exemplary employee, had worked for the University since 1968, eight years prior to the imposition of unwanted monopoly bargaining representation by the UAW-Union. In 1976, after she refused to support the union, UAW officials demanded University Personnel Director Wayne Douglas fire Alford, which he did, with just six days notice.

"I am bitter about 'agency shop'," says Alford. "It's wrong, wrong, wrong . . . It violates my deep personal rights of freedom of association and freedom of speech.

"Anyone should have the right to join a union voluntarily, but they shouldn't be compelled. The whole thing is insane. The only criteria they gave me for holding my job was whether I would pay the union—nothing else mattered—the job that I did, the time I have spent on the job. Nothing. If that isn't extortion, then what is?"

Susan Staub, CEANFU Staff Director, commented, "Increasingly the courts are providing relief to employees victimized by compulsory unionism. Although 'agency shop' is legal in Michigan, an important precedent has been established with the awarding of benefits to an employee who refused to be cowed by union officials. Individual rights come before a bad law."

MICHIGAN COMMISSION RULES AGAINST FORCED POLITICAL DUES AND STRIKE FEES

In the first of three lawsuits brought against NEA-Union officials, the Michigan Public Employment Relations Commission (PERB) has ruled against forcing teachers to pay political dues and strike fees.

The two other suits, one brought by the National Right to Work Legal Defense Foundation, the other by the Federal Election Commission (FTC) under pressure from the National Right to Work Committee, charge NEA-Union officials with massive election law violations.

On May 24, 1978, Judge Joseph B. Bixler of the Michigan PERB ruled in favor of Paul and Lore Chamberlain, two tenured Garden City teachers who refused to pay strike assessments of $75 and $10 to the Garden City Education Association (GCEA), an NEA-Union affiliate, as well as $6.50 in political dues to the Michigan Education Association-Union (MEA) and NEA-Union.

Since 1975, the GCEA-Union has been trying to fire the Chamberlains for not paying the political and strike dues and the full "agency shop" fee of $261 apiece. The Chamberlains did pay GCEA dues of $25 but drew the line on funding the MEA and NEA unions. The Garden City School Board stood firm and refused to bow to the GCEA-Union's demands to fire the teachers.

National Right to Work legal defense foundation and FEC sue NEA-Union

In the second suit, on May 8, 1978, the Foundation filed suit on behalf of the Chamberlains in United District Court for the District of Columbia, charging the GCEA-Union, MEA-Union, and NEA-Union with violating the Federal Election Campaign Act which makes it illegal for union officials to extort political fees from non-union teachers as a condition of employment.

This lawsuit was lodged because the FEC had failed to fully act on a 1977 complaint initiated by the Chamberlains against the NEA-Union. The FEC did charge the NEA-Union and 17 state affiliates with forcing

their members to pay compulsory political dues, but made no move to protect "non-members" from dues extortion. Both suits ask that NEA-Union officials return the money and pay a civil penalty of $10,000 or 200% of the monies collected.

Charged by the FEC as NEA-Union "collection agents" are: the NEA-Union, NEA-PAC, California Teachers Association-Union, Connecticut Education Association-Union, Idaho Education Association-Union, Illinois Education Association-Union, Kansas-NEA-Union, Kentucky Education Association-Union, Massachusetts Teachers Association-Union, Michigan Education Association-Union, Nebraska State Education Association-Union, New Hampshire Education Association-Union, Pennsylvania State Education Association-Union, Rhode Island Education Association-Union, South Dakota Education Association-Union, Vermont Education Association-Union, Wisconsin Education Association Council-Union, and the Wyoming Education Association-Union.

It is openly rumored in Washington, D.C. that the FEC is a tool of union bosses. Not only did the FEC fail to safeguard the rights of NEA-Union "non-members", but it was only after the Foundation obtained a Federal Court order that the FEC sued the NEA-Union at all. Further, the Commissioner and immediate past president of the FEC, Thomas E. Harris, is former associate general counsel to the AFL-CIO, and an outspoken advocate of compulsory unionism.

Right to Work officials blast FEC

Commenting on the case, Right to Work Foundation Chairman, Thomas J. Harris said, "It's a shame that the Chamberlains have had to go into court at all. The union clearly violated the law and the FEC clearly had a charter to act against the union. But the Chamberlains had to sue the FEC to enforce the law and now have to go to court against the union themselves because of the FEC's halfhearted measures."

CEAFU Staff Director Susan Staub said, "Here are NEA-Union officials holding themselves above the law by ignoring the fact that compulsory political dues are unconstitutional. It's quite clear that they are only concerned with seeking more and more power through compulsory unionism, not the education of the nation's children."

COMMISSION RULES AGAINST ILLEGAL NEA-UNION FEES

LANSING, MICHIGAN.—The Michigan Employment Relations Commission (MERC) has ruled that employees cannot be fired for refusing to pay union political dues and fees to support illegal strikes.

The decision is Michigan's answer to the 1977 U.S. Supreme Court decision, *Abood v. Detroit Board of Education*, which states that it is unconstitutional to force employees to pay anything but collective bargaining costs. The Court, however, had left open the proper procedural remedy for employees who object to supporting union political and ideological causes.

The MERC ruling, which will serve as a precedent for other states, prohibits union officials from charging outrageous collective bargaining costs and orders union officials to prove in court or before an administrative agency what the "fees" should be. Until that moment is determined, the union cannot use, even temporarily, any part of an objecting employee's money.

The case arose in 1975, when two tenured teachers, Paul and Lori Chamberlain, refused to pay political dues to the Garden City Education Association-Union (GCEA), the Michigan Education Association-Union (MEA), and the National Education Association-Union (NEA), as well as an illegal $75.00 assessment to support a strike in another school district.

TEACHER PROTECTED

In a decision this week which could have far-reaching effects on the nation's educators, the Michigan State Tenure Commission has ruled that under the state's Tenure Act, teachers cannot be fired for refusing to pay "agency shop" fees to unions of which they are not members.

The Commission ruled 3–2 that Kathryn Jackson, a tenured teacher in the Swartz Creek Community School System, could not be fired for refusing to pay "agency shop" (non-member) fees to the Swartz Creek Education Association-Union, an affiliate of the National Education Association-Union. Mrs. Jackson, who is not a member of the union, had asserted that the payment of forced fees violated her freedom of association, freedom of speech, and her right to work.

In its decision to dismiss the charges against Mrs. Jackson, the Commission said, "At no time throughout the appeal has the Appellant's moral conduct or ability to teach been questioned. Moreover, she has not been charged with insubordination nor has it been contested that students did not learn. The Commission determines that nonpayment of 'agency shop' fees or dues does not meet the standards of reasonable and just cause for discharge within the meaning of the Tenure Act. The action of the Appellee in discharging Appellant was improper, and is reversed accordingly."

Susan Staub, staff director of Concerned Educators Against Forced Unionism, the education division of the National Right to Work Committee, said, "This decision has national significance. Tenured teachers all across the country will be able to cite the Michigan ruling as legal precedent for giving tenure predominance over union 'agency shop' demands. If upheld by the courts, it will, in effect, be a national Right to Work law for tenured teachers."

The Jackson case began on December 9, 1974, when the Swartz Creek Board of Education voted to bring charges against her for not paying the "agency shop" fee. In lieu of regular union dues, "agency shop" fees are charged to teachers who choose not to join the union. In most cases, union dues and "agency shop" fees are the same amount.

The Charges then were presented to Mrs. Jackson and on January 9, 1975, her hearing was held. On January 13, 1975, the Board of Education voted to fire Mrs. Jackson.

Mrs. Jackson appealed the Board's decision to the Michigan State Tenure Commission on January 22, 1975. Due to the nature of her discharge, the Board voted to permit Mrs. Jackson to continue teaching in Swartz Creek until a final decision had been reached.

In its presentation to the Tenure Commission, the Board argued that since Mrs. Jackson had signed an individual teaching contract which was subject to the collective bargaining agreement authorizing "agency shop" fees, she should be fired.

Mrs. Jackson countered that the Board's decision to fire her was "harsh" and "far in excess of the charges" against her. She also argued that her firing was not for reasonable and just cause in accordance with the laws of the State of Michigan.

The Commission has now safeguarded the rights of competent tenured teachers with many years of quality teaching from the "whims" of union officials, whose chief concern is in collecting "agency shop" fees, not teaching America's children.

MICHIGAN OFFICIALS BLACKBALLING SUBSTITUTE TEACHERS

Officials of the Michigan Education Association-Union (MEA) are blackballing non-union substitute teachers who don't submit to their illegal strike demands.

In a letter to a non-striking substitute teacher, MEA-Union executive director, Herman Colemen, and president, Keith Geiger, wrote: "the union has a policy to deal with strike-breakers which may be applicable to you should you seek and gain employment in a school district where MEA, or one of its locals, is the bargaining agent.

"Although the MEA does not have control over the process for hiring teachers, rest assured that we will exert whatever influence we do have to discourage your employment in any Michigan school district."

Susan Staub, CEAFU Staff Director, termed the action "a deplorable abuse of individual freedoms and a first hand lesson to students in criminality."

NEA-UNION TO HAVE MICHIGAN TEACHER FIRED

Michael Young, a tenured teacher and head football coach at Buchanan High School in Michigan, is next in line to be fired for refusing to pay NEA-Union "agency shop" fees.

The Buchanan Board of Education has begun dismissal proceedings against Young in response to the union's demand that he be fired for refusing to support the NEA-Union affiliate with "agency shop" fees equal to full union dues. His qualifications and experience are irrelevant to the union.

Young, who teaches history, sociology, and government, believes union support should be voluntary. "I'm not opposed to unions as such," he says, "because in some cases they are needed . . . I'm just philosophically opposed to this situation. By my stand on this thing . . . they (school board) are being forced to fire me because the union is asking the board to uphold its contract."

Young: "I'm also a pretty good dishwasher"

The case is expected to be appealed to the Michigan Tenure Commission which last March ruled that tenured teachers cannot be forced to support unions.

But, adds Young, "I can be morally and philosophically committed for so long. When it comes to putting food on the table, I'll eventually have to forget about coaching football. I guess I'm also a pretty good dishwasher."

Susan Staub, CEAFU Staff Director, termed the NEA-Union backed firing of Young as a "grave injustice to Buchanan's students who have had the services of an educator with years of dedicated and qualified teaching.

"To fire a teacher', said Staub, "for refusing to support a private organization—a union whose goals are political in nature—is abhorent to the concept of academic freedom."

MINNESOTA

Former local education association president challenges compulsory unionism in court.

THE ULTIMATE THREAT TO ACADEMIC FREEDOM

Leon Knight is a college teacher, an officer of the Minnesota Democratic Party and an unabashed liberal. He is also opposed to compulsory unionism—which places him on the enemies list of the National Education Association.

In 1968–69, Knight served as president of the faculty association at North Hennepin Community College in surburban Minneapolis. He fully supports the right of everyone to join and participate in labor unions. But he draws the line at compulsory affiliation.

"The big difference," he says, "between the faculty association I headed up and the union there now is the issue of voluntary versus compulsory."

After the faculty association became an affiliate of the militant NEA, the association backed legislation requiring compulsory union fees for public employees. Once passed, it was decided all faculty members would have to pay a fee to keep their jobs. Knight's liberal philosophy wouldn't allow him to go along.

"The idea of academic freedom," he explains, "the idea of the dissident person, the idea of a person who marches to a different drum, is very precious. And yet unionism is coming in and saying I must march to that drum."

"If they can determine," he stresses, "not what I teach in the classroom, but whether I teach at all, that is the ultimate threat to academic freedom."

Leon Knight went to court to protect his Constitutional rights. With the help of the National Right to Work Legal Defense Foundation, he and 19 other members of the Minnesota Community College system brought suit against the NEA and its local affiliates. The suit challenges the forced representation and compulsory fee provisions of Minnesota's Public Employment Labor Relations Act.

Leon Knight was fortunate. He found help. But how many other Leon Knights in America haven't?

The National Right to Work Legal Defense Foundation is helping everyone it can. It is currently assisting individual workers in more than 75 cases involving academic freedom, political freedom, freedom from union violence, and the right to work for government without paying a private organization for that privilege.

For more information on how you can help American educators like Leon Knight write: The National Right to Work Legal Defense Foundation, Suite 600, 8316 Arlington Boulevard, Fairfax, Va. 22038.

NEW YORK

Educators speak out against "agency shop."

NEW YORK: CEAFU CALLS FOR END TO "AGENCY SHOP" LAW

CEAFU Director Susan Staub has called for an end to Al Shanker's attempt to make "agency shop" fees "permanent and mandatory."

As a result of the law, passed on a two-year trial basis in 1977, tens of thousands of public employees are being forced against their will to bankroll unions and their political activities. Tony Russo, New York City's Director of Labor Relations, estimates that the "agency shop" law is providing union officials with an additional $38 to $45 million annually.

Senator Fred Eckert, who has introduced a repeal measure, said that union officials want the " 'agency shop' for the money and power it brings." And according to Jerome Lefkowitz, Deputy Chairman of the Public Employee Relations Board (PERB), union officials want a permanent "agency shop" law so they don't have to explain to employees "what it gave up" in order to obtain it.

"The State University of New York is a good example why the law should not be reenacted," said CEAFU Director Susan Staub. "Only 30 percent of the faculty belong to the union, yet the remaining 70 percent are forced to pay 'agency shop' fees to keep their jobs."

One New York City teacher who asked not to be identified told the New York Times he wanted to resign from the UFT-Union because it refused to act on a grievance he wanted to process. Now, he said, there is no point in quitting. "What's the sense in resigning if you're going to have to pay anyway," he said. Says Senator Eckert, "They (union officials) get all the money. A guy quits and they still get his money. You deprive him of his choice to join or not, which is the best way to influence the union."

Individual freedom, public control at stake

Two teachers at Churchville-Chilli Elementary School outside Rochester are two more examples of how the "agency shop" has disrupted their profession. Gretchen Haag, a fourth grade teacher, said, "I don't like the union being able to come in and tell us they have the authority to take money out of our paychecks." And said first grade teacher Susan Baer, "I don't think anyone has the right to force me to support any organization, especially one I don't agree with or want to belong to."

"The public is the loser when its own employees can be forced to pay tribute against their will to private union officials as a condition of employment," says Westbury, Long Island educator Larry von Hake.

"Although union officials," concluded Staub, "spend millions in attempting to reenact the 'agency shop' law, the freedom of choice can be restored if citizens make it clear to their Assemblymen and Senators that compulsory unionism is not in the best interest of New York and that they should vote against any extension of the 'agency shop' law for the state's public employees."

OHIO

Teachers sued by union officials over nonpayment of "agency shop" fees.

JUDGE RULES AGAINST "AGENCY SHOP"

A lawsuit lodged by NEA-Union officials against six Ohio teachers for not paying forced union fees under an "agency shop" contract backfired when the judge ruled that an "agency shop" is illegal in Ohio.

The case evolved out of Niles township where the Niles Education Association-Union (NEA), an NEA-Union affiliate, sued the teachers in Municipal Court of Trumbell County to collect "agency shop" fees equal to full union dues.

The teachers, led by Donald Bofenkamp, contended that the "agency shop" fee was in violation of Ohio statutes (forced fees are not legislatively authorized in the state), the Ohio Constitution, and the Constitution of the United States.

The teachers further asserted that the forced fees were used by the union's bosses for political and ideological purposes against their will, which has been established as unconstitutional under the United States Supreme Court's ruling in Abood/Warczak in 1977.

"Agency shop" serves no "governmental purpose," judge rules

In exonerating the teachers, Judge Charles Zubyk wrote, "It is the fundamental right of an individual to decide whether or not he wishes to become or remain a member of the association. The individual teachers in the instant case neither expressly nor impliedly authorized the Board of Education to enter into an agency shop contract.

"Since the agency shop provision of the collective bargaining agreement is not the individual contract of the six non-union teachers, the Plaintiff is not entitled to recover against the Defendant teachers. The act of the Board in entering into an agency shop agreement as executed is the equivalent of declaring a 'Union Shop' for all teachers in the public school district, does not accomplish a governmental purpose and is ultra vires and invalid."

Commenting on the case, CEAFU Director Susan Staub said, "The decision has national significance because the courts are increasingly cracking down on compulsory unionism demands. Just within the last few months, the state of Michigan has ruled that tenure protects teachers from union 'agency shop' fees and the state of Kentucky ruled against 'exclusive representation' in May.

"We are hopeful that Ohio's legislators will realize the significance of this decision by continuing to reject union 'agency shop' demands."

PENNSYLVANIA

Union officials demand firing of educators who resigned union membership.

TEACHERS WIN DECISION NOT TO SUPPORT UNION

Two teachers backed by the National Right to Work Legal Defense Foundation stung NEA-Union officials on June 19 when the Supreme Court of Pennsylvania refused to reverse a decision upholding the right of tenured teachers to support or not support a union.

Following the State Supreme Court's lead, Caryl Kline, Pennsylvania Secretary of Education then ruled on July 14 that to allow "an otherwise competent teacher to be dismissed for nonpayment of Association dues is unreasonable since it does not even have an indirect relationship to the educational purpose of schools."

The case arose when the Uniontown Education Association-Union, an NEA-Union affiliate, demanded the school board fire Daniel Zack and Warren Langley for resigning from the union.

Zack and Langley threatened

A highly rated teacher, Zack dropped his union membership in 1973 after the union ordered a dues increase and refused to answer questions concerning what, if any, services would be improved.

Warren Langley joined with Zack in leaving the union and seeking the help of the Foundation, an organization that provides free legal aid to victims of compulsory unionism abuse, after listening in on one of many threatening phone calls made to Zack by the union's officials.

The school board caved in to the union's demands and voted to fire the two teachers on the trumped-up charges of "persistent and willful violation of the school laws of Pennsylvania." However, the Board allowed Zack and Langley to continue teaching pending appeals of their firings to the courts.

On May 20, 1976 the Court of Common Pleas ruled in favor of the two teachers, saying that "failure to pay dues cannot be considered to constitute persistent and willful violation of the school laws." The union then appealed the decision to the Pennsylvania Commonwealth Court and to the state Supreme Court, both of which sided with Zack and Langley. After the Secretary of Education concurred with the Supreme Court's decision not to hear an appeal, Zack and Langley were effectively reinstated in their jobs.

Staub hails decision

Susan Staub, CEAFU Staff Director, termed the decision an important precedent.

"The courts have determined that a tenured teacher has the right to resign from a union that doesn't represent his or her interests.

"Mr. Zack and Mr. Langley are highly rated teachers, yet the union's officials wanted them out of the classroom solely because they no longer wanted to be union members."

RIGHT TO QUIT NEA-UNION UPHELD

Harrisburg, Pennsylvania—The Pennsylvania Supreme Court has divided three to three and affirmed a Commonwealth Court ruling upholding the right of teachers to resign from unwanted unions.

The case involved Elaine Hoppe, who refused to pay forced fees to the Dauphin County Technical Association-Union (DCTA) under a maintenance of membership provision which forces teacher union members to remain members for the duration of a collective bargaining agreement.

The Commonwealth Court ruled unanimously that Hoppe could not be fired because the School Code does not list refusal to pay forced fees or maintenance of union membership as reasons for termination of tenured teachers.

Previously, in separate but related action, the Pennsylvania Supreme Court in June let stand a 1976 Common Pleas Court ruling which states that "failure to pay dues cannot be considered to constitute persistent and willful violation of the school laws."

TENNESSEE

Union officials forced educators to strike against their will.

COERCIVE LAW SPARKS VIOLENCE

Teacher faces bodily harm

Told she'll be "planted" for disobeying NEA-Union orders to illegally strike, Mrs. Penny Cole, a Tennessee elementary school teacher, nonetheless, vows to keep teaching "until they fix me to the point where I can't work."

Violent teacher strikes have erupted in Tennessee since last year's passage of S.B. 2016, a compulsory representation law. The Executive Secretary of the state NEA-Union and author of the bill, conned the legislature into believing that S.B. 2016 would "solve the problems people in other states have been failing to solve, causing them to go on strike."

Mrs. Cole, a mother of four and a dues-paying member of the Memphis Education Association-Union (MEA), is bravely fighting the union and crossing the picket line at Longville Elementary School in order to teach fourth, fifth, and sixth grade students who are one and two years behind academically and can't afford to lose a day of school.

Although scared and disillusioned, Mrs. Cole says she decided to accept the Board of Education's proposed contract and defy the MEA for two reasons: (1) that she doesn't believe in strikes, illegal or legal and (2) that she wanted a contract with the board of education, not the MEA-Union.

Cole: A nervous wreck, constantly threatened

"They said they would be planting me if I crossed the picket line again," says Cole, who now rubs her hands and takes a deep breath before answering her phone. The union's tactics have also included unsigned letters labeling her a "coward" and threats as she crosses the picket line staffed by once "sweet and nice friends." Her best friend now calls her "scab."

"A couple of mornings I thought about not going in, but they would think they scared me off," says Cole. "I feel if they have a right to stand in (a picket line), why don't I have a right to stand in a classroom. What they're doing with these scare tactics is they're giving me strength to work. I'm very stubborn. I don't like to be ordered around. I like to come to a conclusion together. I'm a heck of a lot stronger now than I was two weeks ago. Water is just going to roll right off my back."

Minority forced majority to strike

Susan Staub, CEAFU Director, said that her organization "hopes that the media attention given to Mrs. Cole will suffice to protect her from any further harm and that the citizenry will act to repeal the 'exclusive representation' provisions of the teacher bargaining law which has resulted in repeated violence.

"That law has enabled NEA officials to call an illegal strike even though only a minority of teachers in Memphis (42 percent) voted to reject the proposed contract and strike. The law simply gives union officials the power to run rough-shod over the majority—both nonmembers and members—and the taxpaying public which the law was supposed to protect."

VIRGINIA

NEA "unification" assailed.

[From a letter appearing in the Times-Dispatch, Apr. 13, 1977]

EDUCATOR DIDN'T AGREE WITH ASSOCIATION POLICIES

Hundreds of teachers and counselors in Richmond and the surrounding areas pulled out of the NEA, VEA and REA, after many years of membership, when unification was voted in by the VEA. We did not agree with their political activities and their militant tactics. Many of us still belong to other professional organizations to help promote the educational process. And some of us also contribute annually to the National Right to Work Legal Defense Foundation to help assure workers and professional educators the freedom of work without joining a union.

Many teachers and counselors refuse to be identified with the NEA, VEA and REA, but we still "love kids" and we still want the freedom to choose what organization to join. As for me, I shall continue to join and/or contribute to the personnel and guidance associations, and the National Right to Work Legal Defense Foundation. This way I have a part in promoting the educational progress and I shall continue to have the "freedom to choose to join or not to join a union!"

MARY WOODS EDWARDS,
Coordinator of Guidance,
George Wythe High School.

WISCONSIN

Union officials strike over "agency shop."

NEA attempts to silence educators who speak out against "agency shop."

BEHIND THE BITTEREST TEACHER STRIKE IN U.S. LABOR HISTORY

(By Roger Weihing)

(Ed. Note: Roger Weihing, a Wisconsin farmer, is president of the Hortonville, Wisconsin, School Board. In April 1974, the school board was forced to fire 84 of the community's 89 teachers for illegally striking. That strike and the ensuing court battles received a great deal of national attention, and ultimately came before the U.S. Supreme Court (Hortonville Joint School District No. 1 v. Hortonville Education Association), where the court ruled in favor of the school board. One fact that was overlooked about this, one of the longest, bitterest and most publicized teacher strikes in American labor history, was that compulsory unionism was one of the key issues in the dispute. Here, in an exclusive feature, Mr. Weihing gives his views on the compulsory unionism issue.)

When the members of our local school board reluctantly decided to fire virtually our entire "teaching" staff, we knew Hortonville was in for some miserable times. We didn't realize how miserable then, but as I look back on it, I think we'd all do it again—without hesitation—because some principles are worth fighting for, no matter how tough the battle.

The Right to Work is one of those principles. It's one that the Hortonville School Board stood for throughout those difficult times leading up to the strike, when officials of the Hortonville Education Association (HEA) were unremitting in their demands for a compulsory "agency shop".

During the entire time we were negotiating with our teachers' union, before they ordered their illegal strike, the one thing union officials demanded over and over, in preference to all types of improved benefits, was a compulsory "agency shop". HEA, a local affiliate of the National Education Association (NEA), was willing to trade off anything so that all the teachers in Hortonville would be forced to pay dues to the union or lose their jobs. It was incredible.

Now we all know what compulsion means to a union's officials. It means power, pure and simple. It's hard to believe, though, that it's so important that they will sacrifice the very benefits they exist to fight for. But the Hortonville case proves it's true.

The first thing we have to realize is that, prior to the strike, while union officials were repeatedly demanding compulsory unionism, over 95% of the faculty already voluntarily belonged to the union and paid dues. (The total faculty of Hortonville then was 89; 85 of them belonged to the union.)

Was it that important to collect dues from four more teachers? The union's "negotiators" certainly thought so.

Look at some of the benefits union officials tried to trade off in exchange for compulsion. For the 1972–73 school year, HEA officials offered to give up their request for dental insurance if they could have a compulsory "agency shop."

In the same year, they offered to drop their demand for smaller class sizes—something national union officials always tout as one of their most important objectives—for compulsory dues from that tiny minority of Hortonville's teachers who had elected to be free spirits.

The next year, the same thing again—union officials offered to give up additional increases in their health insurance if we would only grant them total control by giving in on compulsory unionism.

Do you think the teachers in Hortonville were really interested in giving up dental insurance, additional health insurance or, above all, smaller class sizes, so union officials could collect dues from those few teachers?

I doubt it. But even if the teachers really would rather have their colleagues pay compulsory dues than have their teeth insured, the board would still have to say "no".

And members of the Hortonville School Board have said "no" again and again to compulsion. We can't bargain away individual rights. We're an elected board; we have to answer to the community that chose us, our neighbors, and just as important, we have to answer to ourselves.

In Hortonville, we think a teacher, like every other American, is entitled to be his or her own boss when it comes to individual rights. If a teacher, or anybody for that matter, wants to join a union, that's fine. If they don't that's just as fine. If you have the right to join a union, you must have the right not to. One is not a right without the other.

Can we fire a teacher just on the basis of whether he or she pays dues to a union? Is that how we should choose teachers for our children? NEA says "yes". The Hortonville School Board says "no".

[From the Washington Star, Dec. 21, 1976]

WHERE PUBLIC EMPLOYEE UNIONS CAN TAKE US

(By James J. Kilpatrick)

On the evening of Dec. 6, 1971, a little more than five years ago, the Board of Education of Madison, Wis., held a regularly scheduled, public meeting. A local school teacher by the name of Albert M. Holmquist made a two-and-a-half-minute speech. And thereby hangs this tale.

It is an ominous tale about public employe unionism in a free society. We should listen to the overtones.

A majority of the teachers in Wisconsin's School District 8 were members of a labor union, Madison Teachers, Inc. (MTI). Off and on throughout 1971, the union and the Board of Education had engaged in collective bargaining. One of the sticking points was MTI's demand for a "fair share" provision in a contract for 1972.

The term is misleading. "Extortion" is a more descriptive word.

The union teachers were demanding that non-union teachers pay the union the same fees and dues they would pay if they belonged to the union—their "fair share" of the cost of collective bargaining. The non-union teachers, mind you, did not want to be represented by MTI; and they bitterly resented the prospect of having to pay the union as the price of holding their jobs.

Holmquist, a leader of the non-union teachers, had circulated a petition asking the Board of Education to have the "fair share" proposition studied by an impartial committee. More than 400 District 8 teachers had signed the petition.

Remember that the board's meeting that evening was in no sense a negotiating session with MTI. It was a public meeting, open

to any concerned citizen. Three to four hundred union teachers were there.

The union's president spoke at length. When it appeared that Holmquist wanted to speak, the union's business manager tried to dissuade him. Holmquist would not be dissuaded. He made his brief pitch, presented his petition, answered a single question, and sat down.

Incredibly, the union later filed a complaint with the Wisconsin Employment Relations Commission, charging the Board of Education with an unfair labor practice by permitting Holmquist to speak. What is even more incredible is that this ludicrous complaint was upheld by the commission. It found the board guilty; and the finding affirmed by the Supreme Court of Wisconsin.

The tale has a happy ending. Two weeks ago the U.S. Supreme Court unanimously reversed the Wisconsin decision. In a stinging opinion by Chief Justice Burger, the court held that "to permit one side of a debatable public question to have a monopoly in expressing its views to the government is the antithesis of constitutional guarantees." Non-union teachers, the court ruled, still have their First Amendment right of free speech.

The Union's effort to gag a dissenter, and to punish the board for even listening to him at a public meeting, is characteristic of a public employe union's concept of collective bargaining. Once such a union gains recognition as an exclusive bargaining agent, dissenters can speak to the union bosses, but they cannot speak to their employers about wages, hours and working conditions. Any such speech, in the arrogant view of the union zealots, creates danger of chaos.

We must think upon these things. Public employe unions are the fastest-growing in the land. Many—perhaps most—are responsible outfits. Some are not. And when a public union's power to negotiate embraces the power to strike, the concept of government by the people is imperiled. At such a point—and the point may not be far down the road—public servants cease to be servants. They become our masters instead.

[From the Philadelphia Inquirer, Aug. 18, 1980]

WHY SHOULD TEACHERS HAVE TO JOIN A UNION?

(By Mary Larkin Dugan)

I may lose my job this year.

I've been teaching English for 13 years. No serious complaints about my work, other than the occasional why didn't I get an A?" Yet I may be fired, and the irony, as I see it, would be a rich one: I'd be done out of my job by the very people of whom teachers usually expect protection: The Education Association.

Here's the situation: Pennsylvania is a right-to-work state, but there's a bill (S.B. 1445) hanging fire in our General Assembly which would allow public employes' unions to opt for what is called an agency shop. If a teacher or policeman or whoever does not want to join the union, fine—but he or she must still pay the dues.

The idea is that, as the union is representing you in negotiations for salary, etc., you should be willing to bear your part of the cost of all this. Well, sure, that's only fair—and I've joined regularly for just this reason.

But now they'd like to make us all join. Obviously, this would bolster union security. But what happens then to the "worker security" of those of us who would not want to join the union in such circumstances? The same sort of thing that happened in Europe to dissenters from the established churches up until about 1700: We'd be punished. Back then, you paid a fine or went to jail. In the present case, the school board would be forced to fire us.

To be sure, there is a provision for people with religious scruples; dues may be given sounds pretty high-handed to me. Anyway, I don't have what you could call religious scruples—just a strong distaste for being taxed by someone other than the government or being forced to join anything.

What all this reminds me of is the bad old days before tenure, when a local politico could squeeze a yearly fee out of a teacher as the price of a job. Now, thanks in part to the teachers' unions, you can't be fired for refusing to pay kickbacks or for any other frivolous reason.

Teachers, like anyone else, should stand or fall on the basis of job performance—not because they attend the Episcopal Church, support the Democratic Party, are somebody's cousin—or pay union dues. Obviously, union membership has a bit more to do with a person's job than does his church or political affiliation. The element of coercion, though, overshadows any differences in the two situations. We don't want to be pushed around by employers; how, fundamentally, can it be any better to be pushed around by the union?

Vastly preferable is the present setup, in which the Education Association entices members by a combination of moral obligation—you owe the union for the help it gives you—and assorted plums, like liability coverage and other types of insurance, good travel buys, and low-interest loans. For ethical and practical reasons, joining the Association is a wise move.

Dropping out of the association, besides, is not something you do lightly. Most people stay in year after year, largely from a feeling of obligation and probably force of habit but also because leaving would mean buying new insurance, paying more for a car loan, or shelling out the full fare to Amsterdam instead of boarding a cheap NEA charter flight.

Each Education Association though, is like a one-party system in a way. It could hardly be otherwise; what a mess it would be if the teachers had to decide continually which of two or more groups would represent them. And, little as anyone relishes a one-party arrangement, this one is not too restricting, really if your voice carries the added volume of being able to dissent by a final "I quit!" If you can't resign, you still have a voice, certainly, but it's lost some decibels.

A parallel would be with church membership or support of the United Fund. Many people choose to help these organizations because of benefits to themselves or to the community. Besides that, there is moral pressure to keep up your end.

But some people get from these institutions much more than they give. So should we pass a law making it illegal to send your kids to Sunday School unless you've put a certain amount in the collection plate? And, further, what if there were only one church to go to?

Or consider this: If I support the Democrats, as I usually do, and they lose here in Chester County, as they usually do, this does not mean I must therefore give my support, financial and political, to the Republicans. Provision is made, as often as possible, for the dissenting minority.

Certainly, the majority rules, but we keep a traditional fondness for consensus politics on the back burner. This means we don't alienate the dissenters by grinding them under. If they can't always have their way, they can at least have their say.

Under the law as it stands, having our say means for teachers the right to register our feelings loudly and clearly by the last-ditch step of giving up association membership. Under an agency shop this would put us out of a job. Clearly, there ought to be some intermediate step between speaking your mind and losing your job.

Finally, though, I guess it all comes down to personal taste or pride or something like that. Unions are supposed to enhance the dignity of the worker, but how is your dignity enhanced if you're pushed into joining? Dignity must imply some freedom of choice and must accordingly suffer to the extent that freedom is diminished or appropriated.

When I began teaching I had to sign a loyalty oath, a lapse of morals or maybe taste that has always rankled and which is the equivalent in insult value and sheer wasted paper of requiring an oath that you will not teach unless fully clothed. And now comes this agency shop thing. My attitude is similar to Groucho Marx's "I wouldn't join any club that would have me as a member." Carrying this a step further, I don't want to join any club that forces me to be a member.

By Mr. JEPSEN:

S. 1416. A bill to amend the National Labor Relations Act to provide for a freedom of choice in labor relations for full-time and part-time secondary and college students by exempting them from compulsory union membership, and for other purposes; to the Committee on Labor and Human Resources.

STUDENT'S FREEDOM OF CHOICE ACT OF 1981

Mr. JEPSEN. Mr. President, I rise today to reintroduce the Students' Freedom of Choice Act of 1981, a bill I introduced in 1979 as S. 1577 during the 96th Congress. The proposed bill would amend section 8(a)(3) of the National Labor Relations Act, as well as the Railway Labor Act. It would exempt fulltime students employed on a part-time or temporary basis from joining a union as a condition of employment.

Mr. President, consider the restrictions placed on the working student. Many students today cannot work more than 12 weeks out of the year, but they are forced to pay the same union dues required of year-round employees.

Passage of the Students' Freedom of Choice Act would eliminate three of the major inequities in the current system.

First, qualified students would be protected from discrimination if they choose not to join a union during seasonal employment.

Second, they would no longer be paying for many of the benefits covered by union dues—including health insurance, pension plans, vacation, sick pay—that they never receive. In effect, Mr. President, the unions receive a windfall subsidy from America's students without providing any services in return.

Finally, in a time of spiraling education costs and limited student loans, students working to defray their educational expenses should be heartily supported, instead of being burdened with the economic disincentives provided by compulsory unionization.

Immediate action is necessary. Many students work during the summer, and they have strong feelings in support of right to work legislation. Surveys show that 79 percent of all U.S. citizens between the ages of 18 and 29 oppose the compulsory unionization of public employees, and 69 percent of that same group oppose the compulsory unionism of industrial workers.

The Students' Freedom of Choice Act of 1981 clearly supports the right of an employee who is a student to join or not

to join a union. Any attempt to deny that right violates the constitutional guarantee of freedom of association granted in the first amendment, and it impinges upon other personal freedoms. There is also the practical consideration that student's short tenure of employment generally excludes him from any union benefits which he is forced to pay through mandatory dues.

Students should be exempted from paying union dues. This bill will provide that exemption and guarantee a student's right to work.

Mr. President, I welcome and encourage the support of my colleagues and ask unanimous consent that the bill be printed in the RECORD.

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

S. 1416

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Students' Freedom of Choice Act of 1981".

SEC. 2. Section 8(a)(3) of the National Labor Relations Act (29 U.S.C. 141) is amended by striking the semicolon at the end thereof and substituting a colon and the following: *"Provided further,* That no employer shall justify any discrimination against any employee for nonmembership in or failure to provide financial support to a labor organization if the employee is a student enrolled or registered to be enrolled in a full-time program of secondary, vocational, or higher education.".

SEC. 3. Paragraph eleventh (a) of section 2 of the Railway Labor Act (45 U.S.C. 15) is amended by striking the period at the end thereof and substituting a colon and the following: *"Provided further,* That no employer shall justify any discrimination against any employee for nonmembership in or failure to provide financial support to a labor organization if the employee is a student enrolled or registered in a full-time program of secondary, vocational, or higher education.".

ADDITIONAL COSPONSORS

S. 294

At the request of Mr. GLENN, the Senator from Minnesota (Mr. BOSCHWITZ) was added as a cosponsor of S. 294, a bill to establish an Interagency Committee on Arson Control to coordinate Federal anti-arson programs, to amend certain provisions of the law relating to programs for arson investigation, prevention, and detection, and for other purposes.

S. 344

At the request of Mr. LEVIN, the Senator from North Dakota (Mr. BURDICK) was added as a cosponsor of S. 344, a bill to increase the accountability of, policy coordination by, and management of priorities by agencies through an improved mechanism for congressional oversight of the rules of agencies.

S. 351

At the request of Mr. WALLOP, the Senator from New Mexico (Mr. DOMENICI) was added as a cosponsor of S. 351, a bill to amend the Federal Mine Safety and Health Amendments Act of 1977 to provide that the provisions of such act shall not apply to the surface mining of stone, clay, and sand work.

S. 395

At the request of Mr. WALLOP, the Senator from Alaska (Mr. MURKOWSKI), and the Senator from Idaho (Mr. MCCLURE) were added as cosponsors of S. 395, a bill to amend the Internal Revenue Code of 1954 to provide estate and gift tax equity for family enterprises, and for other purposes.

S. 569

At the request of Mr. JEPSEN, the Senator from Alaska (Mr. STEVENS) was added as a cosponsor of S. 569, a bill to amend the Internal Revenue Code of 1954 to provide an investment tax credit for certain soil and water conservation expenditures.

S. 701

At the request of Mr. BENTSEN, the Senator from Wisconsin (Mr. PROXMIRE), and the Senator from Utah (Mr. HATCH) were added as cosponsors of S. 701, a bill to amend the Internal Revenue Act of 1954 to provide for the exclusion from taxation of interest earned on deposits which are used for residential mortgage lending purposes.

S. 708

At the request of Mr. CHAFEE, the Senator from Hawaii (Mr. INOUYE) was added as a cosponsor of S. 708, a bill to amend and clarify the Foreign Corrupt Practices Act of 1977.

S. 752

At the request of Mr. BAUCUS, the Senator from Texas (Mr. BENTSEN) was added as a cosponsor of S. 752, a bill to amend the Internal Revenue Code of 1954 to provide for the awarding of reasonable court costs and certain fees to prevailing parties in civil tax actions, and for other purposes.

S. 756

At the request of Mr. HOLLINGS, the Senator from Arizona (Mr. GOLDWATER) was added as a cosponsor of S. 756, a bill to amend the Military Selective Service Act to provide for the reinstitution of the registration and classification of persons under such act and to reinstate the authority of the President to induct persons involuntarily into the Armed Forces, and for other purposes.

S. 888

At the request of Mr. PACKWOOD, the Senator from Illinois (Mr. DIXON) was added as a cosponsor of S. 888, a bill to provide effective programs to assure equality of economic opportunities for women and men, and for other purposes.

S. 1073

At the request of Mr. GARN, his name was added as a cosponsor of S. 1073, a bill to amend section 21 of the act of February 25, 1920, commonly known as the Mineral Leasing Act.

S. 1131

At the request of Mr. DANFORTH, the Senator from Ohio (Mr. GLENN) was added as a cosponsor of S. 1131, a bill to require the Federal Government to pay interest on overdue payments and to take early payment discounts only when payment is timely made, and for other purposes.

S. 1140

At the request of Mr. BENTSEN, the Senator from New Jersey (Mr. BRADLEY) was added as a cosponsor of S. 1140, a bill to improve productivity and promote capital investment in small business and for other purposes.

S. 1214

At the request of Mr. BOSCHWITZ, the Senator from New York (Mr. D'AMATO) was added as a cosponsor of S. 1214, a bill to amend the Internal Revenue Code of 1954 to eliminate the limitation on the interest deduction for interest paid or accrued on investment indebtedness.

S. 1279

At the request of Mr. DANFORTH, the Senator from New York (Mr. MOYNIHAN), the Senator from New Mexico (Mr. DOMENICI), the Senator from Idaho (Mr. SYMMS), the Senator from Wisconsin (Mr. KASTEN), the Senator from Mississippi (Mr. COCHRAN), the Senator from South Dakota (Mr. ABDNOR), the Senator from Missouri (Mr. EAGLETON), the Senator from Ohio (Mr. GLENN), the Senator from Ohio (Mr. METZENBAUM), the Senator from Vermont Mr. (LEAHY), and the Senator from Idaho (Mr. MCCLURE) were added as cosponsors of S. 1279, a bill to amend the Internal Revenue Code of 1954 to exclude from gross income a certain amount of interest earned on the all-savers certificate offered only at savings institutions.

S. 1298

At the request of Mr. WALLOP, the Senator from North Dakota (Mr. ANDREWS) was added as a cosponsor of S. 1298, a bill to amend the Internal Revenue Code of 1954 to extend certain tax provisions to Indian tribal governments on the same basis as such provisions apply to States.

SENATE JOINT RESOLUTION 29

At the request of Mr. HEINZ, the Senator from New York (Mr. MOYNIHAN) and the Senator from North Carolina (Mr. HELMS) were added as cosponsors of Senate Joint Resolution 29, a joint resolution to authorize and request the President to issue a proclamation designating the calendar week beginning with the first Sunday in June of each year as "National Garden Week."

SENATE JOINT RESOLUTION 73

At the request of Mr. GLENN, the Senator from Oklahoma (Mr. BOREN) was added as a cosponsor of Senate Joint Resolution 73, a joint resolution to designate the week beginning June 1, 1981, and ending June 7, 1981, as "Management Week in America."

SENATE JOINT RESOLUTION 83

At the request of Mr. CHAFEE, the Senator from Illinois (Mr. DIXON) was added as a cosponsor of Senate Joint Resolution 83, a joint resolution to authorize and request the President to call a White House Conference on Education not later than January 15, 1982, and for other purposes.

SENATE RESOLUTION 139

At the request of Mr. ANDREWS, the Senator from South Dakota (Mr. PRESSLER) and the Senator from Alabama (Mr. DENTON) were added as cosponsors of Senate Resolution 139, a resolution to assure the access of farmer-owned refining businesses to crude oil at reasonable prices.

SENATE RESOLUTION 153

At the request of Mr. HEINZ, the Senator from Texas (Mr. BENTSEN) was added as a cosponsor of Senate Resolution 153, a resolution to require full adherence to U.S. Trade Agreements.

AMENDMENT NO. 100

At the request of Mr. MOYNIHAN, the Senator from Texas (Mr. BENTSEN), the Senator from Michigan (Mr. LEVIN), the Senator from West Virginia (Mr. ROBERT C. BYRD), the Senator from West Virginia (Mr. RANDOLPH), and the Senator from Massachusetts (Mr. KENNEDY) were added as cosponsors of amendment No. 100 proposed to S. 1377, an original bill to provide for reconciliation pursuant to title III of the first concurrent resolution on the budget for fiscal year 1982 (H. Con. Res. 115, 97th Congress).

SENATE RESOLUTION 160—ORIGINAL RESOLUTION REPORTED WAIVING CONGRESSIONAL BUDGET ACT

Mr. DURENBERGER, from the Committee on Governmental Affairs, reported the following original resolution; which was referred to the Committee on the Budget:

S. RES. 160

Resolved, That pursuant to section 402(c) of the Congressional Budget Act of 1974, the provisions of section 402(a) of such Act are waived with respect to the consideration of S. 43, the State and Local Government Fiscal Note Act of 1981. Such waiver is necessary to permit consideration of an additional fiscal year 1982 authorization of appropriations for the Congressional Budget Office to carry out the purposes of S. 43.

Such waiver is necessary as S. 43 was not reported before May 15, 1981, as required by section 402(a) of the Congressional Budget Act of 1974. The subject matter of S. 43 would not appropriately be taken up as part of the reconciliation process which necessarily received first priority by the Committee before May 15, 1981. However, and especially in consideration of the proposed changes in the structure of Federal assistance to State and local governments included in reconciliation and other measures reported by committees, the Congress should not further delay the implementation of the budget procedures required by S. 43.

SENATE RESOLUTION 161—RESOLUTION RELATING TO IMPACT AID

Mr. HUMPHREY (for himself, Mr. HATCH, Mr. STAFFORD, Mr. DENTON, Mr. NICKLES, Mrs. HAWKINS, Mr. KENNEDY, Mr. MELCHER, Mr. PELL, Mr. RANDOLPH, Mr. WILLIAMS, Mr. COHEN, Mr. DECONCINI, Mr. EAST, Mr. BURDICK, Mr. HAYAKAWA, and Mr. FORD) submitted the following resolution; which was referred to the Committee on Labor and Human Resources:

S. RES. 161

Whereas, Impact Aid has assisted local school districts in providing educational opportunities to children of parents who live and work on untaxed Federal property;

Whereas, the program has allowed children across the nation to receive a quality education despite local losses of property tax revenue from Federal nontaxable properties such as military bases, and Indian reservations;

Whereas, the proposed $200 million authorization for Impact Aid would severely affect support for all federally impacted areas;

Whereas, the proposed cuts in Impact Aid funding have stimulated confrontations in various States with local school districts threatening to charge the children of military personnel tuition;

Whereas, the proposed cuts seriously threaten the educational opportunities of children living on Indian reservations;

Whereas, it is imperative that the morale of the military be maintained, and that military personnel not be forced to pay tuition to educate their children in elementary and secondary public schools, and similarly, native Americans on the reservation must not be forced to pay for their children's public education;

Whereas, negotiations between the Secretary of Education and the Secretary of Defense are currently being conducted on the issue of Impact Aid for local schools serving military bases; and

Whereas, negotiations between the Senate Committee on Armed Services and the Senate Committee on Labor and Human Resources are currently underway on the issue of Impact Aid for local schools serving military bases. Now, therefore, be it

Resolved, That it is the sense of the Senate that—

(1) military personnel should not have to pay tuition for elementary and secondary public education for their children;

(2) native Americans on the reservations should not have to pay tuition for elementary and secondary public education for their children;

(3) local school districts serving regions where a substantial percentage of the students come from homes where parents live and work on Federal property or live on Indian reservations should be financially assisted in meeting the educational needs of such students;

(4) the negotiations between the Department of Defense and the Department of Education are a positive step toward resolving this difficulty;

(5) the negotiations between the Senate Committee on Labor and Human Resources and the Senate Committee on Armed Services are a positive step toward resolving this difficulty;

(6) the Select Committee on Indian Affairs and the Secretary of the Interior should be a party to the negotiations; and

(7) a compromise which will lead to an equitable solution to the Impact Aid dilemma is in the best interest of the United States.

IMPACT AID

● Mr. HUMPHREY. Mr. President, I rise to offer this resolution today because I believe this country will soon face a serious crisis if action is not taken to insure that local school districts will be able to educate the children of our military personnel. For the past 30 years, impact aid has provided an answer for local school districts to the problem of property tax revenue losses from Federal ownership of large parcels of land in their school districts. For military personnel, Indians on our Nation's reservations, and tenants in subsidized housing this program has provided support for the basic education of their children.

The threatened loss of this funding has stimulated court confrontations and threats by elementary and secondary schools to charge the children of military personnel tuition. It has already been made painfully clear to this body that the past several decades have dealt harsh, almost intolerable, blows to the morale of our military personnel.

Fortunately, we are finally taking action to improve military pay and benefits so our fighting force can once again be respected in our country and around the world.

To once again impose an unreasonable burden on these personnel by singling them out to charge their children tuition is a blow we can ill afford to administer. Indeed, it is a blow we can not deliver to our local school districts or citizens. These districts have depended on impact aid to substitute for the property tax loss incurred by large holdings of untaxable Federal property. When these revenues are removed along with impact aid, our school districts will have nowhere to turn for the funding to deliver basic education.

It would be singularly unfair to increase the property taxes of other residents to insure the education of the children living on Federal reserves. To once again look to other citizens to make up this deficit is a burden our Government cannot expect them to assume.

Similarly, our local school districts serving the children of our American Indians must be properly funded. To withdraw this support from the education of reservation children would be a breach of faith with this country's Native Americans and their local school districts.

I have been heartened by the receptivity of the distinguished chairman of the Armed Services Committee, Senator TOWER, to address this unexpected dilemma head on. He has scheduled hearings in our committee for Wednesday to evaluate the dimensions of the problem and options for dealing with it. I am confident that through the concerted efforts of my colleagues on Armed Services and Labor and Human Resources, a just solution can be reached.●

AMENDMENTS SUBMITTED FOR PRINTING

OMNIBUS RECONCILIATION ACT OF 1981

AMENDMENT NO. 101

(Ordered to be printed and to lie on the table.)

Mr. MATHIAS submitted an amendment intended to be proposed by him to the bill (S. 1377) to provide for reconciliation pursuant to title III of the first concurrent resolution on the budget for fiscal year 1982 (H. Con. Res. 115, 97th Congress).

AMENDMENT NO. 102

(Ordered to be printed and to lie on the table.)

Mr. PERCY (for himself and Mr. DIXON) submitted an amendment intended to be proposed by them to the bill S. 1377, supra.

NOTICES OF HEARINGS

SUBCOMMITTEE ON EMPLOYMENT AND PRODUCTIVITY

Mr. QUAYLE. Mr. President, the Subcommittee on Employment and Productivity will hold regional hearings on employment and training issues in Orlando,

Fla., July 17; Boston, Mass., July 24; Indianapolis, Ind., August 5 and 6; Salt Lake City, Utah, August 12 and 13.

The hearings will be on the general subject of the employment and training system in the United States. The purpose of these hearings is to develop necessary background information for the subcommittee and the Congress before it considers the appropriate legislative response to the fact that the authorization of appropriations for CETA expires next year.

A list of major issues that are of particular concern to the subcommittee is provided in the May 19, 1981, CONGRESSIONAL RECORD, pages 10199-10200.

Persons interested in testifying at these hearings should submit a written request to Bob Guttman, 4230 Dirksen Senate Office Building, Washington, D.C. 20510.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

Mr. SYMMS. Mr. President, I ask unanimous consent that the Committee on Environment and Public Works be authorized to meet during the session of the Senate on Tuesday, June 23, at 2 p.m., to hold a hearing on the pending CEQ nomination.

Mr. PROXMIRE. Mr. President, it is my understanding that the Democratic leader, Senator ROBERT C. BYRD, has checked with the minority and has no objection.

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

COMMITTEE ON GOVERNMENTAL AFFAIRS

Mr. SYMMS. Mr. President, I ask unanimous consent that the Committee on Governmental Affairs be authorized to meet during the session of the Senate on Tuesday, June 23 at 10 a.m., to hold hearings on S. 1080, the Regulatory Reform Act.

Mr. PROXMIRE. Mr. President, on that, those hearings also, the minority has no objection.

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

ADDITIONAL STATEMENTS

DRAFT ADMINISTRATION CLEAN AIR BILL

● Mr. HART. Mr. President, a draft of the administration's clean air bill has been made public before being formally presented to Congress. While there is still time for the administration's policymakers to change their minds, all of us who care about the air we breathe should speak out strongly against this proposal. If we are unable to convince the administration to abandon this ill-conceived bill, we will be forced into a protracted, all-out fight—which will not serve anyone's interests.

The draft bill would repeal or relax 115 provisions of the Clean Air Act, involving every important part of the law. Among the most significant changes in the draft are: Elimination of the requirement that States must meet national air quality standards as rapidly as possible; shifting the burden of proof to the Environmental Protection Agency to prove a State's clean air plan is adequate; elimination of Federal sanctions if a State fails to adopt a clean air plan and elimination of EPA's responsibility to draft a plan in that case; relaxation of the requirements for how EPA sets all types of emission standards; virtually unlimited authority to EPA and the States to grant exemptions from emission standards; and the elimination of automatic penalties for emission standard violators.

These proposed changes would make the Clean Air Act optional. Whether anything is done to clean up our air would be completely within the discretion of the EPA Administrator and State governments. The result almost certainly would be dirtier, not cleaner, air.

The effect on our State of these and other reforms proposed by the administration in this draft will be enormous. Elimination of high altitude emission standards and the requirement for State inspection and maintenance programs alone will delay for many extra years the time by which the Denver metropolitan area will meet national air quality standards. The proposal would also remove most of the protections for the cleaner parts of our State, which face substantial energy development.

This draft represents decisions made at the Cabinet level by the "clean air" task force as of June 12. Still under review at that time were three additional issues which could have even greater effects on the revision of the law:

Whether to establish an economic test for setting air quality standards;

Whether to roll back automobile emission standards even further; and

Whether to eliminate all Federal requirements that new facilities use pollution controls.

The administration has declined to comment on this draft bill and its provisions, and it may be that some of them were only "trial balloons" which will never again see the light of day. I hope that is the case, and that the administration will reconsider its position.

There is room for legitimate, reasoned reform of the Clean Air Act. This spring, the National Commission on Air Quality made 109 recommendations to streamline the act while still retaining important public health protections. Similar approaches have been endorsed by responsible industry groups nationwide.

This draft proposal, on the other hand, does not propose reform. It does not suggest refinement. It would repeal the Clean Air Act.

The American people want fewer burdensome and inefficient Government regulations. But they also want cleaner air. Achieving both will be difficult, but it can be done.

I urge the administration to abandon its draft bill, and instead approach revision of the Clean Air Act in a responsible fashion.

Mr. President, I ask to insert in the RECORD at this point a detailed comparison of the administration's draft bill with the current Clean Air Act, showing the 121 significant effects the draft bill would have on the current law. The comparison shows that the draft administration bill would repeal 54 specific provisions of the law; relax 61 other provisions; strengthen 4 provisions and add 2 new provisions.

The comparison follows:

COMPARISON OF DRAFT ADMINISTRATION CLEAN AIR BILL WITH CURRENT LAW

CLEAN AIR ACT	DRAFT ADMINISTRATION BILL
Secondary air quality standards	
1. EPA shall establish secondary national air quality standards to protect the public welfare.	1. Repealed. Existing secondary standards are revoked.
2. States shall adopt implementation plans for meeting secondary air quality standards.	2. Repealed. Existing plans shall be revoked within 60 days.
State implementation plans (SIP's)	
3. States have 9 months after EPA sets an air quality standard to adopt SIPs for meeting the standard.	3. Relaxed. EPA would set a deadline for state adoption of SIPs.
4. States must meet national air quality standards "as expeditiously as practicable."	4. Repealed.
5. The deadlines for meeting air quality standards are (1) December 31, 1982, for current standards; and (2) three years after the standard is established for new standards.	5. Relaxed. The deadlines are (1) December 31, 1987, for current standards; and (2) five years after the standard is established for new standards.
6. States may get extensions from the deadlines (1) until December 31, 1987, for the ozone and carbon monoxide standards, upon a demonstration that meeting the 1982 deadline "is not possible . . . despite the implementation of all reasonably available measures;" or, (2) for two extra years for a new standard, if EPA determines— The necessary pollution control technology is not available; and The state has adopted all reasonably available controls.	6. Relaxed. If a state demonstrates that meeting a deadline "is not practicable," there would be no requirement to meet the standard.

CLEAN AIR ACT	DRAFT ADMINISTRATION BILL
Secondary air quality standards	
7. States must have public hearings on their proposed SIPs.	7. Repealed.
8. SIPS must contain emission limitations and compliance schedules for specific facilities of pollution.	8. Relaxed. Instead, SIPs can contain just a procedure to be used to establish emission limitations and compliance schedules.
9. States must establish permit systems for all new major facilities of air pollution to the extent necessary to meet air quality standards.	9. Relaxed. States can only establish permit systems for the major facilities subject to mandatory new source review.
10. States must require companies to monitor their pollution.	10. Repealed.
11. Companies getting clean air permits must pay the costs of reviewing and enforcing their permits.	11. Repealed.
12. States must review new facilities subject to Federal "new source performance standards" to make sure they will not violate air quality standards.	12. Repealed.
13. SIP's must provide adequate controls to ensure facilities in one state do not violate air quality standards and limits in another state.	13. Repealed.
14. SIP's take effect when approved by EPA.	14. Relaxed. SIP's take effect unless disapproved by EPA.
15. EPA has 4 months to approve or disapprove a SIP.	15. Relaxed. EPA must object within 3 months or the SIP takes effect.
16. EPA shall approve SIP's if they meet statutory criteria.	16. Relaxed. EPA shall not object to SIP's if they meet statutory criteria, but (unless the SIP projects attainment of an air quality standard after 1987) EPA "shall presume" SIP's are adequate.
17. EPA shall establish a Federal SIP for any state which does not have an EPA-approved SIP.	17. Relaxed. EPA establishment of a Federal SIP is discretionary.
18. SIP's may be suspended in emergencies, as determined by (1) the President, if it is an energy emergency, or (2) the Governor, if it is an economic emergency. EPA may terminate either category of emergency.	18. Relaxed. The state government determines whether there is an emergency.
19. The determination of an emergency must be made according to statutory criteria.	19. Relaxed. State governments would have discretion to determine what constitutes an emergency.
20. The period of an emergency suspension of a SIP cannot exceed 4 months.	20. Relaxed. The period cannot exceed one year.
Nonattainment	
21. States must adopt all reasonably available controls in areas more polluted than the national air quality standards ("nonattainment areas").	21. Relaxed. States must adopt all reasonably available controls only in areas which the states project will not meet by 1987 the standards.
22. States must improve each year the air quality in nonattainment areas.	22. Relaxed. States must make only "regular improvement in air quality over a period of time."
23. States must adopt automobile inspection/maintenance programs in areas projected to not meet by 1982 the ozone and carbon monoxide air quality standard.	23. Repealed.
24. Before allowing construction of a new facility in an area projected to not meet by 1982 the ozone and carbon monoxide air quality standards a state shall determine that the overall benefits of the source outweigh its social and environmental costs.	24. Repealed.
25. A new facility in a nonattainment area must arrange to "offset" its pollution by reductions from other facilities in the area.	25. Relaxed. The facility can get a permit so long as it does not impede reasonable further progress toward the standard.
26. A company locating a new facility in a non-attainment area must demonstrate that its other facilities all comply with pollution control requirements.	26. Repealed.
27. A new facility in a nonattainment area must use the "lowest achievable emission rate."	27. Relaxed. The facility would only have to meet only either of two weaker requirements, the Federal "new source performance standard" or "best available control technology.
28. EPA shall withhold air pollution control grants and the Department of Transportation shall withhold highway construction grants, in nonattainment areas where states have not adopted adequate SIP's.	28. Repealed.
29. All Federal agencies shall comply with SIP's.	29. Repealed.
30. The Urban Mass Transit Administration and the Department of Housing and Urban Development shall consider the air quality needs of nonattainment areas when they allocate Federal funds.	30. Repealed.
31. States with nonattainment areas may adopt the tougher motor vehicle emission standards adopted by California under its special exemption.	31. Repealed.
New source performance standards (NSPS)	
32. New source performance standards shall require the use of technology (not just the use of clean fuels).	32. Repealed. The existing standards for coal-fired powerplants are revoked.
33. NSPS, once approved in final form, apply to all facilities which began construction after the standards were proposed.	33. Relaxed. The standards apply only to facilities beginning construction after the standards are finalized.
34. Any modification to an existing facility is subject to NSPS if the modification increases emissions.	34. Relaxed. Modifications are not subject to NSPS if they are offset by new emission reductions elsewhere in the facility.
35. EPA may issue waivers from NSPS.	35. Relaxed. States may also issue waivers.
36. Waivers from NSPS may last only for 7 years after they are issued, or for 4 years after the facility begins operation, whichever is earlier.	36. Relaxed. If issued by EPA, waivers can last for the life of the facility. If issued by a state, waivers can last for 10 years after they are issued; or for 7 years after the facility begins operation, whichever is earlier.
Hazardous air pollutants	
37. Hazardous air pollution standards apply to all facilities beginning construction after the regulations are proposed.	37. Relaxed. The standards apply only to facilities beginning construction after the regulations are finalized.
38. Hazardous air pollution standards apply to all facilities emitting the hazardous pollutants.	38. Relaxed. The standards apply only to the categories of facilities EPA determines produce a "significant risk" of serious illness.
39. EPA has to set standards limiting emissions of a pollutant within 6 months after officially identifying it as a hazardous air pollutant.	39. Repealed.

COMPARISON OF DRAFT ADMINISTRATION CLEAN AIR BILL WITH CURRENT LAW—Continued

CLEAN AIR ACT	DRAFT ADMINISTRATION BILL
Hazardous air pollutants—Continued	
40. Hazardous air pollutant standards shall provide an ample margin of safety to protect the public health.	40. Relaxed. The standards shall require the best technology which has been adequately demonstrated (considering its costs) and any additional control EPA determines is necessary to protect against unreasonable health risks (considering possible health effects and control costs).
41 EPA must set emission standards for officially designated hazardous pollutants.	41. Relaxed. EPA can defer the setting of standards if no emission controls have been adequately demonstrated and if the lack of controls will not cause an unreasonable risk to the public health.
42. Existing facilities must meet hazardous emission standards 90 days after they are established.	42. Relaxed. The standards take effect within two years, as determined by EPA.
Enforcement and inspections	
43. EPA orders for a facility to comply with clean air standards shall require compliance by a date EPA determines is reasonable.	43. Strengthened. The time for compliance must be within one year after the order is issued.
44. EPA may bar the construction of a new facility in a nonattainment area where the state is not carrying out an adequate SIP.	44. Relaxed. EPA may bar the construction of a new facility only if it does not have a state permit.
45. EPA shall seek a court order and/or a fine whenever a major facility is not complying with clean air standards.	45. Relaxed. EPA action would be optional.
46. EPA may extend for 3 years the date by which facilities must meet clean air standards if they are unable to meet the standards earlier.	46. Relaxed. There is no time limit on an extension.
47. Extensions can only be granted from requirements in SIPs.	47. Relaxed. Extensions can also be granted from "new source performance standards" and from hazardous air pollutant standards.
48. Extensions can only be issued if facilities are "unable" to meet standards.	48. Repealed.
49. There must be opportunities for public hearings before extensions can be granted.	49. Repealed.
50. To get extensions for the use of innovative technology, facilities must need the extensions to use the technology.	50. Repealed.
51. To get extensions for the use of innovative technology, the facilities must demonstrate that meeting the standard would be impracticable.	51. Repealed.
52. An extension for the use of innovative technology can last for only 5 years.	52. Repealed.
53. Facilities can get extensions because they are converting to coal if the conversions are ordered by the Federal government or because of a natural gas curtailment.	53. Relaxed. Any facilities converting to coal can get extensions.
54. Initial extensions for coal conversion can last only until December 31, 1980.	54. Repealed.
55. Any additional extensions for coal conversion can last only for 5 years.	55. Repealed.
56. Extensions for coal conversion may not be granted to facilities which then would exceed the national air quality standards.	56. Relaxed. Extensions can be granted for facilities in nonattainment areas if the standards are not being exceeded "significantly."
57. EPA may establish priorities for the allocation by manufacturers of their pollution control systems for facilities converting to coal.	57. Repealed.
58. EPA must hold a public hearing before granting a coal conversion extension to a facility in a nonattainment area.	58. Repealed.
59. A coal conversion extension can be granted to a facility in a nonattainment area only if the facility would affect infrequently the level of air pollution in the area.	59. Repealed.
60. A coal conversion extension can be granted to a facility in a nonattainment area only if there is "reasonable statistical assurance" the extension will not cause any additional violations of natural air quality standards.	60. Repealed.
61. A coal conversion extension can be granted to a facility in a nonattainment area only if the extension will have an insignificant effect on air pollution levels in the area.	61. Relaxed. Extensions can be granted so long as they will have only an insignificant effect on violations of the national air quality standards.
62. Coal conversion extensions require the approval of just EPA.	62. Strengthened. States would have to concur before extensions take effect.
63. A facility getting a coal conversion extension must meet interim requirements of progress in reducing pollution.	63. Relaxed. A facility which eventually will close down instead of meeting clean air standards does not need to make any interim improvements.
64. EPA shall revoke an extension if the facility becomes able to meet clean air standards.	64. Repealed.
65. EPA shall hold public hearings before revoking extensions.	65. Repealed.
66. Extension granted before passage of the 1977 Clean Air Act Amendments shall remain in force.	66. Repealed.
67. N/A	67. New Provision. The decisions to grant or revoke coal conversion extensions are not subject to judicial review.
68. N/A	68. New Provision. Existing extensions can be modified to comply with the new statutory provisions.
69. Final decisions by EPA under the Clean Air Act can be reviewed only in the U.S. Court of Appeals for the District of Columbia.	69. Relaxed. EPA requirements to maintain records and monitor emissions can be reviewed in U.S. district courts.
Smelters	
70. The authority of EPA to allow smelters to be exempt from sulfur dioxide emission standards expires January 1, 1981.	70. Repealed. EPA may extend the exemptions indefinitely.
Noncompliance penalties	
71. EPA is required to collect noncompliance penalties from facilities violating clean air standards.	71. Relaxed. EPA action would be optional.

CLEAN AIR ACT	DRAFT ADMINISTRATION BILL
Noncompliance penalties—Continued	
72. Violations of emission requirements make a facility subject to noncompliance penalties.	72. Strengthened. Violations of reporting requirements may also make a facility subject to noncompliance penalties.
73. The amount of noncompliance penalties shall be based on the economic value to the facility of its failure to meet the clean air standards.	73. Relaxed. The amount of penalties shall be based on the nature, circumstances, and gravity of the violation; the ability of the violator to pay; the degree of culpability and prior violations by the owner; and any other factors, including the economic value of the noncompliance.
74. There is no arbitrary limit on the amount of noncompliance penalties.	74. Relaxed. Penalties cannot exceed $25,000 per day.
75. EPA cannot adjust the amount of noncompliance penalties; they must reflect the economic value of noncompliance.	75. Relaxed. EPA has unlimited discretion to reduce or refund the amount of the penalties.
76. EPA can enforce the noncompliance penalty program in states not implementing their own programs under EPA delegation.	76. Repealed.
77. Facilities shall be subject to noncompliance penalties for the period beginning from the date of EPA notice that they are violating clean air standards.	77. Repealed.
78. Facilities failing to pay noncompliance penalties shall be required to pay additional penalties equal to 20 percent of the original penalties.	78. Repealed.
Tall stacks	
79. The only facilities which can use tall stacks or other techniques to disperse pollution instead of actual pollution reduction measures are those facilities using the dispersion techniques before 1970.	79. Relaxed. Any dispersion techniques used before 1977 can be substituted for pollution reductions.
80. The effect of stack heights on the amount of pollution calculated to come from smokestacks is limited by a precise statutory formula.	80. Relaxed. EPA shall determine the limit.
Interstate air pollution	
81. States must notify other states of all facilities within its borders which might contribute to violations of the national air qualiy standards in the other states.	81. Repealed.
82. A state may seek an EPA finding that pollution from a facility in another state contributes to violations of the national air quality standards in the first state.	82. Relaxed. A state must negotiate with the other state for at least 6 months before it can seek EPA intervention.
83. A local government may petition EPA for a determination that the interstate spread of air pollution is unlawful.	83. Repealed.
84. A facility cannot emit pollution which EPA determines is contributing to violations of a clean air increment in another state.	84. Repealed.
85. A facility cannot emit pollution which EPA determines is contributing to a violation of a secondary air quality standard in another state.	85. Repealed.
86. EPA shall find that the interstate spread of pollution is unlawful if it meets statutory criteria.	86. Relaxed. The burden is on the complaining state to show that the interstate spread of pollution is unlawful under statutory criteria.
87. A facility cannot emit pollution which EPA determines is contributing to a violation of a primary national air quality standard in another state.	87. Relaxed. A facility cannot emit pollution which is contributing to a violation of a primary national air quality standard in another state if EPA determines the pollution is unreasonably interfering with the state's ability to meet the air quality standard, considering the degree of pollution controls required by the complaining state, the costs and effects of reducing the interstate pollution, and other factors.
88. EPA shall decide whether the interstate spread of pollution is unlawful within 60 days of receiving a state's petition.	88. Relaxed. EPA must decide within one year .
89. If EPA determines that its interstate spread of pollution is unlawful, a facility must reduce its emissions according to limits and schedules established by EPA.	89. Relaxed. The state shall establish the limits and schedules, which shall take effect unless disapproved by EPA within 90 days. EPA shall establish its own limits and schedules if it disapproves those established by the state.
90. The interstate spread of pollution must be halted within 3 years after EPA finds it unlawful.	90. Repealed.
Prevention of significant deterioration	
91. New facilities in areas cleaner than the national air quality standards ("PSD areas") may be built only after getting a clean air permit if they are (1) within certain categories of facilities and have the capacity to emit 100 tons of a single pollutant per year, or (2) have the capacity to emit 250 tons of a single pollutant per year.	91. Strengthened. Any new facility with the capacity to emit 100 tons of a single pollutant per year must get a permit.
92. Existing major facilities in PSD areas must get a clean air permit before being modified if the modification increases by any amount the pollution from the facility.	92. Relaxed. Only modifications which have the net effect of increasing pollution by 100 tons of a single pollutant per year must get permits.
93. A public hearing must be held before a PSD permit is issued or denied.	93. Relaxed. The public must be given a reasonable opportunity to comment.
94. Any facility or modification to any existing facility must use "best available control technology" ("BACT") to control all pollutants, regardless of the quantity emitted.	94. Relaxed. BACT is required only for pollutants which will be emitted in quantities of at least 100 tons per year.
95. BACT shall be expressed as a specified emission limit.	95. Relaxed. BACT may be expressed as a work or design practice instead of as an emission limit.
96. BACT requires the use of actual pollution control methods in addition to production processes.	96. Relaxed. BACT may require just production processes instead of pollution control methods.
97. BACT must be at least as strict as the minimum Federal "new source performance standard," ("NSPS"), if any has been established for that type of facility.	97. Relaxed. BACT is equal to NSPS when a NSPS has been established.

COMPARISON OF DRAFT ADMINISTRATION CLEAN AIR BILL WITH CURRENT LAW—Continued

CLEAN AIR ACT	DRAFT ADMINISTRATION BILL
Prevention of significant deterioration—Continued	
98. A PSD permit review shall include an analysis of the air pollution effects of growth caused by the new facility.	98. Repealed.
99. The operator of a new facility in a PSD area must monitor the air pollution from the facility.	99. Repealed.
100. A PSD permit shall be granted within one year after an application is filed.	100. Repealed.
101. All PSD areas except mandatory Class I areas shall be Class II areas (unless redesignated by states) and shall be subject to moderate limits on the amount of additional pollution which will be allowed.	101. Repealed.
102. States may redesignate most PSD areas as Class III areas, subject to generous limits on the amount of additional pollution.	102. Repealed.
103. States may redesignate as Class II or Class III those PSD areas which were designated as Class I under EPA's initial PSD regulations.	103. Repealed.
104. The combined pollution from all new facilities and modifications to existing facilities on which construction began after January 6, 1975, shall not exceed the increment of additional pollution specified for each class of PSD area.	104. Relaxed. Only the pollution from new facilities and modifications to existing facilities on which construction began after August 7, 1977, shall count as part of an annual increment, and short term increments shall be limits on the amount of additional pollution from a single facility (instead of limits on the cumulative additional pollution of all new facilities).
105. Emissions from facilities which have switched fuels under Federal order, and emissions from facilities outside the United States, shall not count as part of any PSD increment.	105. Repealed.
106. Particulate emissions from construction or other temporary activities shall not count as part of any PSD increment.	106. Relaxed. Any fugitive emissions and temporary emissions shall count as part of a PSD increment only as required by EPA.
107. A PSD permit decision shall be based on one year's monitored data on existing air quality and on an analysis of meteorology and other factors.	107. Repealed.
108. EPA shall establish requirements to prevent the significant deterioration of air quality with respect to regulated pollutants other than sulfur dioxide and particulates.	108. Repealed.
Visibility	
109. States shall adopt plans to prevent the future visibility impairment and to remedy any existing visibility impairment in mandatory Class I PSD areas.	109. Repealed.
110. Existing major facilities less than 15 years old which emit pollution impairing visibility over mandatory Class I areas shall be required to install "best available retrofit technology" to reduce the visibility impairment.	110. Repealed.
Motor vehicle emission standards	
111. EPA can relax the statutory emission standards for heavy trucks for 3 year periods.	111. Relaxed. EPA may relax the standards for any period of time.
112. Any relaxed standards for heavy trucks shall require the degree of control possible by technology reasonably expected to be available.	112. Relaxed. A relaxed nitrogen oxide standard shall require the degree of control possible by diesel trucks using technology reasonably expected to be available.
113. The carbon monoxide emission standard for automobiles shall be 3.4 grams per mile.	113. Relaxed. The standard shall be 7.0 grams per mile.
114. The oxides of nitrogen emission standard for automobiles shall be 1.0 grams per mile.	114. Relaxed. The standard shall be 1.5 grams per mile.
115. Beginning in 1984, new automobiles shall meet the national emission standards regardless of the altitude at which they are sold.	115. Relaxed. EPA may establish separate high altitude emission standards for automobiles but the standards must be less stringent than the national emission standards.
116. EPA has general authority to establish motor vehicle emission standards, including high altitude standards.	116. Relaxed. After making certain findings, EPA may establish separate high altitude emission standards for any motor vehicles, but the standards must be less stringent than the national emission standards.
117. EPA, after pre-market testing, shall issue to motor vehicles before they may be sold certificates, that they comply with national emission standards.	117. Relaxed. Instead of pre-market certification, motor vehicles may be sold if they are to be subject to an in-use compliance program with these elements: The vehicles will be tested to determine their actual emissions; Manufacturers will be assessed a nonconformance penalty determined by EPA if the emissions from their vehicles exceed the national emission standards; and, emissions from their vehicles are below the national emission standards.
118. The authority to allow the adjustment of motor vehicles in high altitude areas shall not apply in a high altitude state not meeting auto-related national emission standards unless the state has an automobile inspection and maintenance program.	118. Repealed.
Judicial review	
119. Law suits challenging nationally-applicable EPA decisions under the Clean Air Act may only be filed in the U.S. Court of Appeals for the District of Columbia.	119. Relaxed. Suits may be filed in any U.S. Court of Appeals.
Conflicts of interest	
120. EPA officials with financial interests in companies subject to clean air regulations shall file and make available to the public reports of those interests.	120. Repealed.
121. No person employed by a company subject to clean air regulation may be an employee of EPA.	121. Repealed.●

AMERICA'S STRATEGIC CHALLENGE IN SOUTHEAST ASIA

● Mr. LUGAR. Mr. President, while political and military struggles are no strangers to Southeast Asia, Soviet conduct through its Vietnamese surrogate constitutes an increasingly dangerous threat to the security of our friends in that region. Important Western political and economic interests are at stake in the region as well.

The administration believes, and I concur, that a strong and self-reliant Thailand is central to the future stability of Southeast Asia. If we are to meet the Soviet challenge, we must not only strengthen our own military forces, but also must give urgent attention to the security and economic requirements of Thailand and our other Southeast Asian friends and allies whose strength and support are essential to prevent further expansion of Soviet influence.

Secretary of State Haig's visit to the Association of Southeast Asian Nations (ASEAN) meeting in Manila on June 18, 19, and 20, has been an important sign of American interest in the region. Some of the reasons for American interest in the region have been spelled out expertly in a study by Daniel C. Arnold and Michael A. Daniels. I ask that their study entitled "America's Strategic Challenge in Southeast Asia" be reprinted in full.

The study follows:

AMERICA'S STRATEGIC CHALLENGE IN SOUTHEAST ASIA

As they enter the decade of the eighties, the nations of non-communist Southeast Asia find themselves facing an increasingly grave security threat. This threat comes from two sources: internal subversion and aggression from Vietnam. Internal subversion is a problem which has beset the governments of non-communist Southeast Asia since the early fifties. Leaving aside Burma, which must be considered in a separate category from ASEAN, active communist insurgencies are underway today in Thailand, Malaysia and the Philippines. None pose a serious threat at the moment to the existing governments, yet all are destabilizing elements within their respective societies and have long-term potential for growth. These domestic insurgencies constitute a serious drain on national resources and could be utilized as vehicles for intervention by the neighboring communist states or other outside powers.

More threatening in the immediate future is the possibility of external aggression. This is a threat which is directed most clearly at Thailand but also carries serious implications for the other nations of peninsular Southeast Asia. The source of concern is Vietnam, which has an army of 200,000 men in Kampuchea and more than 40,000 men in Laos, with large well-equipped units operating along the Thai border. It is this more immediate threat that will be examined by this paper.

While political and military struggle is no stranger to Southeast Asia, today's confrontation is complicated by the Sino-Soviet dispute, the use of proxy forces, the growing numbers of refugees, whose support is a political as well as a humanitarian problem, the intense conflict between the Asian communist nations and a direct face-off between a reasonably coherent yet comparatively weak ASEAN bloc and an aggressive Soviet-Vietnamese alliance. The potential for widespread conflict is thus significantly greater today than it has been for many years, and so too are the likely economic, political and military implications of such conflict for the West. As such, it is this array of security concerns that may well pose some of the most difficult challenges for the new Reagan Administration.

Before proceeding, however, it would be useful to examine the origins of this latest round of bloody confrontation in Southeast Asia. For centuries, the Vietnamese have coveted control over the whole of Indochina, and an Indochinese Federation under Vietnamese Communist leadership has been a major objective of Hanoi for fifty years. The genesis of the current leadership's aspirations goes back to the Vietnamese-led struggle against the French for independence in Indochina.

This objective was made clear in an early party document which stated that there was no place for a Lao or Kampuchean revolution on its own. The communists were able to exploit nationalist sentiments to gain popular support in the battle for independence against the French. This led to their victory at Dien Bien Phu and the Geneva Convention of 1954. The Geneva Convention provided for the independent and non-communist nations of South Vietnam, Laos and Cambodia and set the stage for the next phase of Vietnamese strategy: the overthrow of the non-communist governments and their replacement by communist regimes. This objective was achieved by the end of 1975.

On April 16, 1975, Vietnamese-supported communist forces occupied Kampuchea's capital, Phnom Penh, thus bringing an end to the U.S.-backed government of Lon Nol and establishing the Khmer Rouge government of Democratic Kampuchea (DK). In clear violation of the Paris Accords, Saigon was attacked and seized by North Vietnamese and Viet Cong forces two weeks later, on April 30th. The unification of North and South Vietnam was completed in August 1976 with the establishment of the Socialist Republic of Vietnam (SRV). De facto control over Laos was complete in December 1975, with the dissolution of the internationally recognized coalition government and the proclamation of the Lao People's Democratic Republic (LPDR). Hanoi's control over Laos was formalized with the signing of a 25-year Treaty of Friendship, Cooperation and Mutual Assistance on July 18, 1977.

Thus, shortly after the U.S. withdrawal from Southeast Asia in 1975, it appeared that Vietnam's long-sought objective of effective control over Indochina was well on its way to becoming a reality. However, Vietnam failed in its attempts to subvert the Khmer leadership and thereby extend the same control over Kampuchea that it had over Laos. The reasons for this are clear. The major factor was the unyielding nature of the Khmer Rouge leadership, with its extremely radical and nationalistic policies. Another factor was Vietnam's falling out with the People's Republic of China (PRC), followed by strong Kampuchean backing of Peking's foreign policy and increased Chinese aid to Phomn Penh.

Disputes between Kampuchea and Vietnam soon erupted, mainly over the issues of alleged unclear frontier delineation and the large number of Kampuchean refugees that were fleeing the Pol Pot regime. Tensions increased between the two former communist allies to the point where serious clashes erupted in early 1977. Sporadic fighting continued throughout the year and into 1978, with Kampuchea drawing support from the PRC and Vietnam becoming more closely associated with the Soviet Union, while at the same time becoming increasingly distant from China.

In July 1978, Vietnam became a member of COMECON, and in November of the same year signed a 25-year Soviet-Vietnam Treaty of Friendship. Armed with the support of the Soviet Union, Vietnam invaded Kampuchea under the guise of coming to the aid of the Kampuchean National United Front for National Salvation (KNUFNS), which was a Vietnamese-organized and controlled creation, in order to overthrow the legal albeit oppressive Khmer Government. A People's Republic of Kampuchea (PRK) was proclaimed, followed by the now all too familiar signing of a Treaty of Friendship, thus attempting to legitimize the continued Vietnamese military occupation of Kampuchea.

Two months later, after repeated border skirmishes between the PRC and Vietnam, China invaded Vietnam. Casualties for both sides were heavy and caused severe damage to Vietnam's economy. Nonetheless, despite the combination of this damage and the continuing resistance of Khmer Rouge forces, there is no indication that Vietnam is willing to consider withdrawal from Kampuchea or Laos. In fact, there is a serious question whether Vietnam will stop its conquests here or be tempted to extend its influence elsewhere in the region, either through armed invasion or support for local insurgencies.

Thailand is now the front line state facing the Soviet-Vietnamese military alliance in Southeast Asia and would be the next target of direct or indirect aggression. Of the five member states of ASEAN (Thailand, Malaysia, Singapore, Indonesia, and the Philippines), Thailand is the closest to Vietnam, and only Thailand shares a common border with Vietnamese-occupied and controlled Kampuchea and Laos. For the moment Thailand's relations with Laos are not hostile despite the more than 40,000 Vietnamese troops in that country. Nonetheless, there are currently 150,000 Laotian refugees on Thai territory. Increasing the potential for external aggression is the claim that Laos has long laid to northeast Thailand, and the cultural and racial affinity between the Lao and the inhabitants of that region.

The most immediate threat, however, comes from Kampuchea, where more than seventeen Vietnamese divisions are attempting to consolidate military and political control over that country. It is important to note that through most of the last several hundred years, Kampuchea has served as a buffer between the two dominant powers of the region—Vietnam and Thailand. The Thais therefore view with alarm the sudden appearance of a large and well-equipped Vietnamese army adjacent to Thailand along a long and often ill-defined border. Although Thailand has attempted to remain neutral in the volatile Kampuchean conflict, for strategic reasons it is opposed to the unification of Indochina under Vietnamese authority and has therefore continued with ASEAN and the United Nations to recognize the Democratic Kampuchean government as the lawful government of Kampuchea.

This situation is greatly complicated by the unstable conditions prevailing along the the Thai-Kampuchean border. Beginning in the summer of 1979, large numbers of Kampuchean refugees began entering Thailand, fleeing from the famine and warfare that had overwhelmed their country. For six months Thailand was virtually alone in coping with this influx. The eventual cooperation of a number of friendly governments and of the United Nations High Commissioner for Refugees (UNHCR), the International Committee of the Red Cross (ICRC), the United Nations Childrens Fund (UNICEF), the World Food Program (WFP), and a variety of private voluntary organizations led to a multilateralization of the support effort and now the basic human needs of Kampuchean refugees are being effectively met. With the humanitarian problem under control, however, an equally grave political problem remains.

As many as 200,000 Khmer are living in Thailand, primarily in camps administered by the UNHCR. These camps, the largest of which (Khao I Dang) hold 115,000, are located on or adjacent to the border. The border zone itself is under the authority of the Thai military, which maintains general se-

curity. Straddling the border, in an arid no-man's land, are a series of large squatter camps under the authority of the Khmer Serei, a loosely organized group of non-communist elements. While food and medical assistance is delivered to these camps, neither the Thai army nor the United Nations has any established presence there. Their 600,000 residents live under the authority and whim of the different camp leaders, who are notoriously corrupt and are given to fighting among themselves as much as against the communists. On a number of occasions, fighting has broken out between the Khmer Serei and the Thai army.

Also in the border area are separate camps occupied or dominated by the Khmer Rouge. At least 55,000 Khmer Rouge soldiers are known to be operating inside Kampuchea, many in areas contiguous to the Thai border. A number of violent clashes have occurred between Khmer Rouge and Khmer Serei units, with considerable destruction and loss of life. More dangerous, however, is the large-scale fighting now taking place between Khmer Rouge and Vietnamese units. This fighting could at any time spill across the border into Thailand.

The most dangerous threat to Thai security thus comes from the large Vietnamese army poised just across the frontier. It is debatable whether the Vietnamese are prepared at this time to undertake a full-scale invasion of Thailand. More likely are limited incursions such as punitive raids or a series of hot pursuit operations. This would bring Vietnamese forces into direct contact with the Thai army, which would be forced to protect and defend Thailand's territorial integrity. Depending on the length and nature of such incursions, these engagements could possibly lead to U.S. involvement under the Manila Pact commitments.

This is a threat which is likely to increase rather than recede. Far from being invincible, the Vietnamese army is in tenuous control of Kampuchea. The Khmer Rouge clearly retain the military balance of power in Kampuchea. Nighttime travel in the rural areas is dangerous and in many areas of the country Vietnamese troops are restricted to garrison duty. The Vietnamese, armed with Soviet and captured American equipment are finding much as the United States did in Vietnam, that technological superiority is not necessarily a viable answer to protracted guerrilla warfare. The Khmer Rouge, on the other hand, are believed to have stockpiles of Chinese-supplied food and equipment sufficient to last for many years. There is no reason to believe that they will give up their struggle.

A quick Vietnamese "mopping up" of Khmer Rouge opposition is therefore not feasible. Barring a political settlement, which for the moment is equally unlikely, warfare in Kampuchea will continue for the foreseeable future. This means that large numbers of Kampuchean refugees will be forced to remain in or near Thailand and that Khmer Rouge forces will continue to retreat to Thai territory for refuge and recuperation. As Vietnamese frustration inevitably mounts, the danger of punitive military action against Thailand will correspondingly increase. The Thai-Kampuchean border remains a volatile and extremely explosive area.

As previously mentioned, internal subversion has long been a threat to the non-communist nations of Southeast Asia. By far the most serious insurgent problem in the region exists in Thailand, where some 12,000 armed guerrillas are active. The activities of the Communist Party of Thailand (CPT) have since early 1979 been hampered by a loss of outside logistics and material support caused by the intra-communist fighting in neighboring Kampuchea. The CPT has been disrupted and its operations scaled back. A resumption of outside support in the future is not unlikely, however, considering the close proximity of two Vietnamese controlled communist regimes and the basic infrastructure of the CPT within Thailand, which remains intact. Rural and possibly urban insurgency thus remains a serious threat to Thailand's stability in the long-term.

The whole of Southeast Asia is threatened today not only by Vietnamese imperialism but also by the broader wave of Soviet expansionism. While Hanoi, undoubtedly buoyed by the defeat of the U.S., is acting out of a sense of manifest destiny in its drive to dominate Southeast Asia, the Soviet Union is utilizing Vietnam as a dependent client and surrogate in order to pursue its global strategic objectives within the region.

To this extent, the Soviet Union is providing Hanoi with as much as $6 million per day in military and economic assistance. Vietnam's own economy is so weak that the maintenance of its armies of occupation in Kampuchea and Laos would be impossible were it not for such Soviet support. It is this tremendous amount of material support provided by the Soviet Union, as well as its moral backing of Hanoi, that in great part is determining the current balance of power in the region. The humanitarian assistance provided by the West for Kampuchean relief has also aided the Vietnamese. From late 1979 through 1980, Western donor nations contributed over $450 million to this program, of which the U.S.'s direct contribution amounted to almost $130 million. Private Western donations from voluntary organizations amounted to more than $100 million more. Those organizations that derive their support from the U.S. are indirectly being subsidized by the U.S. taxpayers because of their tax free status. While a portion of this assistance went to support refugees in Thailand, much of it has been used to help rebuild a shattered Kampuchea. Vietnam and Laos receive Western aid as well, much of which comes from U.S. funds, including those channeled through the United Nations. While the vast outpouring of Western generosity has gone a long way towards saving much of Kampuchea from starvation, it has allowed Vietnam to continue to occupy that nation with little responsibility for the welfare of the Kampuchean people.

Furthermore, humanitarian aid has repeatedly been diverted by the Vietnamese to feed the Vietnamese Army. It is paradoxical that to the extent the U.S. and other nations provide humanitarian support to the Vietnamese and to the Khmer puppet Heng Samrin, that aid supports and thereby permits the Vietnamese to pursue their own order of priorities which unfortunately emphasize external military adventurism rather than improving the welfare of their people.

In order for Vietnam to consolidate its power, and for the Soviet Union to further project its power throughout the region and beyond, control over Thailand is mandatory and the likely next order of business. Geographic considerations alone do not reveal Thailand's full value of the Soviet Union and Vietnam. Thailand, one of the world's leading agricultural exporting nations, possesses a treasure of natural resources, many of which remain untapped, including potash, tin, tantalum (a strategic alloy used in the manufacture of aircraft), zinc, oil shale and offshore natural gas and oil.

Most, if not all of Asia's leaders, believe that if Thailand falls, it would be only a matter of time before Malaysia and Singapore met a similar fate, either through direct Vietnamese aggression or by increased support from Hanoi for internal communist subversion. Even if the non-communist governments were able to remain in power, they would be susceptable to "Finlandization." Communist control over peninsular Southeast Asia, be it *de jure* or *de facto* would have serious destabilizing effects upon Indonesia and the Philippines, both of which have a long history of communist insurgencies. Control over peninsular Southeast Asia would also permit the Soviet Union to command the strategic Strait of Malacca and be in a better position to interdict the vital neighboring Sunda, Lombak, and Makassar straits as well as other sea lanes vital to Australia and New Zealand. Finally, Soviet-Vietnamese domination over Southeast Asia would contribute to the Soviet objectives of containing the PRC and replacing the U.S. as the predominant influence in the region.

In pursuit of its broader strategic objectives, the Soviet Union has wasted little time in moving into the region militarily. The Soviet naval presence in Southeast Asia began in early 1979. Soviet ships did not play a direct role in the conflict between the PRC and Vietnam, apart from shuttling supplies and personnel along the coast of Vietnam to Haiphong. The primary mission at the time was intelligence collection and monitoring. In addition, the ships probably were intended to deter any possible Chinese naval action against Vietnam and to provide a visible sign of Soviet commitment. Despite the subsequent Chinese withdrawal from Vietnamese territory in early March 1979, the Soviet naval presence in Vietnam and the South China Sea has assumed an increasing air of permanence.

Since early 1979, there have been an average of 16–18 surface units of the Soviet navy on station in Vienamese waters and the South China Sea, with the force built around 4–5 major surface combatants and having up to three Intelligence Collectors. Submarines probably number around 5–6 units at any one time and include both conventional and nuclear powered vessels. The number of ships, especially combatants, can increase sharply for short periods of time due to units passing through the area on their journey to and from the Indian Ocean. In late October 1980, a 4,500 ton floating drydock was reported to have been brought to Cam Rahn Bay. This, together with repair ships already assigned to the area, can give a maintenance capability similar to that existing in support of the Soviet Indian Ocean Squadron, thus indicating a possible Soviet intention to accord the same degree of permanence to the South China Sea Squadron.

Apart from ships, Soviet naval TU–95 (Bear D) maritime reconnaissance aircraft have been deployed for regular operations out of Cam Rahn Bay. At present it is likely that the principal mission of Soviet naval forces in Southeast Asia is to act as an instrument of state policy in peacetime, as well as a deterrent against the PRC and to give credibility to the Soviet-Vietnamese Treaty of Friendship.

The potential of the Soviet military presence, in the region was brought home with great clarity in October 1980 when a Soviet naval task force suddenly left Cam Rahn Bay and entered the Gulf of Thailand. It made a two-day sweep in the centre of the Gulf, moving relatively close to Thai territorial waters as well as offshore oil/gas platforms. This force comprised the Guided Missile Aircraft Carrier MINSK, the Kara-class Guided Missile Cruiser PETROPAVLOVSK, the Krivak-class Frigate LETUCHKY and the Intelligence collector DEFLEKTOR. As a by-product of this political show of force, the Russians were able to utilize detection equipment on the DEFLEKTOR to gather comprehensive data on Thai radar and warning systems covering the Gulf area. This information has doubtless been made available to the Vietnamese. In the meantime, the Soviet Union is making a serious effort to develop the Vietnamese Navy into an effective proxy force. Since November 1978, the U.S.S.R. has already delivered at least 22 naval craft to the SRV, including one W-class submarine,

two Petya-class frigates, two Osa-class missile boats and 12 other fast attack/patrol craft. The combination of increased Soviet naval capability in the region and Soviet upgrading of Vietnam's naval capability is ominous.

The implications for the United States are clear. These are:

1. Control over an agricultural and resource-rich region.—Thailand is a significant agricultural producing nation and contains many valuable natural resources. So too, do the other member nations of ASEAN. For example, Indonesia produces roughly 1.6 MMb/d of oil, of which approximately 1.3 MMb/d is exported, primarily to Japan and the U.S., and has significant reserves of natural gas as well. Indonesia also has deposits of tin, and is rich in wood resources and rubber. Malaysia is rich in rubber, wood and tin, while having some deposits of petroleum. The Philippines has deposits of copper and other minerals as well as timber and other agricultural products. The coming years have been predicted by many as an era of "resource wars." If such a prediction comes to pass, communist control over this region of wealth would be disastrous.

2. Control of Singapore in particular.—Singapore is the world's fourth largest port and the second largest non-U.S. refining center after Rotterdam, producing 918,000 b/d. As such, its natural deep water harbor and its strategic location astride the Strait of Malacca make it particularly valuable. Singapore also ranks fourth as a noncommunist center for petroleum product exports and is the seat of the Asian petroleum spot market. Finally, Singapore is a major bunkering facility, serving the Indian and Pacific Oceans.

3. Control over strategic straits and sea lanes.—Communist control over peninsular Southeast Asia would make it far easier for the Soviet Union to control the adjacent strategic waterways, hence cutting major sea lanes connecting Europe and the Middle East to Japan and industrial northeast Asia, as well as those connecting the Asian subcontinent and the Pacific basin to the Western Hemisphere. This of course would have a severe effect, especially on Japan, South Korea and Taiwan, whose economies are almost totally dependent upon open sea lanes for exports of manufactured goods and imports of petroleum and other raw materials. To illustrate the importance of the strategic straits within the region, it is estimated (based on extrapolations from previous trends) that 6.6 MMb/d of oil pass through the Straits of Malacca, Sunda and Lombak—of which 4 MMb/d goes to Japan, 2.1 MMb/d to other Far East countries and about 500,000 b/d to the U.S. west coast and South America.

4. Disruption of communications and U.S. naval activity.—Our trading partners and allies such as Japan, South Korea, New Zealand, and Australia would be severely challeged by communist control over these strategic waterways. Finally, U.S. naval activity out of Subic Bay and the adjacent Pacific area would be seriously challenged.

The Reagan Administration is faced with serious strategic challenges within the region. Both friend and potential foe will be watching for signs of U.S. resolve at this critical juncture. By way of conclusion, in support of non-communist, and therefore American, vital interests the Reagan Administration should consider the following measures:

1. Strengthen Thailand through significantly increased military and economic assistance.

2. Increase economic and military assistance as necessary to the other ASEAN nations to further their stability while they continue economic and social development.

3. Rapidly build up the U.S. Navy and increase its presence in the region.

4. Strengthen regional bases and acquire additional facilities as needed. Negotiations with Australia should continue for such contingencies.

5. Persuade Japan to increase its defense budget so as to contribute to regional security and hence protect its vital interests.

6. Consult and collaborate with the PRC on matters of regional security.

7. Act to ensure that international organizations and U.S. relief agencies discontinue economic assistance to Vietnam while that country continues to occupy Kampuchea and Laos.

8. Actively support the ASEAN Foreign Ministers' call to the United Nations Secretary General to convene an International Conference on Kampuchea on the basis of United General Assembly Resolution 35/6.

9. While efforts to achieve unity in the leadership of Khmer nationalist elements are matters for the Khmer people, the United States should actively support the current efforts to develop a coalition of non-communist Khmer leaders and the Khmer Rouge with the goal that this United Front could be established before the next United Nations General Assembly, and that this in turn would lead to an acceptable alternative to the Vietnamese controlled puppet regime. An acceptable alternative i.e., coalition government could recognize Vietnam's legitimate security concerns in the hope of expediting Hanoi's withdrawal.

10. Explore the feasibility of U.S. participation in a Southeast Asia-Pacific defense arrangement.●

MOBILE HOMES: AN ALTERNATIVE FOR AFFORDABLE HOUSING

○ Mr. CHILES. Mr. President, in today's world of soaring inflation and unprecedented interest rates, affordable and decent housing for Americans is becoming a crucial problem. One of the alternatives which has become more and more popular is the mobile home. For example, in my home State of Florida, about one out of nine individuals lives in a mobile home.

In Florida, we have a gentleman who has developed some of the more innovative methods for improving the design of mobile homes and for making such homes more affordable to potential buyers. Sydney Adler is one of the leaders in housing for retirees in Florida, as well as in the entire Nation. As president of Design Communities in Brandenton, Fla., Mr. Adler has been successful in convincing residents, savings and loans associations, developers, and local officials that mobile homes are a viable and practical asset and should be assigned mortgage assistance like other more conventional housing. Florida has come a long way in this regard and now provides for long-term mortgages for the mobile home as well as for the land on which the unit sits.

In an article he authorized in Manufactured Housing Dealer, Mr. Adler gives a history of the growing status of mobile homes in the housing and financing industries. The article also gives Mr. Adler's views as a developer about how to make the mobile home a more attractive alternative for the resident as well as for the developer.

Mr. President, I would like to share Mr. Adler's article with my colleagues. I ask that it be printed at this point in the RECORD.

The article follows:

THE PIONEER OF SUBDIVISIONS ADDRESSES—DEVELOPING THE MH SUBDIVISION

(By Syd Adler)

When I started my first mobile home subdivision, Trailer Estates, with 1,450 spaces, in Bradenton, Florida in 1954, the mobile home averaged 8 x 32 feet. Lots in our subdivision were 40 x 60 and sold for $898. Average investment in the home and lot set-up including carports, concrete, etc., was eight to nine thousand dollars.

Today, 25 years later, these same homes and lots are selling for an average of $25,000. Trailer Estates is one of the best answers to the question, "How long will a mobile home last and will it hold its value?"

Here is a development with 25 year old mobile homes that are selling for 300 percent more than the people originally paid for them.

When I started Trailer Estates, we made market studies of the Sarasota/Bradenton area and found that the buyers of lots and mobile homes were mainly from areas in the North and Midwest who were looking for a way to move from a bigger home to a smaller one. They wanted the pride of land ownership and a small piece of property to take care of.

As our industry continued to grow, we went to the 12wide, the 20wide, the 24wide, the 28wide and the 36wide. The industry realized we were no longer in the interim housing business.

Our industry has been a single level industry; the manufacturer being concerned with getting the unit to the dealer; the dealer concerned with selling it to a consumer, and the consumer concerned with finding a place for the mobile home.

This condition is changing as we find dealers interested in parks; manufacturers interested in parks, and lenders recognizing the importance of the environment in which a mobile home is placed in determining what it will lend.

As the homes have continued to grow in size and cost, as rents have continued to rise in rental parks, the mobile home subdivision, condominium and PUD concept are and will become more and more an important factor in the industry's growth. For this growth to continue, we must look at mobile homes as permanent housing and consider the environment in which the mobile home will be placed.

Street dealers must set their lots up as model home centers and developers must recognize that the living unit and home are interdependent parts and, that to successfully sell our new homes, we must integrate the total sales package.

Lenders must look at our industry as a form of permanent housing meeting the needs of the under $40,000 home market. It's this large segment of middle class America that the mobile home industry can supply with housing.

My current development, Lake Mountain Estates, in Boulder City, Nevada, is one of the most advanced housing concepts in the mobile home industry. Not only from its location, its development, but in its marketing and its financing.

It is a terraced hillside development with over 90 percent of the lots having a view of Lake Mead. It is served by city utilities and services. Developed as a PUD, in which the streets, utility lines and common areas are owned by the home owners association, the lots are deeded in fee title to the property owner.

In all the years that I have been developing land, I have always found it to my advantage to work with local area dealers. Consequently, Coulter Mobile Home Sales in Las Vegas is responsible for the setting-up, landscaping, and the joint marketing of the land and home package.

No one can purchase a lot at Lake Mountain Estates without purchasing the total living package of mobile home, land, landscaping and appurtenances to the mobile home.

The price range of the total package runs from $45,000 to $80,000 and the development is surrounded by conventional housing selling from $125,000 up. As in Florida's Trailer Estates, surrounded by an FHA housing subdivision, these developments are proving that a good mobile home subdivision is totally compatible with conventionally constructed housing.

The average cost of the first section of Lake Mountain Estates is just under $7,000 a lot for the physical development of the property, excluding land. The development has approximately four lots to the acre, a low density, but one required by the terrain of the land. Minimum lot size is 6,000 square feet. The average lot sales prices is $16,600 or about twice the cost of land and development.

This is a gross profit figure, from which you would have to deduct construction loans, interest, administrative costs, advertising and promotion.

When the consumer buys a unit of land and mobile home at Lake Mountain Estates, he purchases the entire package from Lake Mountain Estates, Inc., a Nevada corporation.

At time of purchase, a contract is signed and a deposit is placed in escrow with a local title insurance company. The insurance company handles the transaction exactly as they would the sale of any conventional house.

At closing, all money goes into an escrow account, that portion applicable to the mobile home is paid to the mobile home dealer, and that portion applicable to the land is paid to Lake Mountain Estates, but as far as the consumer is concerned, he is not buying from two separate sellers.

With this concept, we were able to get, for the first time, a HUD exemption on the sale of land. HUD accepted the fact that a mobile home, even though personal property in Nevada, qualified the property as an improved residential lot with an accepted structure.

A finance package was developed in which a single note is executed by the purchaser, secured by two security instruments, a deed of trust or mortgage on the real property, and a chattel mortgage on the mobile home. The note bears 12 percent simple interest rate, payable over 25 years with 20 percent down.

This represents a major break-through in having a lender provide permanent house financing in a state which requires the mobile home to remain personal property.

The title company handles the entire transaction including the recording of the mortgage or deed of trust for the lender, obtaining the releases from the construction loan, recording the deed to the purchaser, preparing the closing statement and disbursing the funds to the mobile home dealer and the land developer.

From an administration standpoint, we receive a closing package of the closing statement, a disbursement of money into our operating account, payment to the construction loan land lender and the disbursement of any other costs, thereby making the handling of money and documents totally controlled simply and efficiently.

It is our feeling that the need for developments such as Lake Mountain Estates in the under $40,000 home market is unlimited throughout the country. These developments need not be large and may or may not have leisure areas, depending on the market being served.

The developer must convince local governmental agencies that this is an alternative form of permanent housing and that zoning should be permitted. We can exhibit, through our past developments, that this type of development is an asset to any community and serves a need in these inflationary times.

We have no qualms of restricting our developments to lot sizes of 6,000 square feet or about five to an acre, or meeting all municipal road and development requirements.

If the community is reluctant to maintain the roads, we will establish a PUD or condominium form of development, where the city or the county is relieved of the responsibility of maintenance. The development should be restricted to selling totally set-up units and not just vacant land as they should be permanent housing developments.

An important ingredient in making these developments successful is strong rules and regulations, which can be established either as deed restrictions or included in the PUD or condominium documents.

The developer must control the set-up; the units that go into the development; the landscaping and total environment so that the quality of the development remains constant from beginning to end. In other words, the total approach to the development must be that of a permanent housing community.

The amenities provided on the individual lots or in the leisure areas must be compatible to competition from conventional housing.

It is important that the developer maintain control of the development until it is sold out so that if PUD or condominium form of ownership is used, the developer should remain in control of the homeowners association.

The same rules and regulations that make a mobile home park successful must be used in land ownership developments. We are dealing with a form of high density housing, which requires greater policing and control than homes placed on large lots.

Excited as I was 25 years ago with providing home oriented retired persons with smaller houses on smaller lots, I am even more excited now in the growth of our industry in providing smaller or larger housing on smaller or larger lots to the vast middle class in this country, who will not be financially able to handle the cost of conventional housing.

The future of the industry, the opportunities for both mobile home dealers and developers is greater than it's ever been but it's going to take a concerted effort on all industry levels, manufacturer dealer and land developer, to make this become a reality.

However, the true success of this reality will come through the competitive consumer financing package for the total housing unit.●

STATUE OF KOMITAS, ARMENIAN HERO

● Mr. LEVIN. Mr. President, this past weekend I had the honor of helping to dedicate a statue memorializing the 1½ million Armenians who perished in this century's first genocide. The statue, located in a prime area of Detroit's riverfront, pays tribute to an Armenian folk hero, Komitas, and through him to Armenians throughout the world.

While the Armenian community took a leading role in raising the funds for the memorial, and while the city of Detroit donated the land, all people and all communities can now make at least a spiritual contribution to the symbolic promise of the statue: a promise that says we will never forget this tragedy and we will never permit another like it to take place.

Mr. President, I want to take this opportunity to publicly congratulate Moe Assarian, who as chairperson of this effort demonstrated the skill, patience, tenacity, and generosity that all of us who know him have come to expect; and I also want to express my personal appreciation to Alex Manoogian, the recognized leader of the world Armenian community, for all his efforts not only on this project, but on so many other issues of concern for his community and our country.

Mr. President, I ask unanimous consent to place in the RECORD at this point the remarks I delivered at the dedication of the memorial to the Armenian martyrs.

REMARKS OF SENATOR LEVIN

The monument we dedicate today is a physical symbol of the strength of the Armenian people and the endurance of your love and our love for them. In the selection of Komitas, we have a symbol which is both profoundly powerful and richly ironic.

The power comes from the passion of the man and the purpose of his life. His contribution to the intellectual life and musical enjoyment of all people was immense. His songs reflected the pure expression of his people and his scholarship preserved and strengthened a heritage by purifying the music of his church and making it consistent with its historic traditions. He contributed to our pleasure. He enriched our appreciation of the world.

But his contributions were prematurely stilled. The same passion that infused his work made him particularly sensitive to the terror and tragedy that he saw. The sight of death, the experience of deportation, the loss of friends, family and, finally, an entire people was too much for him. And while he lived for many years thereafter, he never again could sustain, in a world of chaos, the sense of order taht his work demanded.

There is, however, an irony in the symbolism of Komitas' life and the memorial to it that we dedicate today. His work, and in essence his life was ended by the genocide he was forced to witness. But it is precisely that work that life and even that genocide that we today vow will never be allowed to die, but rather will survive in our memories and the very architect of our city.

This monument is our monument of memory—a monument which cannot be extinguished. This is our monument of faith like a candle whose light burns with the intense fire in the eyes of Armenian martyr. This is our monument of commitment whose very stone proclaims that we who survive will instill meaning in the loss of our departed by rededicating ourselves to the needs of Armenians throughout the world. And finally, this monument helps us provide an answer to Hitler's penultimate mocking insult of the Armenian genocide.

In the 1930's when Hitler began planning and implementing his holocaust, he was asked how history would judge him and he replied that he didn't worry about that because, after all, he said, who remembers "the extermination of the Armenians."

Today we answer that question for Detroit and Michigan. We remember the 1½ million Armenians who perished in this century's first genocide. We remember. We remember the Armenians and through that memory, they and we will triumph.●

SIMILAR IMMIGRATION PROPOSALS

● Mr. HUDDLESTON. Mr. President, during the last several months, a Cabinet-level task force has been reviewing

our immigration and refugee problems in order to make policy recommendations to President Reagan. Copies of the option paper prepared for the President have been obtained by various newspapers and articles describing the preferred options have appeared in recent weeks. If we assume that these articles are correct in their information on the option paper, it is interesting to note the similarity between the Cabinet's recommendations and the Immigration and National Security Act of 1981, S. 776, which I introduced 3 months ago on March 24, 1981.

According to the New York Times on May 30, 1981, the report recommends enacting "legislation prohibiting employers of four or more employees from knowingly and willfully hiring ilegal aliens." S. 776 would also make it illegal for employers to knowingly hire illegal aliens. Most experts agree that the only effective way of controlling the flow of millions of illegal aliens is to take away the one thing they come to this country for—jobs.

The method recommended for verifying employment eligibility would be to require job applicants "to show identification, including a new, counterfeit-resistant social security card * * *." My bill would establish a verification system using a new improved social security card. However, my bill provides for a simplified call-in procedure which is similar to that now utilized by thousands of businesses for verifying credit card purchases. A verification system such as this is necessary in order to give employers a simple and certain means of verification. The social security number is the most logical system to use since it is already an established national system.

The Times article goes on to state that:

> In the final draft, the panel also recommends a "moderate increase" in the enforcement budget of the Immigration and Naturalization Service.

S. 776 beyond a "modest" increase and specifies an increase in the Border Patrol to 6,000. Although the degree of the increase may differ, there is agreement that there is a need to beef up the law enforcement personnel of INS.

The report next recommends that there be a general amnesty for illegal aliens who were present in the country before January 1980. S. 776 contains an amnesty provision, but one which is much more restrictive than the general one recommended in the report. Amnesty should not be a reward for those illegal aliens who knowingly violated our immigration laws to enter this country. Nor should it encourage illegal aliens with minimum ties to this country to remain. The provision in my bill is based upon the premise that only those who meet the criteria for immigration under our present immigration laws be qualified for amnesty.

Another article in the Washington Post on June 12, 1981, reported that:

> The presidential task force has decided to recommend that the Reagan administration take drastic action to prevent any new flood of Cuban and Haitian refugees into Florida * * *

A section of S. 776 would require the administration to develop a plan for dealing with mass asylum situations such as we have experienced in Florida. If such a plan had been in existence before the recent Cuban influx, I do not believe that we would be faced with the problem of what to do with the 125,000 Cubans who flooded our shores. Nor should we be experiencing the continuing arrival of large numbers of Haitians.

If these newspaper reports are accurate, it appears that the Reagan administration is ready to recommend major and necessary revisions on our immigration laws which closely resemble those in S. 776. If these are the recommendations which the administration makes to Congress, I believe that they will find strong bipartisan support and a willingness to move forward with them.

The only significant difference between the recommendations that these newspapers describe is the number of legal immigrants to be admitted each year and the process of deciding which are admitted. Under our present immigration system, each country is limited to a quota of 20,000 immigrants to the United States each year. This quota was established in order to treat ethnic and national groups fairly and not to give preference to any one group.

The recommendation outlined in the New York Times would retreat from this equity concept and give special treatment to one country—Mexico. And this preference would be accomplished with a little sleight-of-hand. The administration's proposal would raise the per country quota for our two closest neighbors, Mexico and Canada, to 40,000 per year each. However, since immigrants from Canada normally number around 15,000 a year, Mexico would be allowed to "borrow" the extra numbers from Canada. This means that Mexico would end up with a yearly quota of about 65,000 while all other countries would still be allowed only 20,000. Under this formula, the Hispanic portion of the population would rise from its present level of 6.5 percent to 10.4 percent in 2030.

The important thing that the task force report does not point out is that if this policy had been in effect last year, legal immigration to the United States would have been 853,000 rather than 808,000. Nor does it point out that it would be possible to have an immigration flow of 800,000 or more under this system. This normal flow would be in addition to the "leakage" of illegal aliens which Father Hesburgh has stated will occur regardless of the type of enforcement system we have in place.

Adding 853,000 immigrants to our population each year is the same as creating a city the size of Phoenix or San Diego every year in this country. This, of course, is in addition to our normal growth rate without immigration and does not include the additional population generated by the children of immigrants. If we continue our present course, annual immigration in excess of 800,000 would add at least 35 million people to our population in the next 20 years. This would be the same as adding approximately five cities the size of New York over that same period of time.

I believe that a much more rational approach is to set a total immigration ceiling which is generous but which does not impose these excessive population burdens on the citizens of this country. I chose the number 350,000 because it is reasonable, it far exceeds the number of immigrants admitted by any other country in the world and probably exceeds total world immigration for permanent settlement. Furthermore, within the next 25 years, it will mean that we would have 20 million less in our population than if the immigration number were 800,000. This difference in population increases to about 50 million less by the year 2057.

The drain that this increased population will have on scarce resources, energy, housing, jobs, food, and governmental services will be substantial. With unemployment standing close to 8 million today, I believe that we need to seriously consider the open ended immigration system the administration is ready to recommend.

It is apparent that the administration is also ready to recommend a trial guest worker program. The proposal mentions 50,000 per year. S. 776 is neutral on the issue of guest workers. Those who support my bill could either oppose or support a guest worker proposal.

Mr. President, I believe that on the whole, the administration appears to be off to a good start in finding workable solutions to our serious and escalating immigration problems. However, we cannot afford to waste any more time studying this problem. It has been studied and delayed too long. It is imperative that we get on with passing the necessary legislation which will restore control to our immigration system.●

THE STATE OF INTELLIGENCE

● Mr. GOLDWATER. Mr. President, on April 28, the Director of the Central Intelligence Agency, Mr. William Casey, spoke before the annual meeting of the U.S. Chamber of Commerce. He made an exceedingly good speech, one that I think my colleagues would enjoy reading, and I ask that it be printed at this point in my remarks.

The speech follows:

INTELLIGENCE REPORT

(By Morris I. Leibman)

THE STATE OF INTELLIGENCE

Some thirty-five years ago I was there at the creation of modern American intelligence, sending observers behind German lines in World War II and planning the organization of the first American peacetime intelligence service. Now, about a third of a century later, I've spent three months looking over the American intelligence community that has evolved from that embryo and talking about how it measures up to today's needs and how it might be improved.

Over the years Dick Helms and my other predecessors have changed intelligence and made it far more than a simple spy service. They developed a great center of scholarship and research, with as many doctors and masters of every kind of art and science as any university campus.

They have produced a triumph of technology, stretching from the depths of the oceans to the limits of outer space, using photography, electronics, acoustics and other technological marvels to learn things totally hidden on the other side of the world. In the

SALT debate, for example, Americans openly discussed the details of the Soviet missiles which are held most secret in the Soviet Union, but are revealed by our intelligence systems.

All this has produced a staggering array of information, a veritable Niagara of facts. But facts can confuse. The wrong picture is not worth a thousand words. No photo, no electronic impulse can substitute for direct, on-the-scene knowledge of the key actors in a given country or region. No matter how spectacular a photo may be, it cannot reveal enough about plans, intentions, internal political dynamics, economics, etc. There are simply too many cases where photos are ambiguous or useless, and electronic intelligence may drown the analyst in partial or conflicting information. Technical collection is of little help in the most important and difficult problem of all—political intentions. This is where clandestine human intelligence can make a difference.

We started a clandestine intelligence service in OSS. Over the years it has proven itself. It has served the nation well. It has also received slings and arrows which it did not deserve. I am personally dedicated to supporting it and strengthening it.

Of late, a good deal of the criticism of our intelligence has been leveled at the analytical function. The necessity of analysis is obvious. Collection is facts. Just as houses are made of stones, so is collection made of facts. But a pile of stones is not a house—and a collection of facts is not likely to be intelligence.

Much of the criticism is based on unrealistic expectations of what an intelligence service can do. We produce good current intelligence and good intelligence on military and economic capabilities. But if one reduces all intelligence analysis to the predictive function, and then looks for a 1000 batting average, no intelligence organization will measure up. We are interested in foreknowledge, but we do not have a pipeline to God. Nor do we have a crystal ball. In short, the CIA does not have powers of prophecy. It has no crystal ball that can peer into the future with 20-20 sight. We are dealing with "probable" developments.

Also, it is one thing to deal with something that is knowable but unknown by us. It is another thing to deal with something that is unknown and unknowable. Often intelligence is expected to predict what course a country will take when the leaders of that country themselves don't know what they will do next.

If we can't expect infallible prophecy from the nation's investment in intelligence, what can we expect? We can expect foresight. We can expect a careful definition of possibilities, and ascertainment of what can be known by testing, observation, professional analysis which probes and weighs probabilities, assesses their implications and assists the policymakers in devising ways to prepare for and cope with the full range of probabilities. The President does not need a single best view, a guru, or a prophet; the nation needs the best analysis of the full range of views and data it can get.

The process of analysis and arriving at estimates needs to be made as open and competitive as possible. We need to resist the bureaucratic urge for consensus.

We don't need analysts spending their time finding a middle ground or weasel words to conceal disagreement. Their time needs to go into evaluating information, searching and evaluating meaning, expressing both their conclusions and their disagreements clearly. The search to unify the intelligence community around a single homogenized estimate serves policy makers badly by burying valid and meaningful differences, forcing the intelligence product to the lowest or blandest common denominator. This search for consensus cultivates the myth of infallibility. It implicitly promises a reliability that cannot be delivered. It too frequently deprives the intelligence product of relevance and the policy maker of the range of possibilities for which prudence requires that he prepare.

The time has come to recognize that policy makers can easily sort through a wide range of opinions but cannot consider views and opinions they do not receive. The time has come to recognize that CIA, DIA, NSA, and every other element of the intelligence community should not only be allowed to compete and surface differences, but be encouraged to do so.

And the time has come to recognize that the intelligence community has no monopoly on truth, on insight, on initiative in foreseeing what will be relevant to policy. For that reason, we are in the process of reconstituting a President's Foreign Intelligence Advisory Board made up of strong and experienced individuals having a wide range of relevant backgrounds.

In addition to that, we ask scientists and a wide variety of experts, scholars and practitioners to serve on advisory panels to address special problems and we contract with think tanks and a wide variey of business corporations to do specialized research for us. So to get the intelligence we need, we must call up all the intelligence information and scholarly resources of the nation.

We will need to do even more of this in the future to cope with the intelligence requirements of our increasingly complex and dangerous world as it generates new threats. In the OSS, we were doing pretty well if we knew where the enemy was and how he was redeploying his forces. For the first twenty years of our peacetime intelligence most of th effort went to understanding the production and capabilities of weapons. It is only in the last decade that it has dawned upon us that we have been threatened and damaged more by coups and subversion and economic aggression than by military force. We will still devote a large slice of our effort to military estimates and rely very heavily on them in formulating our defense budget and force structures. But they will have to be supplemented by increased efforts to assess economic vulnerabilities and technological breakthroughs and to identify social and political instabilities and how they can or are being targeted by economic and political means, by subversion, by terrorism, by propaganda, and by other means of destabilization. To meet these challenges fully we will have to call upon the private sector of additional assistance.

So much for the kind of intelligence capabilities we have and need to develop. Let me now give you some of the specifics of the problems we face.

Our first priority is still the Soviet Union. It has been the number one adversary for 35 years. It is the only country in the world with major weapons systems directly targeted at the United States which could destroy the U.S. in half an hour. For that reason alone, it remains the number one target.

Today we live in a world of increasing nationalism, increasing terrorism and vanishing resources. These three realities illustrate the new kinds of problems of concern to intelligence.

First, the tide of nationalism is running strong in the less-developed countries of the free world. There is hostility and negativism toward free enterprise. There are potential dangers there for American, European, and even Japanese multinational corporations. Local politicians cannot always manage this distrust of foreigners. Free enterprise from abroad suddenly appears as foreign domination or neo-colonialism. It is difficult to predict when and where this hostility will break out.

Nationalism is not new. Its manifestations range from restrictive policies to outright expropriation. What is new today is that it is accompanied by global economic distress. This is caused by the explosive growth in energy costs—in both the industrialized countries and the less-developed ones.

The enormous cost of fueling economic activity is forcing the less-developed countries into austerity and no-growth policies. They are running out of credit. They cannot meet the very high interest rates required. All this intensifies instability.

One form of instability that I'm afraid we'll see more of around the world is terrorism—hijacking, hostage-taking, kidnapping, assassination, bombing, armed attack, sniping, and coercive threats—mindless acts of violence designed to create a political effect—regardless of the innocence of the victims.

Last year also marked the first time that a large number of deadly attacks were carried out by individual nations. This is a dangerous development. It is one thing for a demented individual or a private group of fanatics to resort to terror. For a nation to resort to it with all the resources it can command is another—and much more serious—matter.

It is a grim story. What do we do about it? At CIA, international terrorism has been high on the list of intelligence priorities for some time. Defensive tactics are taught to key personnel serving abroad. Many business corporations have been searching for defensive measures to protect their people. What must be done is to adopt a firm policy and develop a strategy for dealing with terrorism before a crisis situation arises—when the terrorists hold all the cards. We all must maintain an awareness of the constant threat of terrorism and learn how to react quickly and decisively. Terrorists must learn that there is little or no payoff where Americans and American interests are involved.

Another factor threatening international stability today is our long-term and increasing dependence on fewer critical resources worldwide. Until recently, availability of natural resources has been taken for granted.

Roughly a decade ago, we received a jolt. Shifting geopolitical patterns, coupled with rising Third World nationalism, sharply tempered our expectations. The oil crisis of 1973 was the first time we could actually see and feel the crushing impact of international "non-military warfare" strike us squarely where it hurts the most—in our pocketbooks and in our life-styles.

That crisis still haunts us with a new reality. Others, well away from our borders, can now place their hands on our economic throttles and on our economic throats. International tensions and threats are not limited to military ones. There are other power projections far more subtle because they are largely unseen and thus not readily perceived. Senator Goldwater has warned of the dangers of being caught short without an adequate game plan to deal with it. We would lose access to the minerals chromite, cobalt, tantalum and others, as Senator Goldwater told us.

It would mean massive shocks to our economic system and current life-styles. Without these minerals, we cannot make TV sets or computers or heart-lung machines or produce high-grade stainless steel for a thousand uses. The implications for our defense capabilities are just as grim. No supersonic jets and no sophisticated submarines.

In the future, we can expect to be in competition with the Soviet Union for both oil and non-fuel minerals. They have both in Siberia, but the technologies developments needed and the cost will make it prohibitive for some time to come. In response, the Soviet Union is moving toward a policy of selective and strategic dependency on foreign resources. This is an alternative to the exceptionally high capital costs of their extending their own self-sufficiency.

Add to this a growing trend in the Third World in which ownership and control of natural resources are changing from commercial to state dominance. This historic change provides the political environment for Soviet access to Third World natural resources. Soviet support for state ownership and control in the Third World creates a potential for non-market state trading corporations through which the flow of minerals can be organized as barter. This expansion of non-commercial mineral resource control, combined with Soviet power-projection capabilities is raising acute concern about Soviet access strategy in the case of Persian Gulf oil and South African minerals. And I can spell out to you how that is being developed.

Let me now conclude with a quick word about accountability. It is often said that intelligence is not accountable. Nothing could be further from the truth. It has always had to answer fully to the President, in varying degrees to the Congress, the National Security Council, the Office of Management and Budget, and the Intelligence Oversight Board. In the past few years, we have witnessed an expanded intelligence oversight role for the Attorney General and the Courts.

Today our relations with the two permanent Congressional intelligence committees are excellent. We are responsive to their concerns, as we should be. In turn, their attitude is one of "what can we do to help you accomplish your mission?" Our response has been to ask them to help us protect necessary secrecy, with such legislation as may be appropriate.

The first bill along these lines was passed by Congress last October. It deals with intelligence oversight and how it is to be exercised. For us, it means that we have to report important activities, at most, to two instead of eight committees. Congress realized that it is very difficult to keep something secret when up to 200 people have to be cut in on it. We are down to about 20 now.

The second legislative bill that would help us is not yet passed—it is designed to protect the secret identities of intelligence officers and agents under cover. It is really outrageous that dedicated people engaged or assisting in U.S. foreign intelligence activities can be endangered, and are endangered, by a few individuals whose avowed purpose is to destroy the effectiveness of intelligence activities and programs duly authorized by Congress. That is what a few misguided individuals are doing. It must be stopped.

Third, we need an exemption from the Freedom of Information Act. There is too much information released that should remain secret. This law is a poor law in that it allows anyone to request information on the activities of our intelligence agencies. It also costs intelligence agencies millions of dollars and ties up our personnel who could or should be doing work on intelligence.

Recently, on one request, we spent $300,000 to meet an FOIA request from Mr. Philip Agee, a renegade from the CIA who goes all around the world publicly exposing those he thinks are CIA people. This causes continuous concern to other intelligence services who cooperate with us, and it causes our people to fear exposure all around the world.

If the KGB wrote us—and we assume that they do—we would have to respond in ten days. Do we really want to turn the CIA into a purveyor of information for the world rather than a supplier of intelligence to our policymakers?

Secrecy is essential to any intelligence organization. Ironically, secrecy is accepted without protest in many areas of our society. Physicians, lawyers, clergymen, grand juries, journalists, income tax returns, crop futures—all have confidential aspects protected by law. Why should national security information be entitled to any less protection?●

HOW MUCH SUBSIDY IS FAIR?

● Mr. EAGLETON. Mr. President, the Senate Water Resources Subcommittee has begun a series of hearings on waterway user charges. It is, therefore, an appropriate time to share with my colleagues the remarks made by Mr. Thomas J. Barta, president of The Valley Line Co., St. Louis, Mo., at the Transportation Conference held in Jefferson City, Mo., on April 16, 1981.

Mr. Barta points out that there is no disagreement that the industry should share a portion of the costs associated with maintaining the navigation facilities. The question is rather: How much of a share is equitable when competitive modes continue to receive heavy Government subsidies? After all, Congress made a significant departure from established policy when it levied the barge fuel tax in 1978. The 4 cents per gallon tax began last fall and will rise to 10 cents per gallon in 1985.

Furthermore, the 1978 law also mandated a study to assess the impact of the water-way user fees on regional and national economies, as well as on competing transportation modes. The study should be completed shortly. Congress would be ill-advised to enact higher user charges without the benefit of the study findings.

I ask that the full text of Mr. Barta's speech be printed in the RECORD.

The speech follows:

[Remarks of Thomas J. Barta]

COMPETITIVE EQUITY IN FINANCING GOVERNMENT TRANSPORT OUTLAYS

I appreciate the opportunity to join with the Missouri Highway and Transportation Department to discuss current transportation issues.

This ought to be a session with few complaints.

In the first place, as a state, Missouri has one of the most highly developed networks of highways, railroads, and pipelines of any state in the union. It is, in addition, bordered by the Mississippi and Missouri Rivers and therefore enjoys the competitive pressures of barge transportation.

If Missouri's agricultural and industrial economy are flourishing, one reason may be that its underlying transport facilities provide shippers with so many choices and with the efficiencies which come from so much healthy competition.

There is, I think, something else to celebrate. While rail and barge traditionally have been and still are vigorous competitors in recent years, we are noticing an increasing trend to rail-water cooperation. We tend to be each other's best customers. Railroads bring coal and grain to the river banks and barges take it from there. Chemicals, fertilizers and many other commodities come up from the Gulf by barge and the railroads take the traffic from the river bank.

The consumer gains from transportation at a low rate. The barge lines get a healthy chunk of the business. The railroads make more money out of better utilization of their equipment.

Missouri is seeing heavy private investment going into transport facilities. We are all familiar with the steady growth of grain exports. I read this week that, according to a new study barges provide more than 50 per cent of the transportation for corn to all export points in the U.S., while rail accounted for another 36.7 per cent. Barges were even more dominant for soybeans, providing more than 60.8 per cent of the transportation for all export shipments. Grain exports are growing at the rate of 7 per cent a year.

The prising price of OPEC oil and the urgent desire of European and Asian nations to liberate themselves from too great a dependency on oil has created a boom in coal. Along the Mississippi River and its tributaries lie enough coal reserves to keep the lights burning in Europe and Asia far into the forseeable future.

Export coal has been mostly used in steelmaking up to now. But last year we began to see a brand new market for steam coal—coal to be used by electric utilities for generating electricity for homes and industry.

The United States is being called the "Saudi Arabia" of coal reserves and the prospects are for new markets for U.S. coal amounting to hundreds of millions of tons. And tens of millions of tons of new traffic for the Mississippi River.

In response to the steady expansion of grain exports and the new markets for coal exports, the barge industry is pouring new money into barge facilities, rail-to-water transfer facilities, new fleets of barges and everything that goes with continued expansion. My own company has on order 240 barges for $78,000,000.

Our session this morning is intended to aid in future planning. You will be glad to know that the barge lines at least—and I believe the railroads too—are committing investment to meet future demands for the traffic.

Whatever private enterprise can do to meet demand, it will do.

But there is one issue which I believe will require the best thinking of all of us in the coming decade and I would like to share with you some of my thoughts on the subject.

It is simply the extent of the role of government—the Federal government particularly—in transport and how that role will be financed in the future.

I don't suppose there are many in this room who do not support the President's program to reduce the budget, to rely more heavily on the market place rather than on government regulation, and to release the private energies of the people to solve our problems.

We've all been talking long enough about reducing the role of government and certainly yesterday—the deadline for income tax filing—was a reminder if any were needed of the heavy weight of government on all of us. And now the Reagan Administration has given us an opportunity and a program. We may think the details can be improved, but we can agree with the thrust.

As I read what the Administration is saying, they are open to having their program improved. They are also committed to being even-handed in their approach.

Most of the transport modes have been given substantial Federal assistance from time to time. Certainly the economy of Missouri has been a major beneficiary of the development of the Mississippi River System. We have all known since the dispute over the reconstruction of Locks and Dam 26 at Alton, Illinois above St. Louis, Mo. that the government would be seeking increased taxes from users of the waterways.

Waterway user charges were adopted in 1978 and began late in 1980 with a fuel tax of 4¢ a gallon. This was to escalate to 10¢ a gallon by 1985. Any further escalation would come only after Congress had a chance to consider and evaluate the results of a comprehensive study of impacts of such taxes on local and regional economies and also on the question of competitive equity between modes.

Now the proposal is to eliminate any Federal aid to commercial barge traffic this year.

A bill has been introduced which would require user fees to "provide for full recovery of operation and maintenance and construction costs" on the inland waterways after October 1, 1981.

Let me assume the role of someone trying to sell this proposition to the barge industry and to the State of Missouri. It seems to me I have to have assurances on a number of points if I am to have any chance of success.

The objective is for barge commercial traffic to pay a much heavier tax, one that is 7 to 8 times the present tax.

In an economy full of a variety of Federal aids, all of which have a competitive effect, there is no justification for barge commercial traffic paying a heavy tax and not competitive rail commercial traffic. If I say to my friends in the barge industry that all traffic will pay and competitive equity will be assured, I remove a natural objection. If I say your traffic will pay beginning in October of this year, but aids to your competitors may or may not be eliminated some time in the future or their traffic may or may not be required to pay as well, then I have a considerable problem.

Clearly there must be firm linkage between a charge on barge commercial traffic and a charge on rail commercial traffic for federal aids if the pledge of even-handed treatment is to be observed.

Next, I will have to assure my friends in the barge industry that commercial barge traffic will not be charged for more than its proper share of the costs of building and maintaining the waterways. Navigation is one product in a multi-purpose Federal program to manage the nation's water resources.

Congress set out on its water resource development program with many broad national interest objectives. One of these is national defense. Another is regional development, a purpose which has been highly successful. Besides these are the more mundane objectives such as recreation, environmental protection, fish and wildlife preservation, water supply and quality, power production, flood control, irrigation and industrial cooling.

It would be difficult to be precise about making allocations, but a reasonable approximation is certainly possible and necessary to convince those willing to pay a heavier tax that they are not being unfairly burdened by costs which should be assigned elsewhere.

We have become accustomed to the fuel tax, but the legislation introduced gives the Secretary of the Army authority to prescribe fuel taxes, license fees, lockage fees, congestion fees, and charges related to segment costs among other different types of taxes as well as an unspecified combination of such taxes.

This is no small matter. It costs about $5 million a year for operations and maintenance of the Missouri River. Traffic is light on the Missouri—only 1.5 billion ton miles were performed in the latest year for which we have figures. Recovery of that cost would require a charge roughly equivalent to $4.95 per barge mile. Traffic is far heavier on the Lower Mississippi and the charge there would have to be only 27 cents a barge mile to recover all operations and maintenance costs.

Some in the government believe that a number of rivers, the Missouri included, would be closed to traffic under the segment charge approach. Far away in Washington, they have no problem with closing the Missouri.

But clearly some more thought should be given to the discriminatory effect of the segment approach before the executive branch is allowed to make such a judgment. At the same time, the alternative, requiring commercial traffic on the lower Mississippi to cross-subsidize the Missouri, poses questions I would have difficulty in answering.

I doubt anyway, as a practical matter, if anyone can sell a proposal to delegate to the executive branch the power of establishing specific amounts and levels and types of taxes. The Congress has never given the executive branch a blank check of this kind and it may even be unconstitutional for it to try to do so.

In the original waterway tax program was a provision for an extensive study to get a handle on what the impact on localities, regions, industries and agriculture would be of various tax levels. These studies are in progress but will not be completed until late in the year. They should be expedited and made available for local and regional comment and evaluation as soon as possible.

The fact is of course that the American genius is for combining principles and pragmatism. Increasing Federal revenues through charges for Federal activities has many supporters. At the same time, pragmatism will tell us that long range goals of national defense, regional development and the over-riding need to contain inflation must also be considered. It would not help the public much to find that barge rate increases due to a heavy tax led to rate increases by all their competitors. The consumer might save something in government outlays from the barge tax but lose many times that amount from price hikes elsewhere—a penny-wise and pound-foolish proposition if ever there was one.

If we were to come out for a much heavier tax, what would we get for it? That's a very good question. In the White House before Christmas, there was a conference on coal exports. Customers from all over the world wanted to know how soon the U.S. seaports could be improved to take ships capable of carrying 150,000 tons of coal. New expedited procedures might produce 55-foot channels in three years, the conference was told. The head of the French delegation said he thought three years was much too long.

He doesn't know us very well. Navigation projects take so long to complete—15 to 25 years—as to be a national scandal.

If I tried to sell a much heavier tax, my friends in the barge industry would want to know how to expedite the needed projects and eliminate those costly years of delay.

These are the questions that someone willing to pay more would naturally ask about a proposal that increases the tax seven or eight times.

But by far the most difficult question is the one over competitive equity. A tax that is demonstrably inequitable is not only difficult to sell, but gathers many enemies.

It is not so far clear from the legislation just how much the Administration hopes to collect from commercial barge traffic. One figure mentioned on February 18th was $325 million.

Federal subsidies take many forms, but they have one thing in common—they all require Federal outlays and all have a competitive effect.

One rail program alone, officially labelled a subsidy in the Reagan budget, and clearly having a competitive effect of relieving the railroads of substantial labor costs, is a provision for $350 million in 1981 and in 1982 to save the pension program of the railroad industry from bankruptcy. The $350 million subsidy applies indefinitely and the amounts could even be $100 million or more higher a year.

The revised Administration budget for 1981 includes appropriations for $510 million for operational assistance to Conrail, which serves a region accounting for over 40 per cent of total U.S. manufacturing activity. Conrail exchanges over 70 per cent of its traffic with western, southern and other eastern railroads. Hence the true beneficiary of the Conrail subsidy is the rail system as a whole.

There are many other Federal subsidy and subsidy-effect programs involving railroads. But these two alone are in the revised budget for $860 million with no provision for recovery.

From the standpoint of sound economic and public policy, there is no more reason to recover one form of Federal outlay than the other. But if Federal outlays benefitting barge commercial freight are to be recovered, the same policy should apply at the same time to rail commercial freight.

The fuel tax applied to waterways, now at the rate of 4 cents a gallon and rising to 10 cents a gallon by 1985, should also be applied to railroads.

Any escalation of the tax on each mode should keep pace.

If a fuel tax of 10 cents a gallon were applied to rail freight, it would yield about $400 million, an amount far less than the annual subsidies of $860 million now flowing to railroads from only two Federal programs.

In the huge Federal budget, a barge tax linked to a rail tax would provide even-handedness and consistency and open up a new source of revenues that the budget had not contemplated. All to the good.

We see many benefits all around. For the railroads, the pension deficit is more securely funded and a reasonable interim solution is provided for the Conrail problem.

For the barge lines, a heavier tax which leads to expediting needed river improvement projects would certainly have merit. We hope never again to see the costly delays we experienced in the replacement of Locks and Dam 26.

Clearly, in the 1980's, we must come to grips with the financing of Federal participation in commercial transportation. At the same time, the program must be even-handed.

At the moment, a few more months of factual research and evaluation are needed.

It is more important to get it right than start it in October.●

LAURENCE TRIBE TESTIMONY ON COURT STRIPPING

● Mr. HART. Mr. President, numerous bills have been introduced in the current session of Congress which seek to invalidate certain Supreme Court rulings on controversial social policy issues by amending the Constitution. These legislative proposals seek to incorporate personal, moral and religious views of an ideologically extreme nature into the basic constitutional structure which should underlie and guide all policymaking. Such an approach would shield policy issues from the workings of the normal legislative process, thus subverting a fundamental principle of democracy on which this Nation is based. The only reassuring aspects of this approach, however, are the obstacles it will have to surmount which the Founding Fathers wisely built into the Constitution. A constitutional amendment must receive support from two-thirds of each House of Congress and from the legislatures of three-fourths of the States.

An even more disturbing strategy for legislating morality is now spreading, however. More than 20 bills have been introduced to strip Federal courts, including the Supreme Court, of jurisdiction over a variety of controversial issues. This attempt to shortcut procedures for amending the Constitution is especially dangerous because it can succeed without the scrutiny of State legisla-

tures and the American public, requiring only majority support in the Congress.

These legislative proposals seek to nullify the power of judicial review which allows Federal courts to interpret and enforce constitutional rights, safeguarding them from legislative encroachments. Such legislative initiatives to restrict the Supreme Court's jurisdiction should be opposed whether or not one agrees with the Supreme Court's rulings on the substance of the various issues.

In recent testimony before the House Judiciary Subcommittee on Courts, Civil Liberties, and the Administration of Justice, Laurence Tribe, a foremost constitutional law expert, offered a detailed, step-by-step argument demonstrating how current attempts to strip the Federal courts of jurisdiction are unconstitutional and destined to undermine the separation of powers provided by our Constitution. I ask this testimony be printed in the RECORD and urge each of my colleagues in the House and Senate to study it carefully.

The testimony follows:

CONGRESS' POWER TO CREATE GAPS IN THE JURISDICTION OF FEDERAL COURTS

(By Laurence H. Tribe)

Mr. Chairman and Members of the Subcommittee: I am honored to appear at the Subcommittee's invitation to testify concerning the constitutional limits on Congress' authority to curtail the jurisdiction of federal courts to enforce constitutional rights. In this statement, I will set forth the general framework of principles governing the constitutionality of such measures, and will attempt to apply that framework to the sixteen bills which are pending before the Subcommittee and which illustrate quite well the range of issues presented.

INTRODUCTION

Grave misgivings are inevitably stirred when the opponents of specific constitutional rulings suggest that such rulings be changed not by constitutional amendment—with the participation of state legislatures, and subject to requirements of concurrence by extraordinary majorities—but by ordinary statutes limiting court jurisdiction and enacted by a mere majority of the House and Senate. Some of these misgivings come into focus only when we recall that the practice of elaborating and enforcing constitutional provisions through an independent judiciary—a practice inaugurated for the United States in *Marbury* v. *Madison*, 5 U.S. (1 Cranch) 137 (1803)—is one that few nations in the world follow. The 1961 Constitution of South Africa, for example, expressly provides in Section 59(2) that, with only the most limited exceptions, "[n]o court of law shall be competent to enquire into or to pronounce upon the validity of any Act passed by Parliament. . . ." A noted student of South African law and politics observes:

"As a result of the new Constitution's firm adherence to legislative supremacy, and the restriction of the courts' testing rights to [a few limited] matters. . . . Parliament has been able to ride roughshod over individual liberty without fear of judicial obstruction." J. Dugard, "Human Rights and the South African Legal Order" 35 (Princeton Press, 1978). Thus the technique of circumventing constitutional safeguards through carefully crafted jurisdictional withdrawals approved by mere legislative majorities has, to say the least, disturbing antecedents.

In this country, of course, the continuing availability of state courts as forums for the enforcement of federal constitutional rights, and the tradition of at least some voluntary compliance with the norms entailed by such rights, render jurisdictional withdrawals a good deal less threatening than they might otherwise be. Yet the transparent expectation of those who propose such withdrawals is precisely that state courts will in fact prove less receptive than their federal counterparts have been to assertions of those rights that the proposed statutes deliberately single out for removal from the protective reach of the federal bench. Moreover, if our history is one in which federal rights have at times been taken quite seriously indeed even without federal compulsion, it is also a history in which federal rights have at other times depended upon such compulsion for their very survival. For these among other reasons, the inquiry into what limits, if any, are imposed by the United States Constitution upon Congress' restriction of federal court jurisdiction assumes more than merely theoretical interest.

Despite wide differences of view as to just what limits the Constitution does in fact impose on Congress' power, virtually all students of the subject begin from a shared promise any federal court in which a purported jurisdictional restriction is asserted at least has jurisdiction to decide whether or not the purported restriction is itself constitutional.[1] In the exercise of this threshold jurisdiction—this power, and indeed duty, to review the constitutional validity of any statutory creation of gaps or fissures in a federal court's subject-matter or remedial jurisdiction—a court will encounter both internal and external constitutional constraints, the first set stemming from the nature and sources of the affirmative authority Congress must invoke in legislating controls over federal courts; the second, deriving from independent limits and prohibitions imposed by the Constitution upon all federal legislation.

Within each of these two categories of constitutional constraints, the internal and the external, some of the most significant limits will, of course, be implicit rather than explicit in the constitutional text. This should come as no surprise, for "[t]he tacit postulates" of the constitutional plan "are as much engrained in the fabric of the document as its express provisions." *Nevada* v. *Hall*, 440 U.S. 410, 433 (1979) (Rehnquist, J., joined by Burger, C. J., dissenting). The remaining task is to describe the constraints themselves and to illustrate their operation by examining the bills now before the Subcommittee.

INTERNAL LIMITS

1. Congress' jursdiction-defining powers with respect to the Supreme Court in particular are internally limited by the substantive role that the Constitution assigns to the Court. The reach of the Supreme Court's original jurisdiction ("all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be a Party") is, of course, fixed by Article III (as limited in turn by the Eleventh Amendment), and can be neither expanded nor contracted by an Act of Congress. That was, indeed, the precise holding of *Marbury* v. *Madison*.

As to the Supreme Court's reviewing authority, there is general agreement that Congress' power under Article III to regulate, and make exceptions to, such appellate jurisdiction, while undoubtedly very broad, "must not be such as will destroy the essential role of the Supreme Court in the constitutional plan.[2] Whatever the reach of that necessarily vague principle, it is difficult to believe that the principle would not at least bar, for example, the abolition of Supreme Court jurisdiction to review any state court order that is, will be, or was, subject to review by the highest court of the state. Stripping the Supreme Court of its power under the Supremacy Clause to enforce constitutional rules directly against recalcitrant state courts—a power firmly established in *Martin* v. *Hunter's Lessee*, 14 U.S. (1 Wheat.) 304 (1816)—would generate a clash of sovereigns so irreconcilable as to imperil the Union,[3] by gutting the Supreme Court's capacity to preserve the unity and supremacy of federal law.[4] The seminal cases of ex parte McCardle, 74 U.S. (7 Wall.) 506 (1868), and ex parte Yerger, 75 U.S. (8 Wall.) 85 (1868), are certainly not to the contrary, since they together establish only that Congress may extinguish one avenue to the Supreme Court for appellate review of a constitutional claim when other avenues for bringing that claim to the Court for review remain open.

2. Congress's jurisdiction-defining powers with respect to all Article III courts are also internally limited to Article III's implicit concept of the "judicial power," and by basic principles governing the separation of powers among the three branches of the National Government.

The judicial power described by Article III, Chief Justice Marshall declared in *Marbury* v. *Madison*, is the power to "decide . . . [cases] conformably to the law, [including] the Constitution. This is of the very essence of judicial duty." This duty is, in turn, inherently incompatible with congressional authority to direct an Article III court to arrive at the outcome desired by Congress whether or not regarded by such a court as consistent with the Constitution and laws of the United States; the Supreme Court so held in *United States* v. *Klein*, 80 U.S. (13 Wall.) 128 (1872), ruling that Congress may not dictate the rule of decision for a particular case, even in the guise of a jurisdictional regulation.

The nub of the matter is that courts sworn to uphold the Constitution in their discharge of adjudicative responsibility cannot be required, in deciding a case otherwise properly before them, to ignore any question they regard as crucial to a correct decision under law, and certainly cannot be forced to "close their eyes on the constitution, and [Congress'] law. *Marbury* v. *Madison*, 5 U.S. at 178.

Yet just such a requirement would be imposed, for example, by H.R. 2365 and H.R. 2791, both of which purport to strip the Supreme Court and the lower federal courts of jurisdiction over all questions going to the constitutional validity of statutes that treat males and females differently in military registration, induction, training, or service. Whenever an Article III court endowed with subject-matter jurisdiction over a controversy deems any such military-personnel statute relevant to the correct outcome, these proposals would in effect instruct that court automatically to proceed as though the statute's constitutional validity made no difference—to "close [its] eyes on the constitution, and see only the law." Such an instruction violates both Article III and Article VI.

That Congress may control the timing and the context for federal judicial review of its own statutes[5] does not imply that Congress may place its favorite laws behind a shield wholly impenetrable by federal judicial review. For Congress to do so would impermissibly condemn those federal judges before whom such enactments become relevant in pending cases to serve as instruments of constitutional disregard and defiance. Authorized to decide a case, an Article III court must decide it constitutionally—or not at all. See *United States* v. *Nixon*, 418 U.S. 683, 704–05 (1974).

Beyond this internal requirement of adjudication according to a court's best effort to address all questions necessary to decision, to do so in accord with law, and to regard the Constitution as the "supreme law of the land"—beyond this, both the Supreme Court

Footnotes at end of article.

and all inferior courts created pursuant to Article III are charged to resolve only actual cases or controversies, and are concomitantly barred from merely offering "opinions in the nature of [legal] advice." *Muskrat* v. *United States*, 219 U.S. 346, 362 (1911). See also Correspondence of the Justices, Letter from Chief Justice John Jay and the Associate Justices to President George Washington, August 8, 1793. To "constitute a proper 'controversy,'" an "asserti[on] [of] a right [must be] susceptible of judicial enforcement." *Maryland* v. *Louisiana*, 49 U.S.L. Week 4562, 4565 (U.S. Supreme Court, May 26, 1981).

It follows that Congress may not be so truncate the jurisdiction of an Article III court as to empower it to "decide" a legal controversy while denying it any means to effectuate its decision—or even, as in the ordinary declaratory judgment, at least to alter the concrete situation of the parties or the range of options open to them. Congress' broad authority to regulate the panoply of available remedies, in other words, stops short of the power to reduce an Article III court to a disarmed, disembodied oracle of the law lacking all capacity to give concrete meaning to its decision that one party won and the other lost.

This much, at least, is implicit even in Article III's bar to adjudication at the behest of a party lacking any concrete stake in the outcome of the proceeding.[6] For a party advancing a legal argument in a court that has been rendered impotent in any meaningful degree to remedy the wrong complained of lacks, by definition, any stake beyond a citizen's purely theoretical curiosity about how the case turns out.

Thus, for example, H.R. 73 and H.R. 900—both of which would unconditionally deprive inferior Article III tribunals of authority to "issue any restraining order" or "temporary or permanent injunction" (and, in the case of H.R. 900, of authority to issue any "declaratory judgment" as well) in any case arising out of a law restricting abortions—seem inconsistent with Article III. For an Article III tribunal thus defanged, but nonetheless seized of jurisdiction to "decide" a pregnant woman's anticipatory challenge to the validity of an abortion ban under which she is threatened with a criminal fine if she exercises her rights as defined by *Roe* v. *Wade*, 410 U.S. 113 (1973), is reduced to whistling in the wind: if it rules the ban invalid and the threat unconstitutional, as it should, it might as well send the woman its regrets. For the tribunal is forbidden to come to her aid in an anticipatory way—while there is still time—even without any showing that the state courts would, or even might, provide timely relief in proceedings of their own. On the contrary, the expectation quite clearly is that the states will not do so—even though the pending statutes, H.R. 73 and H.R. 900, would at least leave open the possibility of the Supreme Court's appellate review of such state court refusals. The point, it should be emphasized, is not that H.R. 900 and H.R. 73 guarantee that the pregnant woman's rights will be rejected in every court to which she goes for preventive relief; the point is that these restrictions would leave Article III tribunals with no way to compel the timely vindication even of the rights such tribunals find to be unconstitutionally jeopardized; and they in no way link this power vacuum to grounds for supposing that state courts will vindicate the rights on their own or will be forced to do so by the Supreme Court before it is too late. A federal court placed in such a predicament has been emptied of the essential attributes of judicial power contemplated by Article III:

"[For] Congress . . . to confer the jurisdiction and at the same time nullify entirely the effects of its exercise are not matters heretofore thought, when squarely faced, within its authority." [7]

Similarly, H.R. 869, H.R. 1079, and H.R. 1180 would purport to strip all Article III courts of jurisdiction to "require the attendance at a particular school of any student because of race, color, creed, or sex," and H.R. 761 would extend this ban to an ouster of jurisdiction "to make any decision, or issue any order, which would have the effect of requiring any individual to attend any particular school"—evidently for any reason. This latter provision, insofar as it tells federal courts what "decision[s]" they may and may not make regardless of their view of the applicable law and facts, plainly contravenes *United States* v. *Klein*, *supra*. And all four provisions, insofar as they purport to rule out various pupil-assignment remedies regardless of whether any other decree could give effect to the court's constitutional determination [8] appear to violate the requirement that decisions made by Article III tribunals not be doomed to futility from the start.

The same may be said with respect to H.R. 114, which attempts to strip all inferior federal courts of jurisdiction, directly or indirectly, to "modify" the effect of any state court order so long as that order is or was reviewable by the state's highest judicial body. If a federal court concludes that such an order was entered in violation of the Constitution; that opportunities to challenge and modify it within the state's judicial system were and remain constitutionally inadequate; and that the individual whose rights the order violated, now a party properly before the federal court, will continue to be unconstitutionally prejudiced by the order unless it is promptly modified by that federal court, then following the mandate of H.R. 114 would render the court powerless to give its conclusion any effect whatever.

The view has at times been expressed that Congress is bound not only to equip whatever federal courts it creates with subject-matter and remedial jurisdiction sufficient to satisfy the implicit demands of Article III but also to create such lower federal courts in the first instance (how many? where?) and to vest them with all the jurisdiction that Article III allows, see *Martin* v. *Hunter's Lessee*, 14 U.S. at 330–31, at least to the degree that the effective protection of constitutional rights under modern conditions so requires.[9] The consistent rejection of this position—a position perhaps rendered more plausible by the Civil War Amendments than it was when Justice Story announced it in Hunter's Lessee—might be thought to preclude its adoption now. But such rejection of the Story view should not be permitted to obscure the underlying principle—one never rejected by any court—that no Article III tribunal that Congress elects to create, whether under constitutional compulsion or otherwise, may be crippled from birth with a defect of design fatal to the tribunal's capacity to fulfill a function indispensable to the "judicial power of the United States."

EXTERNAL LIMITS

3. That Congress jurisdiction-defining powers—in common with all other powers entrusted by the Constitution to the National Legislature—are limited externally as well as internally may at times be forgotten, or obscured by sweeping dicta about plenary authority, but is undeniable all the same.

[T]he Constitution is filled with provisions that grant Congress or the States specific power to legislate in certain areas; these granted powers are always subject to the limitation that they may not be exercised in a way that violates other specific provisions of the Constitution." [10]

Thus, whatever its "power to give, withhold, and restrict the jurisdiction of [Federal] courts . . . , [Congress] must not so exercise that power as to deprive any person of life, liberty or property without due process of law or to take private property without just compensation," *Battaglia* v. *General Motors Corp.*, 169 F.2d 254, 257 (2d Cir. 1948), cert. den., 335 U.S. 887 (1948) footnote omitted, or to contravene any other provision in the Bill of Rights, or in the Bill of Attainder Clause or the Ex Poste Facto Clause of Article I, Section 9, or in any other independent limitation or constraint imposed by the Constitution or its amendments upon affirmatively authorized Federal legislation. Were the law otherwise, Congress could freely deny access to Federal courts to all but white Anglo-Saxon Protestants, or to all who voted in the latest election for a losing candidate.[11] If such consequences are to be prevented, it must be the case that Acts of Congress are accorded no special immunity from independent constitutional limits on national legislation simply because such Acts are cast in jurisdiction-defining terms; the power to define and control the jurisdiction of Federal courts is no talisman, somehow dissolving otherwise fatal constitutional limits on what Congress has chosen to do.

As with the internal limits upon the power of Congress to control jurisdiction, these external limits may derive from the interstices and implications of the text, structure, and history of the Constitution as well as from its explicit terms. Ex parte Garland shows as much,[12] and nothing in the logic of the situation counsels a more restrictive cannon of constitutional interpretation here than in the identification of internal limits.

4. Among the external constraints the Constitution imposes upon all federal legislation, including legislation that regulates judicial authority, is the principle that no law may unjustifiably deter or disadvantage the exercise of a constitutional right. The Supreme Court recognized decades ago that constitutional rights could be jeopardized and ultimately destroyed not only by laws directly forbidding or penalizing their exercise but also by laws making their exercise the occasion for withholding or withdrawing benefits or privileges that would otherwise be available.[13] "It is inconceivable that guaranties embedded in the Constitution of the United States may . . . be manipulated out of existence," [14] by using the invocation of such guarantees as a trigger for suspending access to a valued service that government would otherwise have extended. The fact that the service is one government could have chosen to abolish altogether is immaterial; it is the choice to withdraw something *selectively* when particular constitutional rights are exercised that marks a law as an indirect burden upon such exercise. And whenever a law has this character, it automatically becomes constitutionally suspect. Such a law is per se void to the extent it is *intended* to prevent or penalize the exercise of a constitutional right.[15] And, to the extent the law's tendency to deter or disadvantage such a right is but an unintended and incidental consequence of the measure, the law is valid only if demonstrably necessary to the attainment of a compelling governmental purpose—a purpose with respect to which the law is neither underinclusive nor overinclusive.[16]

5. One particularly pernicious device through which a law might deter or disadvantage the exercise of a right is the technique of making the right's exercise ineligible for a generally available form of governmental protection.

The kind and degree of protection to provide—the combination of executive and judicial enforcement authority to confer—is left, in the first instance, to the judgment of the legislature. But so fundamental is "the right of every individual to claim the protection of the laws, whenever he receives an injury," [17] that such pro-

Footnotes at end of article.

tection cannot be suspended or reduced so as to abandon the enjoyment of selected rights to a jeopardy from which others are shielded. Government even bears responsibility for the private intimidation or harassment of citizens that it invites, whether directly[18] or indirectly[19]—including the abuse that it encourages by suspending or withholding ordinarily available devices of law enforcement.[20] Even more plainly, the Federal Government is accountable for the public harassment or persecution of citizens that predictably results when it declares open season on them by placing the rights they seek to exercise in a "free-fire" zone, one that is expressly ineligible for the usual panoply of executive and judicial mechanisms for enforcing such rights through making state and local officials civilly and criminally liable for their abridgment. At least when surrounding rights are fully protected through such mechanisms, "denying the equal protection of the laws includes the omission to protect, as well as the omission to pass laws for protection." *United States* v. *Hall*, 26 Fed. Cas. 79 (C.C.S.D.Ala. 1871).

Congress' sweeping authority to define federal torts and crimes, for example,[21] would confront an insuperable constitutional obstacle were that authority to be deployed in such a way as to protect from hostile state and local governmental activity only such constitutional rights as might meet political favor with the electorate at any given time. Thus, 42 U.S.C. § 1983 currently subjects to civil liability in federal court all who, under color of state law, deprive individuals of their constitutional rights; and 18 U.S.C. § 241 now makes criminal the willful deprivation of such rights by state and local officers, among others, who "threaten or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution . . . , or because of his having exercised the same." Such harassment is not immunized from federal prosecution by the theoretical existence of state remedies against it.[22] Nor is such harassment immunized by the fact that it takes the form of arrests, searches, seizures, or interrogations under a patently void statute—one that could not possibly lead to a valid conviction; indeed, precisely such harassment is currently subject to preventive relief by federal injunction. See *Younger* v. *Harris*, 401 U.S. 37, 47–49 (1971).

Now imagine what would happen if Congress were to amend 18 U.S.C. § 241 to make it inapplicable, or to limit its punishment to nominal fines, whenever the "right or privilege" that had been subjected to threat or intimidation was the right to an abortion, or the right not to have even "voluntary" prayers conducted in one's public school, or any other of a short list of rights of which a majority in Congress happened to disapprove. It is unthinkable that such a law would, and unimaginable that it should, be upheld—not because Congress' reach in enacting it would have exceeded its grasp (Congress' power to define federal crimes and to regulate their punishment is at least as "plenary" as many of its other powers and is, if anything, broader than its power to control federal judicial jurisdiction) but because in its reach Congress would have collided with the rights that it had selectively sought to disadvantage.[23]

The same would follow if Congress were to withdraw from the reach of 42 U.S.C. § 1983 the right to bring up one's children without undue public intrusion, or the right to end a pregnancy, or indeed any other specific right, thus subjecting to federal civil remedies at law and equity all actions under color of state law depriving citizens of their constitutional rights—except for the rights thereby left by Congress to fend for themselves. The fact that Congress' exclusion of selected rights might involve a limit on the judicial branch rather than, or in addition to, the executive branch, obviously makes no constitutional difference so far as the external constraints on Congress' powers are concerned.

The deployment of Congress' affimative authority so as to expose disfavored rights to an increased risk of state suppression is equally invalid regardless of whether Congress bases such affirmative authority on its power to enforce the Fourteenth Amendment under Section 5, on its Necessary and Proper Clause power to set substantive and procedural limits on the Executive Branch, or on its Article I and III powers to determine the subject-matter and remedial reach of federal judicial authority within the sphere made potentially available by Article III itself.[23a]

Exactly the same analysis would apply if the federal protection out of which Congress sought to carve a set of disfavored rights involved not a mechanism for imposing civil or criminal *liability* in federal court upon those state officials who willfully interfere with the exercise of rights, but a mechanism for enjoining in federal court all state interference with such rights. Congress' focused deletion of a right such as abortion from the list of rights eligible to receive protection through this federal injunctive mechanism—especially if coupled with the inclusion of abortion funding, and perhaps of police inaction against abortions, as targets against which the injunctive mechanism would expressly be made available[24]—would be exactly as infirm, constitutionally, as would a congressional enactment specifying that police and others who arrest or threaten women seeking abortions are to be immune from the federal criminal punishment to which other rights violators (including, if H.R. 900 were to become law and be upheld, those who run public abortion clinics) are subject under 18 U.S.C. § 241.

Thus H.R. 73 and H.R. 900, which would forbid federal district courts to issue injunctions or restraining orders in cases arising out of bans on abortion or on abortion funding, are both in hopeless conflict with the Constitution's external limits on Congress' powers—a conflict that is, of course, exacerbated by the fact that these laws would permit (and perhaps require) federal courts to award injunctions against state officers in exactly the same lawsuits, involving the same courts and parties and issues, if sought on behalf of the unborn to halt state aid to abortions or to end a state policy of allowing abortions to go unprosecuted.

Superficially distinguishable—but, on closer inspection, not genuinely so—are the proposed statutes that would prevent federal judicial action restrictive of "voluntary" prayer in public schools. These statutes purport to eliminate federal court jurisdiction to hear or to review any case arising out of any state law or rule "which relates to voluntary prayer in any public school or public building." Read literally, this language appears to deny federal judicial access equally whether the prayer-related state rule in the case forbids voluntary prayer, makes it optional, requires schools to provide for it, or "relates" to it in some other way. Yet the impetus behind these denials of federal-court access to school prayer cases has come exclusively from proponents of voluntary prayer (who feel aggrieved by federal court decisions rejecting their position) and not at all from opponents of such prayer who are concerned that federal courts have been too willing to permit (or even to require) that opportunities for such voluntary prayer be provided in public schools. Indeed, five of the bills (H.R. 72, H.R. 326, H.R. 989, H.R. 1335, and H.R. 2347) contain preambles that expressly describe their purpose as that of preventing federal courts from ruling voluntary prayer unconstitutional and enjoining it as such. Although the remaining two bills (H.R. 408, H.R. 865) contain no such language, their silence on the point cannot obscure the one-sided aim and effect of these measures. That observation leads to a broader point, one developed in the following section.

6. "Jurisdictional gerrymandering"—the practice of excising disfavored rights from generally available forms of federal protection—cannot be saved by a mere appearance of neutrality. In *Hunter* v. *Erickson*, 393 U.S. 385 (1969), a city charter amendment prevented the city council from "implementing any ordinance dealing with racial, religious, or ancestral discrimination in housing without the approval of the majority of the [city's] voters." Id. at 386. The amendment drew no distinctions among racial and religious groups, subjecting "Negroes and whites, Jews and Catholics . . . to the same requirements if there is housing discrimination against them which they wish to end." Id. at 390. Despite this appearance of neutrality, in which "the law on its face treats Negro and white, Jew and gentile in an identical manner," Id. at 391, the Court had no hesitation in recognizing "the reality . . . that the law's impact falls on the minority." Id. Although subsequent decisions might be understood to require a showing of discriminatory intent before such racially differential impact, even in access to a governmental forum, triggers strict judicial scrutiny,[25] there is no doubt that even wholly inadvertent and incidental burdens on the exercise of an independently secured constitutional right continue to require compelling justification. (See Section 4, supra.) Thus, the patently illusory neutrality of the school prayer statutes, for example, would not spare them from evaluation under a requirement of precise fit and compelling necessity—a requirement that they could not, in all likelihood, meet. Similarly, the arguable neutrality, as a facial matter, of the pending bills that purport to withdraw federal judicial power to assign students to particular schools—either with reference to race, creed, color, or sex (*see* H.R. 869, H.R. 1079, H.R. 1180) or on any basis whatever (*see* H.R. 761)—would be unlikely to obscure their discriminatory impact and structure.

7. To whatever extent courts might be reluctant to rely on judicial findings of forbidden congressional motive to invalidate jurisdictional restrictions that are neutral on their face and that are too ambiguous in their effects to be struck down on that basis alone,[26] the most that might follow is that some of the restrictions at issue might squeak by in the courts—not that they are constitutional.

Congress' duty to comply with the Constitution's mandates derives not from the risk that courts may otherwise strike down Congress' enactments but from the oath binding every Member of Congress "to support this Constitution." See Article VI. Whatever courts might say as to some of the measures analyzed in this statement, the Members of Congress surely can have no doubt that all of the jurisdictional restrictions now pending before them are designed, obviously and transparently, to circumvent constitutional rulings of the Supreme Court by a method less onerous than the amendment procedure set forth in Article V. Doubtless aware of this forbidden aim, Congress should, I believe, regard itself as duty-bound to reject the pending measures—whatever its predictions as to how courts might rule on each of them.

8. Conversely, any congressional decision to enact jurisdictional limitations believed to be unconstitutional, in the expectation that the Supreme Court or another federal court will promptly strike the limitations down, would be completely irresponsible.

Footnotes at end of article.

Such a decision by Congress might be motivated by a wish to curry favor with some constituents while passing the buck for constitutional enforcement to the federal judiciary—which can then be dramatically criticized, in feigned surprise and with calculated political effect, for imperialism and hyperactivity. Or such a congressional decision might instead be motivated by a hope that federal judges, frightened by Congress' assault upon their jurisdiction and fearful of even worse attacks to follow, would either be cowed into (erroneously) upholding unconstitutional limits on their own jurisdiction or pressured into (hypocritically) reversing those decisions—on such issues as abortion, busing, prayer, gender-neutral military registration, and the like—that provoked the public's dissatisfaction and its spasms of legislative rebuke to the courts. Whatever Congress motive for enacting legislation that it knows (or ought to know) is unconstitutional, and whatever the eventual reaction of the federal courts, the cost of such cynical manipulation of the Constitution as our most fundamental and unifying body of law—the cost in reduced credibility for already wounded institutions and in diminished power for already weakened sources of normative guidance—is bound to be far too high to make the gambit worthwhile.

9. Even when entirely constitutional and well intended the restructuring of federal court jurisdiction to achieve substantive ends should be undertaken only with the greatest caution and after the clearest possible showing of need and efficacy.

Even on the most optimistic of assumptions, state courts, recognizing themselves as still bound by the Constitution and as constrained to follow the Supreme Court's still authoritative decisions construing it, would either replicate the very rulings that had inspired jurisdictional restructuring, thereby freezing the law unwisely but otherwise rendering the shift from federal to state courts too inconsequential to have been worth the effort; or would move in dozens of different directions in their understanding and elaboration of the governing constitutional norms, thereby destroying a vital uniformity on matters governed not by fifty distinct bodies of state law but by one constitutional rule.

Unless such diversity is secretly desired as a way of overturning a constitutional ruling that one dislikes when one cannot muster enough support to amend the Constitution itself, its virtue is difficult to fathom in dealing with the one document that, above all others, binds the Nation into a legal whole.

Thus, the Supreme Court has found it intolerable even for federal constitutional restraints on matters as localized as police interrogation to vary from state to state.[27] It is still less tolerable, surely, for a person's ability to vindicate a right under the First Amendment's Religion Clauses, or under the Fifth Amendment's Due Process Clause, to vary with the geographical terrain. If there is any question as to which ours must be not fifty laboratories but "one nation, indivisible," that question is the fundamental meaning of these genuinely constitutive features of our policy—the provisions that make ours an open society aspiring to equal justice under law.

Although it is not beyond imagination that such state-by-state fragmentation—even at a level where national unity means so much—might be worth risking for some transcendent benefit, the circumstances in which such a benefit could be realiably achieved through jurisdictional abacadabra seem most unlikely to obtain. Thus the presumption against the enactment even of constitutionally valid gerrymanders of federal court jurisdiction ought to be extremely heavy—especially when one adds the caveat that such jurisdictional measures, in their motivation as well as in their structure and impact, must invariably raise the gravest of constitutional questions.

FOOTNOTES

[1] *See, e.g.*, Hart, "The Power of Congress to Limit the Jurisdiction of Federal Courts: An Exercise in Dialectic," 66 Harv. L. Rev. 1362, 1387 (1953).

[2] Hart, 66 H.L.Rev. at 1365.

[3] *See* O. Holmes, *Collected Legal Papers* 295 (1920).

[4] *See* A. Hamilton, *The Federalist* Nos. 22, 81; J. Madison, *The Federalist* No. 39; *Cohens* v. *Virginia*, 19 U.S. (6 Wheat.) 264, 416–18 (1821); Ratner, "Congressional Power Over the Appellate Jurisdiction of the Supreme Court," 169 U. Pa. L. Rev. 157, 160–167 (1960).

[5] *See, e.g., Yakus* v. *United States*, 321 U.S. 414 (1944); *Lockerty* v. *Phillips*, 319 U.S. 182 (1943).

[6] *See Baker* v. *Carr*, 369 U.S. 186, 204 (1962)

[7] *Schneiderman* v. *United States*, 320 U.S. 118, 168–69 (1943) (Rutledge, J., concurring). Cf. *Sterling* v. *Constantin*, 287 U.S. 378, 403 (1932) (Hughes, C.J.)

[8] Cf. *North Carolina* v. *Swann*, 402 U.S. 43 (1971) (invalidating state statute that rules out busing remedy even where needed to correct *de jure* segregation).

[9] *See* Eisenberg, "Congressional Authority to Restrict Lower Federal Court Jurisdiction," 83 Yale L.J. 498 (1973).

[10] *Williams* v. *Rhodes*, 393 U.S. 23, 29 (1968) (emphasis added).

[11] *But see Ex parte Garland*, 71 U.S. (4 Wall.) 333 (1867) (former Confederate sympathizers cannot be denied access to advocates in cases before federal courts).

[12] *Id.*

[13] *See, e.g., Frost & Frost Trucking Co.* v. *Railroad Commission*, 271 U.S. 581, 593–94 (1926).

[14] *Id.*, quoted with approval in *Western and Southern Life Insurance Company* v. *State Board of Equalization of California*, 49 U.S.L. Week 4542, 4546 (U.S. Supreme Court, May 23, 1981).

[15] *See United States* v. *Jackson*, 390 U.S. 570, 581 (1968); *Shapiro* v. *Thompson*, 394 U.S. 618, 631 (1938); *Frost & Frost Trucking Co.* v. *Railroad Commission*, 271 U.S. at 593–94.

[16] *See Shapiro* v. *Thompson*, 394 U.S. at 634; *Memorial Hospital* v. *Maricopa County*, 415 U.S. 250, 258 (1974); *Sherbert* v. *Verner*, 374 U.S. 398, 404–07 (1963). *See also Thomas* v. *Review Bd. of Indiana Employment Security Div.*, 101 S. Ct. 1425, 1431 (1981).

[17] *Bodie* v. *Connecticut*, 401 U.S. 371, 374 (1971); *Marbury* v. *Madison*, 5 U.S. (1 Cranch) 137, 163 (1803).

[18] *See Lombard* v. *Louisiana*, 373 U.S. 267 (1963) (property owners invited to invoke facially neutral trespass laws against blacks during sit-ins at restaurants).
(1958) (compelled disclosure of membership

[19] *NAACP* v. *Alabama*, 357 U.S. 449, 462 (1958) (compelled disclosure of membership lists made government responsible for predictable private abuse that would result).

[20] *See Gregory* v. *Chicago*, 394 U.S. 111 (1969); *Feiner* v. *New York*, 340 U.S. 315, 326–27 (1951) (Black, J., dissenting); Z. Chafee, *Free Speech in the United States* 245 (1948).

[21] *See, e.g., United States* v. *Hudson & Goodwin*, 11 U.S. (7 Cranch) 32 (1812) (federal courts have no authority to punish conduct without congressional enactment specifically defining the conduct as criminal).

[22] *See Screws* v. *United States*, 325 U.S. 91 (1945) (state police who beat black suspect to death may be federally prosecuted under 18 U.S.C. § 242 for willful deprivation of suspect's constitutional rights under color of law notwithstanding possible state prosecution for murder).

[23] Whatever such a law's other aims, it would fit too poorly (to pass muster under strict scrutiny) any objective other than the forbidden one of deterring or penalizing the rights excluded.

[23a] A contrary illusion might be fostered by the fact that Congress' control over the Supreme Court's appellate jurisdiction, at least, rests on Article III's express reference to congressionally created "exceptions." But this circumstance has no bearing on the external limits on the power in question, nor is there even any reason to suppose that the Necessary and Proper Clause, say, confers less affirmative authority over its range of subject matters than the Exceptions Clause does over its.

[24] *See*, e.g., H.R. 900, Section 1, which would achieve this result (unless struck down) by declaring fetuses to be among the "persons" to whom the state's duties of equal protection extend.

[25] *See, e.g., Washington* v. *Davis*, 426 U.S. 229 (1976).

[26] Cf. *United States* v. *O'Brien*, 391 U.S. 367 (1968).

[27] *See Oregon* v. *Hass*, 420 U.S. 714, 719 (1975).●

ILLEGAL ALIENS RECEIVE GOVERNMENT PAYMENTS

● Mr. HUDDLESTON. Mr. President, when informed people talk about the problem of illegal aliens, one of the experts most often referred to is David North. For many years, Mr. North has been steadily digging into this issue and he is constantly publishing scholarly work which also have a practical aspect to them.

One of Mr. North's newest studies, "Government Records," sheds new light on the impact of illegal aliens on our economy. The major contribution of this study is that it shatters an old myth which claims that illegal aliens do not apply for transfer payment—benefits from the Government—because they fear coming into contact with Government officials. The study shows conclusively that illegal aliens make extensive use of the unemployment insurance system and possibly are heavy users of the welfare system.

Of those illegal aliens who were a part of the study, 49 percent had filed and 35 percent had collected unemployment insurance benefits. Furthermore, the report details how Los Angeles County is saving as much as $49 million a year by checking questionable welfare applications through INS. One can reasonably assume that if illegal aliens are using the systems in California, they are also using similar systems in other States where they are concentrated.

The North study also covers several other aspects of the illegal alien problem, one of which debunks the myth that illegals stay in the U.S. labor market for very short periods.

This study demonstrates that, by controlling the escalating illegal alien problem, we can save millions of dollars in misuse of transfer payments. At the present time, I have the only bill pending in the Senate, S. 776, the Immigration and National Security Act of 1981, which would provide an effective way of stopping the flow of illegal aliens. I believe that the study provides new justification for this bill.

The length of the study precludes me from putting it in the RECORD in its entirety. However, I ask that the executive summary and chapter 8 of the study be printed in the RECORD and urge my colleagues to obtain and read the full study.

The material is as follows:

GOVERNMENT RECORDS

(By David S. North)

EXECUTIVE SUMMARY

Objectives: to secure data on the interaction between illegal immigrants and the U.S. labor market and various income transfer programs (such as unemployment insurance) by examining governmental records.

Methodology: Two different kinds of reporting systems were used; they were workload data, i.e., records of government accomplishments (such as numbers of minimum wage investigations); and individual earnings, taxes, and benefits records. Group data were sought from individual records of 580 illegal immigrants who had been apprehended by the Immigration and Naturalization Service in February, 1975. The 580 were chosen as the study group because their apprehension reports bore legible Social Security numbers.

Findings: The conventional wisdom is that illegal immigrants (1) stay in the U.S. labor market only briefly, (2) rarely seek income transfer payments, (3) are likely to pay taxes, and (4) are paid below-average wages. Data on the study group contradicted the first two statements and affirmed the second two. It should be noted, however, that this study group, like all other illegal immigrant study groups, cannot be regarded as a random sample of the illegal alien population (as one cannot draw such a sample from an unknown population). More specifically, government records indicated that this study group had the following characteristics:

A high rate of return to the formal segment of the labor market after apprehension. Of the 192 members of the study group apprehended in California, 147 (77%) subsequently had earnings recorded by the California state unemployment insurance (UI) system. Slightly lower rates of return were reflected nationwide in data from the Social Security and Internal Revenue systems.

A high rate of filing for unemployment insurance benefits. Of the 147 who had been covered by California UI, 72 (49%) filed, and 51 (35%) collected. No member of the study group (whose median birth year was 1950) sought Social Security benefits.

Sustained contact with the U.S. labor market and tax systems. Some of the individuals had filed income tax returns as many as nine years before, and as many as four years after, their 1975 apprehension.

A low rate of acquiring legal status in the U.S. According to post-1975 INS records, of the 580 members of the study group, only 49 were converted to permanent resident aliens and four acquired U.S. citizenship.

Workload data provided by several government agencies on a national basis indicate:

Rising indices of illegal immigration throughout the 1970s;

Increasing duration of the stays of apprehended illegal migrants in the nation's cities; and

Continuing patterns of low wage levels for illegal immigrants including sub-legal levels. (This finding was based on both the Department of Labor workloads data and the individual earnings records.)

National workload data on the subject are not available, but local data from Los Angeles County (California) indicate that the county human resources agency identifies tens of thousands of illegal immigrants seeking welfare benefits annually and thereby saves at least $50,000,000 a year.

CHAPTER EIGHT—ILLEGAL MIGRANTS AND WELFARE PROGRAMS IN LOS ANGELES COUNTY, CALIF.[1]

We have not (yet) had an opportunity to seek group data on the interactions between the 580 members of the study group and welfare programs, such as Aid to Families With Dependent Children (AFDC) and Food Stamps, but interesting workloads data on this subject have been gathered for years by the Los Angeles County Department of Public Social Services (the human resources agency).

In California the human resources agencies administer a cluster of income transfer programs, including the federally-funded Food Stamp program; county supported General Assistance; and AFDC and Medicaid, which have mixed federal-state-local funding bases. Applicants for all programs move through a standard eligibility determination process. One has to be a resident of the state and have the right kind of problems (too little income, too many mouths to feed) to be eligible for one or more of the programs. Illegal migrants are not eligible for any of them.

Everyone seeking benefits is asked to document his or her eligibility; birth certificates for the native born; naturalization papers for foreign-born citizens; alien identification cards (green cards) for aliens. The aliens are asked to copy down information from the green card, such as their name, date and place of birth, and alien number for verification by the Immigration and Naturalization Service (INS).

That request made to the alien welfare applicants saves millions of dollars a month. In the 12 months ending June 30, 1980, 19,088 applications for benefits were withdrawn by aliens in Los Angeles County after that request was made;[2] presumably they were illegals. (It is also possible that some are legal residents, but have illegals in their households, or simply have a strong dislike for INS.) The number of aliens withdrawing claims in Los Angeles has risen in recent years, but the percentage of alien claims withdrawn[3] has remained fairly steady at 17–18%.

After the self-identified illegals withdraw their claims, about 7,000 or so alien applications remain to be processed each month. Theoretically, each application could be sent to the local INS district office for verification, but that would be a sea of paper. What does happen is that county welfare workers sort out the more suspicious applications (filed, for example, by persons who say that they have lost their green card and cannot remember its number). Several hundred such forms are sent to INS each month for checking.

An INS clerk running a computer terminal sorts out the easiest cases—those known to the computer as being legal residents. The rest are invited to come to the INS office to prove their legal presence. If INS finds them illegal, or if they do not respond to the invitation, they are taken off the welfare rolls. In the year ending June 30, 1980, according to County records, 2,135 of the referred applicants approved their legal status to INS, while another 2,405 turned out to be illegals. The 2,405 welfare cases actually identified by INS were merely the tip of the iceberg; the bulk of those denied benefits, 19,088 of them, identified themselves as ineligible rather than facing an examination by INS.

Each application denied or withdrawn saves the taxpayers $215.76 per month or $2,589.12 per year, the County estimates. If one multiplies $2,589.12 by 19,088 cases, the result is $49,421,123.55. That sum, in 1977, would have more than funded the entire, year-long AFDC programs in the states of Montana, Nevada, South Dakota, and Wyoming combined.

The $49,000,000 cost-saving estimate is a conservative one, for two reasons: first, it is the savings for denying 12 months of benefits. It has been estimated by other knowledgeable sources that a typical successful L.A. County welfare application triggers a 19-month period of benefits payments. If one were to factor in this element, the savings for a year's group of denials would be worth more than $75,000,000.

Secondly, the $49,000,000 in savings ignores the 2,405 illegal migrants who were determined to be illegal by INS. The overburdened INS office takes, on average, close to six months to handle these welfare checks. But even if the savings for these 2,405 were calculated assuming only six months of benefits saved, that would be an additional $3,000,000 or so a year.

Presumably, given a slightly larger staff for the project (say one more investigator and one more clerk, costing the government about $50,000 a year) the INS turn-around time on these cases could be cut from six to, say, two months. This would save $2,077,920 a year (4 months x $216 per month x 2,405 cases). But given the bizarre economics of federal budget making, the INS office cannot secure the extra $50,000 to save $2,077,920. In fact, recently INS has been saying that it may have to drop the program completely.

There are, of course, non-financial problems associated with the program. Some persons in need presumably are sent away hungry; others rejected by the system may turn to lives of crime; some others, because of lack of Medicaid eligibility, may not seek needed medical care.

Generally, however, the alien identification program appears to be simple and effective. Only a few persons years in staff time are spent on it; scores of millions of dollars are saved annually. If the word gets around that in California, at least, welfare benefits are hard to obtain if one is there illegally, it may deter some small part of the stream of illegal migration.

[1] Funding for research reported here was provided by the Laurel Foundation, and is gratefully acknowledged. This chapter is derived in part from the appendix to North, *Immigration and Income Transfer Policies in the U.S.*

[2] Los Angeles County, Department of Public Social Services, "Quarterly Report on Alien Status Verification Activity on Aliens Who Apply for Welfare," (Los Angeles: Aug. 14, 1980).

[3] The Los Angeles county agency regards these claims as denied (rather than withdrawn) in its reporting system.

THE DETERIORATING CONDITION OF THE WESTERN ALLIANCE

Mr. ROTH. Mr. President, I have for some time been disturbed by the deteriorating condition of the Western alliance. Despite the obvious and ominous growth in Soviet military capabilities far beyond anything they would need for legitimately defensive purposes, and despite the demonstrated Soviet willingness to use military force beyond its borders, the industrial democracies are plagued with uncertainty and discord on how to meet this threat. While the United States has undertaken a tremendously expensive program to rebuild our defenses, the allies have not even met their own commitments to increase defense expenditures by 3 percent per year. And the prospects are for even lower rates of growth in the immediate future.

This week's Economist magazine contains an unusually incisive and well-written account of this sad state of affairs. Furthermore, the Economist goes beyond the usual hand wringing to make an excellent suggestion as to how to begin to reverse the drift apart among the allies. The Economist suggests that a small group of eminent and trusted men and women be appointed to urgently examine the state of the alliance, and within a few months to make recommendations for consideration at a special summit meeting of the heads of government.

Mr. President, I believe that this suggestion deserves wide publicity and serious consideration. I therefore ask that it be printed in the RECORD.

The article follows:

DID YOU SAY ALLIES?

The relationship between western Europe and north America, alias the Atlantic alliance, is in the early stages of what could be a terminal illness. The alliance has been in trouble plenty of times before, but this time is the worst yet. Guess who says this about Europe:

Yes, there is a danger of neutralism. It is the result of a desire to let go, of an immense weariness. That makes me despair.

No, not a right-wing American, but the new Socialist foreign minister of France, Mr. Cheysson was talking mainly about the British, but what he said applies to many other Europeans too. And the Americans should not think it is all the fault of the feeble Europeans. Seven months ago they dismissed their own ineffectual President Carter, but that has not solved their part of the problem. The new Reagan administration has started to rearm America, which is essential; but it has not yet produced a policy which will rally the alliance around a rearmed America.

Like most illnesses, what has gone wrong with the western alliance is the result of an underlying condition, an immediate cause, and an over-hasty diagnosis.

The underlying condition is (a) the fact that the growing strength of western Europe's economies in the 1960s and early 1970s never managed to embarrass the Europeans into taking a suitably larger share of the burden of the west's defences off the shoulders of the relatively declining American economy, so that (b), when everybody's economies ran into trouble in the later 1970s, the Europeans were so accustomed to low defence spending that they were desperately reluctant to buy more defence at the cost of less welfare. Their tongues talked of independence from America; their purses preferred continued dependence. The Europeans' faltering 1977 promise to raise defence spending by 3 percent a year was not enough to remove this valid cause of American complaint.

This underlying condition has now been inflamed by the immediate cause of the present problem. The two parts of the alliance have reacted in sharply different ways to the belated discovery that Russia has been piling up its own military strength for the past 15 years, and is willing to use it. The Americans, being the people they still are, have responded with a rearmament programme and a fuzzy cloud of anti-Soviet rhetoric. The Europeans, being the people circumstances have made them, have tended to mutter that the Soviet build-up may not mean what the Americans think it means or, if it does, that the Americans will have to cope with it. The result, in the Gulf and in the nuclear protection of Europe, is that Europe's economically unjustified military dependence of America is growing even more lopsided.

PUSHING EACH OTHER APART

Enter the over-hasty diagnoses. The conclusion hot-headed right-wing Americans draw from all this (including some people in the Reagan administration) is that Europe is defecting from the alliance. That is, at worst, an exaggeration. Mr. Cheysson is right, the ingredients of neutralism are there: a weary reluctance to make hard choices, a flinching away from nuclear problems, a consequent temptation to give Russia most of the benefit of the doubt. These things have eaten deep in Denmark, in Holland, perhaps in Belgium too. But in the big European countries neutralism is still confined to a minority inside the main parties of the left. Even in Britain, the battle for the Labour party is not yet won or lost. With good leadership, Europe's neutralism can be kept in its corner.

The opposite mis-diagnosis, by hot-headed left-wing Europeans, is that Mr. Reagan's America is charging off in pursuit on an ideologically Quixotic foreign policy. This too is hardly borne out by the evidence. Mr. Reagan was supposed to be pro-Israeli, but his administration's first actions in that part of the world have been to discourage an Israeli attack on Syria's missiles in Lebanon and to make a (botched) offer of reconnaissance aircraft to Israel-loathing Saudi Arabia. Mr. Reagan was supposed to be pro-South African, but he has merely offered the South Africans a concession or two on Namibia in the hope of speeding them out of that territory. Even in El Salvador he seems to have recognised that shouting at Russia is not enough to solve the problem. In only one important respect are those raised European eyebrows justified. The Reagan administration has a rearmament programme; but it has yet to reveal whether rearmament is meant to be part of a wider policy, or an end in itself.

The danger facing Mr. Reagan is that these two misdiagnoses will eventually prove each other right. The Americans, suspecting European betrayal, will veer away into an attempt to do everything themselves. The Europeans, not being sure where America intends to lead, will increasingly decline to follow. The two halves of the alliance are pushing each other apart. It is Mr. Reagan who has to take the lead in stopping this. No European politician—not the beleaguered Mrs. Thatcher, nor the tattered Mr. Schmidt, nor the brand-new President Mitterrand—can do it for him. Only Mr. Reagan has the necessary authority, because only the United States has the necessary reservoir of will. The attempt has to be made at once, before 1981 is out.

FIVE BRIGHT MEN TO START A REFORMATION

The first step is to find a kernel of transatlantic agreement. The best way of doing this is to appoint a small group of intelligent men known to, and trusted by, the main Nato governments: say, one American, a German, a Briton, a Frenchman (if Mr. Mitterrand is willing) and someone from a smaller Nato country.

These men should be neither current holders of high office, who are too busy, nor retired prime ministers, who will be too preachy. They should not, God forbid, be chosen because they are as acceptable in Copenhagen as in Washington. What they need to be is men who know the subject like the back of their hands, know the people they will be arguing with, and above all know their own minds. Their instructions will be to criss-cross the alliance for a couple of months, and then write a brief report (10,000 words maximum?) which sets out, not some bland consensus of what they have heard in 15 capital cities, but their own view of what needs to be done and what most of the alliance might just be persuaded to do.

The next step, when their report is ready, is for President Reagan to call a summit meeting either of the whole alliance or—perhaps better at this stage of the proceedings—of its four or five biggest members (again including France if Mr. Mitterrand is willing). With that 10,000-word report as a starting-point, he would ask his fellow-summiteers to draw up a short list of proposals which would amount to a radical reform of the Atlantic alliance. This would involve some uncomfortable decisions for both the Americans and the Europeans. Here are three suggestions for the reformation programme.

1. The statistics of the Soviet military build-up make it clear that the Americans are right to urge more counter-armament. But the Europeans who are thus being urged to accept more taxes and/or less welfare are entitled to insist that this should be only one component of a wider policy designed to ensure, if humanly possible, that the need to rearm has some limits. The Europeans may be realising that the cheap and easy postwar period is finally over; but they want to be reassured that this is not the start of a prewar period.

This does not mean resuming the whole range of detente-era negotiations with Russia, most of which either helped Russia or achieved nothing. It probably does mean resuming the Salt nuclear-weapons negotiations. If the Reagan administration could show that, without Salt, the United States would be able to recapture the sort of nuclear superiority it possessed in the 1950's, a lot of Europeans would be relieved to return to the shade of that nuclear umbrella. But if you look at the sort of nuclear weapons that America can build over the next 110 years (and those Russia can build), it seems almost impossible that the easy superiority of the 1950's—when America could hit Russia without being seriously hit back—can be recaptured.

THE UNEQUAL ALLIANCE IN 1980

	Defense spending			Size of Armed Forces	
	Total (billions)	Per head	As percent of gap	Men (thousands)	Per thousand population
NATO:					
The big spenders:					
United States	$142.7	$644	5.5	2,050.0	9.2
Britain	24.5	437	5.2	329.0	5.9
France	20.2	374	4.0	495.0	9.2
West Germany	25.1	410	3.3	495.0	8.0
The small spenders:					
Italy	6.6	115	2.3	366.0	6.4
Denmark	1.4	274	2.1	35.0	6.9
Canada	4.2	177	1.8	79.0	3.3
Luxembourg	.05	134	1.1	.7	1.8
The rest (average)[1]	2.6	168	3.4	175.0	11.3
Japan	9.0	75	.9	241.0	2.1
Soviet Union	[2] 165	[2] 620	[2] 11–13.0	3,568.0	13.4

[1] The rest of NATO means Turkey, Greece, Portugal, Belgium, Holland, Norway: Iceland has no defence force.

[2] CIA figures.

Sources: based on IISS and NATO. All figures 1980 except Russia's (1979).

Mr. Jimmy Carter's abortive Salt-2 treaty—which gave Russia at least a theoretical chance of hitting America without being hit back—has to be put right. But if the 1950s cannot come again, next year should see the start of a new Salt negotiation that will ratify something like nuclear equality: a state of mutual *nemo me impune lacessit*. That will limit the amount of money that has to be spent on new nuclear arms (thereby making more available for non-nuclear ones). It will also keep alive the hope that, one day, a more amenable Russia can be talked to about other things as well.

2. But nuclear equality means that Russia cannot be allowed to have superiority in the non-nuclear weapons which nuclear equality enables it to use. The Europeans have to take a fairer share of the cost of the rearmament programme this calls for. The table on this page shows how unequally the weight now falls on American shoulders. The load has to be redistributed. The rational way of doing this is not an annual squabble about some annual percentage increase in every country's existing defence budget. That merely perpetuates the present imbalance.

The rational way is to sit down and start again from scratch, trying to agree how big an army, navy and air force "the west" would need to defend its territory, and to protect its vital interests outside that territory, if "the west" were a single unit. That should probably include the protection of the west's oil lifeline from the Gulf, since the Americans will not forever go on making a large (even if diminishing) contribution to the defense of Europe itself if the Europeans will make no contribution to the protection of the area from which America now gets only 10% of its oil but western Europe gets 60%. When the total military requirement is known, it should be possible to start making a more sensible allocation of the jobs to be done, and the cost of doing them, among the countries that make up "the west". It would be idle, of course, to expect a share-out of computer-like rationality. But something rather more computer-like than today's higgledy-piggledy Nato should be attempted.

3. If the Europeans are to put up more money for guns, however, they will want a bigger voice in the making of the policies which those guns ultimately serve. To quote the eloquent Mr. Cheysson again: "For pity's sake, let us talk about what we are and what we fight for".

The Reagan administration has promised to consult its allies, but all administrations promise that. A mechanism is needed to make consultation inescapable. One possibility is a series of ad hoc working groups, like the five-country committee (from America, Britain, France, West Germany and Canada) which has been negotiating with South Africa about Namibia. Another idea is a small permanent secretariat, consisting of fairly senior officials from the foreign, defence and economics ministries (and intelligence agencies?) of the four or five main members of the alliance. Such a body would not need to have an office in one particular capital; consultation can be done by electronics nowadays. The details of the mechanism are not difficult to work out. But first it has to be accepted that "consultation" means something more regular and rigorous than today's system of voluntary exchanges between foreign ministries which too often find themselves snapping their fingers and crying, "Ah! I meant to tell you!"

An alliance reformed along these lines would give both parts of it what they chiefly want. The Americans would have a heartier European shoulder behind the military wheel. The Europeans would have a better idea of where the wheel was rolling. Each would mistrust the other less. Let President Reagan address himself to it in the second half of 1981.

CHANGING THE CONSCIENCE OF AMERICA

● Mr. LEVIN. Mr. President, for many years I have admired the philosophy of Mordecai Kaplan, a theologian who founded a school of Jewish thought called reconstructionism. My admiration is based in part on the way reconstructionists approach the ethical dimensions of social issues. An editorial in the April 1981 issue of Reconstructionist magazine explores some of the ethical implications associated with the various budget issues we are considering. The editorial urges us to be aware of the fact that we will be debating more than economic theories; we will be deciding the direction that our society will take as well.

Mr. President, we would do well to look at this editorial and keep it in mind as we consider the various components of the reconciliation bill. Accordingly, I ask that the text of that editorial appear in the RECORD at this point.

CHANGING THE CONSCIENCE OF AMERICA

The revolt against the merciless cutting of the budget has begun; apparently the honeymoon period has also been cut. In the halls of Congress, the revolt is peaceful. What is not yet certain is that the revolt on the streets, in the ghettos, among the unemployed, among those who cannot see hope in their futures will be equally peaceful. Dissent explodes into violence when the atmosphere changes, when people no longer attribute their distress to bungling or inefficiency, and identify it with the deliberate policies of their leaders.

For it is now evident that the Reagan administration is intent upon turning the nation around, transforming its purported goals, rarely achieved to be sure, of narrowing the gap between the haves and the have-nots, favoring the rich and the privileged at the expense of the poor and needy. Everyone would concede that the budget needs to be balanced, or at least set upon the road toward its balancing; at the very least, no one would deny that the "fat" ought to be cut out. But citizens of compassion would vehemently submit that the current administration's program reflects a peculiar notion of where the "fat" lies.

For a man who, during his election campaign, invoked the memory of Franklin D. Roosevelt, it is passing strange that he seems callous to those who are poorly fed, poorly clothed and poorly housed. FDR was accused of being a traitor to his class; no one seems to be directing that charge at Ronald Reagan. He and his aides are indignant when free luncheons are given to children of a family receiving food stamps; they grow livid at the thought that legal aid is made available to the poor who cannot afford the services of a lawyer and are not acquainted with their rights. But somehow they look the other way when tax shelters protect the wealthy, and loopholes of all kinds enable the rich to avoid taxes. They do not hesitate to deny artists and musicians, and scholars seeking opportunities for research the funds needed for their enterprises; but they blandly continue to subsidize tobacco growers (whose product has been officially declared a hazard to the health of the republic).

Cutting the fat out of welfare programs appears to be a sacred duty; but inefficiency and waste in the military may be denounced only at the peril of being dubbed a traitor.

All of this is being done, ostensibly, with the blessing of the American people, for was not Ronald Reagan elected by a landslide? We submit that the President jumps to an unwarranted conclusion. It is true that he swept the country last November; but it does not necessarily follow that the victory gave him *carte blanche*. It was not a mandate to change the conscience of America. For more than a generation we have been moving in the direction of greater social justice, toward the acceptance of the thesis that society as a whole is responsible for the well-being of all its citizens. A whole generation grew up in believing in the classic Jewish principle of *kol Yisrael arevim zeh va'zeh*, that what happened to one of us happened to all of us, that the "bell" tolled for everyone. We believe in one world; at least, we believed in one nation, indivisible, with justice for all.●

GUN CONTROL ACT AMENDMENTS NEEDED NOW

● Mr. SASSER. Mr. President, approximately 2 months have passed since the introduction of "A Bill to Protect Firearm Owners' Constitutional Rights, Civil Liberties, and Right to Privacy," a bill which I have cosponsored. I am pleased to be able to say that over half the Senate has, in those 2 months, elected to sign on to this needed legislation. We may look forward to passage of this bill, but I feel that it is desirable to discuss now the need for this legislation and its historical context.

The primary thrust of this bill is aimed at amending the Gun Control Act of 1968 to change its most onerous provisions and institute guarantees of gun owners' civil liberties which were omitted from the act. To understand how those guarantees were omitted, we should examine the historical background of the 1968 act.

What ultimately became the 1968 Gun Control Act originated in 1963, as a relatively modest measure to require police notification before mail-order firearm purchases. Over the following years, as the gun control controversy expanded, so did the proposed legislation. It finally came to the floor in 1968 in a politically charged atmosphere. Those who sought extensive Federal regulation of gunowners fought for registration and permit systems; those who opposed it primarily fought against these proposals. The Gun Control Act was not a coordinated piece of legislation, but a hodgepodge of proposals which neither side particularly wanted, inserted piecemeal as the legislative battle see-sawed back and forth. No sooner was it enacted—as part of the Omnibus Crime Control and Safe Streets Act—than a new push was started for amending the bill.

A second piece of legislation, entitled the Gun Control Act of 1968, was passed, which amended various provisions of the first bill, making it apply to rifles and shotguns as well as pistols, creating a collectors' licensing system, amending provisions for review of license denials, and generally clouding the issue to a still greater degree. The end result was a strange piece of legislation. Among its other unusual features:

Four classes of persons are prohibited from purchasing or receiving firearms (section 922), and six classes of persons are forbidden possession of firearms (section 1201). But only two of these classes overlap, and even here the classes are defined in different language: the result is that most of the groups

forbidden receipt of firearms are not forbidden possession and vice versa.

The section limiting possession by persons convicted of an offense punishable by more than one year provides that a pardon ends the prohibition—but the drafters of the section limiting receipt of a firearm by the same class forgot to insert a similar provision. Accordingly, the Seventh Circuit has held that a person given a full pardon is allowed to possess a firearm, but commits a felony when he receives it to begin possession. (*Thrall* v. *Wolfe*, 503 F.2d 313 (7th Cir. 1974).)

The Act makes it a federal felony to "engage in the business" of dealing in firearms without a special license but fails to give any guidelines of any sort on what "engage in the business" means. This is vital to legitimate gun collectors, who often swap or sell a few firearms out of their collection. Courts have repeatedly held that, in absence of a legislative definition, there is no minimum profit, no requirement of advertising, employment of others, or premises used for business. The jury is simply instructed that the defendant should be convicted if they find he did "any business" in firearms. One court has even claimed that the display of a firearms collection in a glass case is listed among the characteristics associated with a "firearms business venture," so that a normal collector's display at a gun show is itself evidence of violation. (*United States* v. *Jackson*, 352 F. Supp. 672 (D. Ohio 1972) *aff'd* 480 F.2d 927 (6th Cir. 1973).)

The Act requires a federally-licensed firearms dealer to keep records of his inventory and sales, and does not require private citizens to do so. But it says nothing about what a dealer who has a private collection, not in his business inventory, should do if he sells a part of that collection as a private citizen. The agency enforcing the gun laws itself cannot make up its mind on this issue, but the persons who pay are law-abiding gunowners. In 1972, that agency formally ruled that a dealer did not have to record in his inventory personal firearms, even if they were on his business premises, if they were marked not for sale. It then proceeded to prosecute several dealers whom its agents enticed into selling guns from their private collection. At their trials it argued that its ruling, if read carefully, only said personal firearms did not have to be recorded in the inventory, not that their sale did not have to be recorded in sales records. But even while one of these prosecutions was pending, the head of the agency stated, in writing, that the dealer may "maintain a private collection independent of the business inventory and lawfully dispose of such firearms without entering the transaction in the business records." When confronted with this statement by its acting director, the agency responded that (1) the director was mistaken as to the law and (2) since mistake of law is no defense under the Act, the fact that the dealer here had the same misunderstanding is no protection to him! If this were not enough, since that date the agency's director has been quoted again as advising dealers that they may indeed have a private collection and sell from it off their business premises! No one seems to know what a dealer should do in this case—except that if he wrongly guesses the agency's position this month, he will be prosecuted on federal felony charges.

The vague and often inconsistent commands of the Gun Control Act would be a serious enough imposition to the citizens of this Nation, but they are compounded by two general problems. The first is that every violation, no matter how trival or technical, is a Federal felony. Not only are those who violate subject to 5-years imprisonment in a Federal institution plus a $5,000 fine, they lose most civil rights—to vote, hold office, and so on—even if their honest nature leads the judge to impose no real punishment. More than this, they totally lose the right to possess any firearm for the remainder of their lives. While a person who knowingly and intentionally commits a barehanded murder or robbery can theoretically get an administrative "relief from disability," enabling him to own firearms, a person convicted of a minor and unintentional Gun Control Act technically cannot—another of the harmful quirks of that legislation.

The second general problem is that most sections of the Gun Control Act require no proof of intent in order to obtain a conviction. The requirement of proof of criminal intent has been ingrained in our legal system from its beginnings; Blackstone went so far as to state that a crime without criminal intent was unknown to the common law of England. In *Morisette* v. *United States*, 342 U.S. 246 (1952), our Supreme Court went so far as to read an intent requirement into a statute where Congress has failed to insert that requirement. It stated that to do otherwise would "radically change the weight and balances of the scales of justice," and that the effect would be to "ease the prosecution's path to conviction, to strip the defendant of such benefit as he derived at common law from innocence of evil purpose, and to circumscribe the freedom heretofore allowed juries." Id. at 263.

The Morisette court's condemnation of this as a "manifest impairment of the immunities of individuals" was expanded a few years later when the Court added that "were it otherwise, the evil would be as great as it is when the law is written in print too fine to read or in a language foreign to the community." *Lambert* v. *California*, 355 U.S. 226, 230 (1957). Unfortunately, the Congress failed to place intent requirements in most of the provisions of the Gun Control Act. In *United States* v. *Powell*, 513 F.2d 1249 (8th Cir. 1975), the court went so far as to say that, in an "engaging in the business" prosecution, reliance on an attorney's opinion that the conduct was lawful is no defense.

The 90th Congress most definitely did not have to enact such a complicated gun control law, but the combination of the language they chose in the Gun Control Act and the interpretations the courts have placed upon that language had exactly that effect. Commands so vague that even the head of the agency charged with their enforcement cannot define them combined with the doctrine that "ignorance is no excuse" produce a law custom-made to ensnare law-abiding citizens who exercised their right to own and use arms. This opportunity fitted in perfectly with the bureaucratic expansion of the enforcing agency, the Bureau of Alcohol, Tobacco and Firearms (BATF).

Between 1968 and 1972, for instance, the Bureau was able to expand its employment of special agents from 985 to 1,622. Before the Gun Control Act, the agency had only been able to employ 214 agents for firearms enforcement; 5 years later it was able to thus employ almost a thousand.

But the BATF apparently found that enforcing the law against genuine criminals—for example, convicted felons who illegally owned firearms—was not suitable to mass production of arrests that could be used as a "numbers game" to justify still more employment of agents.

Instead, it has engaged in frequent entrapment of licensed dealers and private collectors. They were easily located, were not evasive or even expecting undercover approaches. They had no criminal intent, but the law did not require proof of such for charges or conviction. The broad language of the act and the vagueness of its commands insured that they could easily be lured into a technical violation.

Collectors were approached by agents who purchased two, four, or six guns from their collection. They were then raided, charged, and their collections confiscated on "engaging in the business of dealing in guns" charges. Dealers were approached by nonresidents of their States, to whom they could not sell. When they turned down the nonresident, a resident agent with valid identification claimed to be a relative and bought the firearm legally "for" the nonresident. The dealer was then charged with a "straw man" sale. Other dealers were induced to make sales from their personal collections, then charged with having sold without proper recording, as I described earlier. In many areas, a virtual reign of terror came to dominate legitimate gun owners and collectors.

To date, three Senate and one House hearings have documented the extent of these abuses. These have established, among other things, that approximately 75 to 80 percent of BATF criminal firearms charges were being brought against individuals who had no criminal intent; that BATF itself admits barely 10 percent of its firearm charges are on "felon in possession" or "sale to felon" charges; that an assistant director of the Bureau had indicated in a private memorandum to the director that he "shuddered to think" that their errors might lead to conviction of innocent citizens; that agents have repeatedly confiscated collector-grade firearms, deliberately dropped them on concrete floors, stored them in damp areas, and otherwise damaged them; that in aggravation of this, agents have often refused to return seized firearms even after their owner has been acquitted, after grand juries refused to find even "probable cause" to believe he had broken the law, or after the Bureau itself dropped charges.

These were not minor acts; in several cases the agents calmly informed individuals that the Bureau did not have to pay legal expenses, the individuals did, and if they sued to assert their rights, the expense would be beyond their means. BATF, to be sure, claimed to have "reformed," but the hearings document that, after the reforms, the percent of cases brought against felons in possession dropped and the value of seized firearms rose, indicating seizure of more collectors' items, not fewer.

In short, this legislation is vitally needed. We must remove the opportu-

nity for such abuses, and minimize the incentive for new ones by providing liberal remedies for firearm owners who successfully assert their rights. This bill would achieve these goals with a series of provisions, which I can briefly discuss here.

First, prosecution for unintentional violations would be ended. Now the Government must prove, beyond a reasonable doubt, that a violation was willful before it can obtain a conviction. A technical violation, by one who did not intend to break the law, can no longer form the basis of life-wrecking felon status.

Second, this bill would narrow and clarify the most vague commands of the Gun Control Act. The vague command that one refrain from engaging in the business would be clarified by a definition of that term as pertaining to engaging in the repetitive sale of firearms for the primary motive of profit, and as expressly excluding firearms hobbyists who dispose of their collection. This more nearly approaches what we commonly think of as a dealer—not a collector who exhibits his firearms and swaps or sells in pursuit of a hobby.

Another provision would recognize that a licensed dealer may have a private firearms collection, separate from his inventory, and so long as he keeps it separate may act as a private collector in acquiring, keeping, and disposing of it. No longer will those with a license be treated as second class citizens who even dispose of their own property in a manner permitted an ordinary, unlicensed citizen.

Yet another provision would coordinate the different sections listing persons banned from receiving or possessing firearms. As I mentioned earlier, existing law in this area is an ill-coordinated hodgepodge of different provisions—persons prohibited from owning guns may not be prohibited from receiving them, and vice versa, a pardon may permit a person to possess but not to receive, and so on. This bill coordinates these provisions into clear-cut commands: seven classes of persons, including all convicted felons who have not received pardons, reliefs from disabilities, or expungement of cases, are banned from possessing, owning, receiving or transporting firearms. The same rules on pardon, relief, and expungement apply to all such restrictions.

Third, this bill would remove the opportunity and incentive for harassment and civil rights violations. If a citizen is acquitted, confiscated firearms cannot be withheld based on the charges of which he has been found innocent. Nor can firearms be withheld if the agency seizes them and refuses to bring charges within 120 days. The BATF has in the past seized firearms from an individual and, to cover the fact that the firearms were not involved in any violation, claimed that he "intended to use" them at some unspecified later date. This bill would remove the "intended to use" language from the confiscation section, allowing seizure only where the Bureau can establish firearms actually were used in violation of the law.

Given that the Government seizure of valuable private property without compensation, jury trial, requirement of proof beyond a reasonable doubt or any other safeguards normally accorded one whom the Government seeks to punish, is a procedure whose constitutionality skates upon thin ice to begin with, a limitation to property actually involved in violations is surely the minimum that justice requires.

As a means of enforcing these restrictions, the bill contains provisions that, where the owner of firearms must sue for their return, he is automatically entitled to a reasonable attorney's fee if successful. I see no reason why a citizen may have his property taken by the Government, win a finding that its taking was illegal and be saddled with legal fees while fighting a Government agency whose fees are paid from his pocket and those of every taxpayer.

Finally, this bill would remove several sections of the act which have been used for abuse and which constitute needlessly broad and wasteful restrictions. The most important of these is the ban on interstate firearm sales. When the Gun Control Act was being debated, it was initially proposed to ban interstate sales where the effect was to circumvent local laws—for example, where the buyer resided in an area where the acquisition of the gun would be illegal.

These proposals were rejected at the 11th hour due to drafting difficulties and instead a general ban on all interstate transfers—even where no local law existed that could be circumvented—was imposed. This, in turn, was altered by various exceptions—for firearms passing by will and devise, transferred to a dealer, replacement firearms, sales between contiguous States—but only of certain firearms and with special forms—and so forth. The result is to make inadvertent Federal felons out of honest citizens who transfer or give a firearm to a friend or relative who lives across a State line, even where they violate no State laws in so doing.

This bill would replace this exception-riddled general ban with a simple, clear, and rational rule: an interstate transfer is legal if it violates no State or local law in the place of the sale and the place to which the buyer intends to take it. If it breaks local laws in either of these places, it is illegal.

Another provision of the bill ends ammunition recordkeeping, another provision hastily inserted in the Gun Control Act. Even the agency enforcing the law has admitted that ammunition recordkeeping is of no measurable crime-fighting value and, with billions of rounds sold each year, the paperwork burden is enormous.

A third provision permits agents to enter the premises of dealers for record searches only where they have reasonable cause to believe a violation has occurred or there is evidence of such to be found. All too often, in the name of generating "makework" for appropriations time, or harassing a dealer, agents have spent hours or days examining his records without any reason to expect evidence of violation. We must remember that a firearms dealer, like any citizen, is entitled to his fourth amendment protection against search and seizure without probable cause. If an ordinary businessman is entitled to this protection when enforcement of OSHA is involved—and our Supreme Court has ruled that he is—I see no reason why the fact that he has chosen to transact firearms business should create an exception in the Bill of Rights.

In summary, I think this legislation is badly needed, to prevent future abuses of this type, to force the enforcing agency back toward real criminals and away from law-abiding gun owners, and in general to coordinate and add some reason to a hastily drafted and poorly formed statute. I am tired of the abuses which have been committed in its name—tired of having citizens without criminal intent being charged with felonies, tired of having honest collectors' museum-grade firearms seized as if they were likely to be used in crime, tired of agents who withhold firearms after their owners have been acquitted of all charges, tired of hearing that "ignorance of the law is no excuse," when the law is so vague the directors of the enforcing agencies admit ignorance of its provisions.

The 90th Congress acted hastily in drafting the legislation as it now stands; I suggest it is our duty in the 97th to end forever the violation of our Constitution and laws in the name of its enforcement.●

OPERATION DRIVER EXCELLENCE

● Mr. EAGLETON. Mr. President, on May 15–17, 1981, 36 young men and women from around the country participated in one of the finest programs available to teenagers to heighten their safe driving skills, the 15th National Finals of Operation Driver Excellence. This event was held at the Holiday Inn North in St. Louis.

I am impressed with Operation Driver Excellence, for it offers a positive response to one of the more perplexing problems of the present day, namely, the daily loss of life on America's roads and highways.

The program's cosponsors, the American Veterans of World War II, Korea and Viet Nam (AMVETS) and the Dodge Division of the Chrysler Corp., have over the years developed a response that stresses that safe driving is not always good enough, and that only a skillful driver is a safe driver.

Operation Driver Excellence has been designed by AMVETS and Dodge to emphasize skillful driving and recognizes those most skillful in this area.

Every spring AMVETS and Dodge take their program to thousands of high schools across the land. Eligibility rests on the successful completion of a certified high school driver education course. Students who meet the criteria participate in a three-phase competition which includes an over-the-road test in actual highway traffic, a written test on driving laws and theory, and a specially designed skills course to measure response to driving emergencies.

Those who win the local competitions

test their skills in the State finals. State champions and one chaperone are awarded a weekend trip to the national finals.

The 36 students who won trips to the 15th Annual National Finals in St. Louis were the best young drivers in the United States.

The driving competition, held at the Northwest Plaza Shopping Center, saw these 36 teenage driving champions wheel their loaned Dodge automobiles through suburban St. Louis traffic and the highly complex skills course. After more than 6 hours of tough competition, a national safe driving champion was crowned.

AMVETS and Dodge make sure that everyone wins in Operation D.E. I wish to personally congratulate each of the 36 State champions who took part in the national finals. By participating, these fine young Americans have heightened public awareness of the need for safe driving standards on the part of all Americans.

Douglas D. Schmidt, a 16-year-old sophomore at Northeast High School in Lincoln, Nebr., topped the field of State driving champions and won the coveted title of 1981 National Safe Driving Champion. His award-winning performance earned him a new Dodge Aries-K car and a $2,000 AMVETS scholarship. The AMVETS State D.E. chairman in Nebraska was Schmidt's father, Duane.

Second place and a $1,500 scholarship went to Joey Mahon, 16, of Greenwood High School in Greenwood, S.C. The AMVETS D.E. chairman in South Carolina was Paul Jordon. A third place finish earned Raymond Thomas Cerwinski, 18, of St. Aloysious High School in Newark, N.J., a $1,000 scholarship. The D.E. chairman in New Jersey was George Decker, junior scholarships of $750 and $500 went to James A. Capwill, Jr., 17, of Solon High School in Solon, Ohio; and Joel Roy Kantor, 17, of Charles W. Woodward High School in Rockville, Md., respectively. The D.E. chairmen in Ohio and Maryland were Ernest Bloomfield and Hugh Warner.

All of the National Finalists received commemorative trophies, D.E. wristwatches and jackets.

The national finalists listed alphabetically by State were: Mike T. Eder, Alaska; Bobby W. Martin, Arizona; Reza R. Farrokhi, California; Danny Fahey, Colorado; Debra Scholoss, Connecticut; George D Shaw, Washington, D.C.; Joseph L. Hamilton, Florida; Sharon K. Morris, Georgia; Edward Karpinski, Illinois; Michael Osmon, Indiana; Adrian L. Blumhagen, Iowa; Ray Dick, Kansas; Stephen Sangalli, Kentucky; Georgia Skrmetta, Louisiana; James A. Hatch, Maine; Mark B. Windham, Massachusetts; Ruben Ovalle, Michigan; Faye D. Dulaney, Mississippi; Daniel Smith, Jr., Missouri; Andre Koehler, New York; Danny R. Craven, North Carolina; Lee D. Leadbetter, North Dakota; Brad Borlin, Oregon; Mark A. Sampson, Pennsylvania; Dave Humphrey, Rhode Island; William C. Rhodes III, Tennessee; Brett Macy, Vermont; Todd Banks, Virginia; Mark E. McDonald, West Virginia; Ken Ebert, Wisconsin; Kelly Anderson, Wyoming. The students were escorted to St. Louis by their high school driver education instructors or their parents.

The sizable AMVETS delegation at the event was led by their National Commander, Ernest F. Pitochelli of Johnston, R.I. Administration of the program was conducted by James R. Ramsburg, AMVETS national program director, with able assistance from the Missouri home State representative, William Thompson of St. Louis.

The program was supervised by AMVETS National Highway Traffic Safety Commission, chaired by Robert Medairos of Massachusetts. Other members of the commission include Vice Chairman Donald Fournier of Illinois; Roger Christ of Michigan; Jerry Hartman of Ohio; Leon Gubala of New York; and Fred Bogatay of Pennsylvania.

The Dodge Division was officially represented by Walter M. Jajuga, St. Louis truck sales manager. Thomas F. Houston, manager of Dodge public relations, handled media liaison for the event.

Judging on the over-the-road test and the skills course was done by the Missouri State Police with expert assistance from local police officers.

Mr. President, the participants had a special guest at their victory banquet the evening of Saturday, May 16. My good friend, Missouri Lt. Gov. Kenneth Rothman, made a special guest appearance to congratulate the national finalists.

As I have said, I have been most favorably impressed with Operation D.E. in that the program is noble in purpose and it draws participants of the highest caliber. I should point out that Operation D.E. is a classic example of what American citizens can do on their own to address a serious national problem.

Mr. President, all who participated in this worthy project, whether at the local, State, or National level, came away with a better understanding of safe driving practices and techniques and they have heightened the public's awareness of a very serious national problem. I encourage the "partners in safety," AMVETS and Dodge, to continue to provide this unique program for the young drivers of our Nation in the years to come.●

RESOLUTION ADOPTED BY THE NATIONAL GUARD ASSOCIATION OF ARIZONA

● Mr. GOLDWATER. Mr. President, recently, the National Guard Association of the State of Arizona adopted a resolution honoring America's soldiers, sailors, airmen, and marines who served honorably in the Vietnam war. Recognition for these veterans is long overdue.

That conflict is fortunately many years behind us but the veterans who served their Nation so well are very much with us. We are in the throes of dealing with many of their problems which did not go away with the termination of hostilities. The very least that we can do is to express our sincere appreciation for the service they gave when their country called on them.

I ask that the resolution adopted by the National Guard Association of Arizona on May 30, 1981, be printed at this point in the RECORD.

The material is as follows:

Phoenix, Ariz., June 19, 1981.

NATIONAL GUARD ASSOCIATION OF ARIZONA,

Hon. BARRY GOLDWATER,
U.S. Senator,
Washington, D.C.

Re: Resolution Honoring America's Soldiers, Airmen, Sailors, and Marines Who Served Honorably in the Vietnam War.

DEAR SENATOR GOLDWATER: Enclosed is a Resolution adopted by the National Guard Association of Arizona at its Annual General Conference on 30 May 1981.

We think that the Resolution is timely, appropriate, and a message not only to those who served in the past, but also a message to those who may be called upon to serve in the future.

We respectfully ask that you consider the intent and tone of this Resolution, and that you act to perpetuate its message.

Respectfully submitted.

JOSEPH E. ABODEELY,
Chairman, Resolutions Committee, National Guard Association of Arizona.

RESOLUTION No. 2

Whereas, several years have passed since America's military involvement in the Vietnam war, but not so many years have passed that the soldiers, airmen, sailors, and marines who served their country in that war will forget the sacrifices they made serving their country; and

Whereas, the soldiers, airmen, sailors, and marines served valiantly and effectively in a war unlike any other in which U.S. forces engaged because the U.S. military's involvement in Vietnam was directed toward fighting a limited war of counter-insurgency rather than fighting a conventional war of terrain acquisition and occupation; and

Whereas, the American public became satiated with the horrors of the prolonged war after being informed by media coverage of the horrors of that war; and anti-war sentiment and Congressional leaders influenced the President to quickly withdraw U.S. military forces from Vietnam because Congress would no longer support U.S. military action there; and U.S. soldiers, airmen, sailors, and marines returned to the United States without a victory for their country; and

Whereas, the veterans of the Vietnam War who carried out the policies of the Administration who sent them to Vietnam did not lose the war, and it is unjust to blame any single group for the outcome of that war, but especially unjust to blame those who honorably served their country; and

Whereas, Vietnam veterans have been unfairly treated by some members of the American public by being called derogatory names when the vast majority of their service was highly professional and honorable; and the media has unfairly portrayed Vietnam veterans as psychopathic losers of an unpopular war; and the Government has unfairly treated Vietnam veterans by granting amnesty to deserters and draft evaders, by upgrading previously less than honorable discharges, and by failing to show a concerted interest for these veterans by granting appropriate Vietnam veterans benefits or memorials or other forms of recognition due the veterans of our Nation's longest, most costly, and most difficult war; and

Whereas, President Reagan so appropriately stated America's need to rethink the Vietnam experience;

"It is time we recognize ours was, in truth, a noble cause. A small country, newly free from colonial rule, sought our help in

establishing self-rule and the means of self-defense against a totalitarian neighbor bent on conquest.

"There is a lesson for all of us in Vietnam. If we are forced to fight, we must have the means and determination to prevail. We dishonor the memory of 50,000 young Americans who died in that cause if we give way to feelings of guilt as if we were doing something shameful"; and

Whereas, it is only just and right that we all remember and recognize the many sacrifices made by those soldiers, airmen, sailors, and marines who honorably and valiantly served in Vietnam;

Now, therefore, be it resolved, by the National Guard Association of Arizona assembled in annual general conference this 30th day of May, 1981 that

(1) All Vietnam veterans who honorably and valiantly served in America's longest, most costly, and most difficult war are to be commended for their honorable and dedicated service to their country;

(2) This Association supports and encourages the creation of a monument at the State Capitol or other suitable location which recognizes and expresses appreciation for the service of the soldiers, airmen, sailors, and marines who honorably and valiantly, and under the most difficult of circumstances, served their country in the Vietnam war;

(3) This Association supports the creation of a similar monument at our Nation's Capitol and at other locations throughout the Nation;

(4) This Association supports President Reagan's statements regarding considering the Vietnam veterans' "noble cause" so as not to dishonor those who died;

Be it further resolved, that this Resolution be sent to the Arizona Congressional delegation, the National Guard Association of the United States, and the Arizona State Legislature for consideration and adoption.●

SENATOR LEVIN PINPOINTS DRAWBACKS ON REINSTATING THE DEATH PENALTY

● Mr. LEAHY. Mr. President, on June 12, the Washington Post published a very fine article by our distinguished colleague from Michigan, Senator CARL LEVIN, on the drawbacks of reinstating the death penalty. Senator LEVIN has obviously given a great deal of thought to the propensity of our criminal justice system to make errors and to apply capital punishment in inappropriate circumstances.

As a former prosecutor with substantial experience in murder and other serious felony crimes, I want to be sure Senator LEVIN's point is not lost on us. No matter how well qualified the trial judges, or how well intentioned the juries, our criminal justice system is run by people, and people make mistakes. Regardless of the procedures used to determine cases in which the irrevocable penalty of death will be applied, innocent people will be condemned to die. Senator LEVIN forcefully makes this point in his article. I ask that the article be printed in the RECORD.

The article follows:

DEATH PENALTY: ERRORS HAPPEN

(By CARL LEVIN)

This week, the Senate Judiciary Committee approved a bill to reinstitute the death penalty for certain federal crimes. As a lawyer with some experience in capital cases, I hope the bill "dies."

A primary reason to oppose the death penalty is the fear that innocent people will be executed. Proponents of capital punishment suggest that such "mistakes" are rare. But as the gubernatorial commutations, in "high-profile" cases such as those of Sacco-Vanzetti and the Haymarket defendants indicate, they do take place. Even more frequent is, our experience with situations in which innocent people escaped execution only through fortuitious circumstances unrelated to the judicial system's ability to correct error.

One example comes from my experience with the Public Defender's Office in Detroit. There I was assigned to the case of Charles Clark, convicted of murdering a store-owner in 1937 and serving a mandatory life sentence because Michigan had previously abolished the death penalty.

In the years following his conviction, Clark persisted in proclaiming his innocence. Despite the hardships of prison life, he rejected gubernatorial offers to commute his sentence, explaining that acceptance would be an implicit admission of guilt.

I was intrigued by the case. I read the trial transcript and concluded that there was a good possibility that Clark actually was innocent. An investigator was assigned to find the murdered store-owner's daughter who, as the only eyewitness, had played a critical role at the trial.

When we talked with her, it became clear that she really had never been able to identify Clark as the killer or even place him at the scene. Her testimony, she explained, was the result of a detective's telling her at a lineup, "that's the man who shot your father," rather than her own recollection.

With the only evidence against him removed, a new trial was ordered, and soon thereafter Charles Clark left prison a free and officially innocent man. There is some comfort to be derived from the absence of the death penalty in Michigan, a fact that allowed Charles Clark to savor his ultimate vindication.

But this case demonstrates that our criminal justice system is fallible. It is designed, operated and maintained by imperfect human beings. Although we cannot allow the fear of error to paralyze us, we should avoid acts that make error irredeemable.

The issues associated with capital punishment go beyond the question of clear error. Our judicial code does more than establish innocence or guilt—it also seeks to evaluate relative levels of culpability. Thus we distinguish between murder in the first and second degrees. And in the bill now before the Senate, we catalog conditions that mitigate against imposing the death sentence.

These gradations of guilt attempt to recognize and respond to the diversity of human motives and the difficulty of determining individual intent. The inherently imprecise nature of this determination ensures that errors will be made in assessing the degree of guilt and imposing the appropriate punishment.

The Judiicary Committee's acceptance of proposals that allow the members of the jury to disagree about what specific aggravating factors justify the death penalty, as long as they agree that some aggravating factors were present, simply highlights this problem.

One can argue about the death penalty's deterrent effect, its morality or the fairness of its application. But one cannot argue against its ability to take the life of an innocent person or that it can be applied inappropriately in cases in which some degree of guilt is firmly established.

It is simply unwise and unconscionable to deprive ourselves of the ability to correct errors. The fatal flaw of the death penalty is that it denies us that opportunity.●

RURAL CO-OPS, AGRICULTURE, AND REAGAN

○ Mr. BAUCUS. Mr. President, I represent the State of Montana. There are many in my State who support President Reagan vigorously; indeed, I have made no secret of the fact that I support many things he is trying to do.

Yet, among his strongest supporters, there are many in Montana who are very, very concerned about the direction and the philosophy behind Mr. Reagan's energy and agricultural programs.

In brief, his energy program seems to be one of terminating as much renewable resource work as possible, while spending as much as possible on nuclear. There is no balance, simply an end or near end to such efforts as alcohol fuels, conservation, and solar, while increasing nuclear spending wherever possible.

In agriculture, under the banner of "privatization," Mr. Reagan seems determined to undermine all the rural programs that have helped make our agricultural industry the envy of the world and have brought basic health, education, and other services to rural America.

The National Rural Electric Association is in a good position to see some of the impacts of Mr. Reagan's proposals for agriculture and energy. I believe my colleagues would find two short articles from this association's Rural Electric Newsletter interesting, and I ask that these articles be printed in the RECORD at the conclusion of my remarks.

I hope that the supporters of Mr. Reagan here in the Senate—especially those from rural States—read these articles and use their influence to turn Mr. Reagan away from his present course both in agriculture and in energy.

American agriculture depends upon the family farm, and our energy security depends upon a reasonable balance of our energy priorities. I would strongly urge Senators from rural parts of our country to closely scrutinize Reagan energy and agricultural initiatives. We should base our judgments upon the impacts of these policies on our regions and on the Nation; we should not base our judgment on any blind assumptions, ideological litmus tests or grand rhetoric about potential rewards of unrestrained capitalism.

The articles follow:

[From Rural Electric Newsletter, Feb. 20, 1981]

THE DARK SIDE OF SUPPLY SIDE

(By J. C. Brown)

"Supply side" economics, which is being pushed by OMB's David Stockman and the Wall Street Journal, was for many years known as the "trickle-down" theory.

Prior to the Great Depression, Presidents Harding, Coolidge and Hoover put together eight straight years of supply side economic policies.

The theory is that government makes bad economic decisions. If, on the other hand, you give private enterprise the tax breaks, subsidies (Harding tossed in oil wells), or just leave it alone, and hold government to the role of providing for the national defense, people will invest in industry, which will employ workers to produce goods, which will be offered at attractive prices regulated by competition, and the employed workers will buy these goods, creating even greater profits which will encourage further

investment in producing those things which business believes there's a market for.

It works—but not well enough to serve the total national interest—which must be measured in the well-being of a nation's people.

Investment quite logically goes to industries and enterprises which promise the highest return on the dollar. This much, of course, is not theory. That's the way intelligent people with money behave. And this behavior extends upward to conglomerates and multi-national corporations, which explains why they frequently close down profitable factories in small towns which they once had bought eagerly. They could make still more profit somewhere else or in some other line—Europe, Caribbean condominiums, Ringling Brothers Circus.

Franklin Roosevelt, among others, observed that supply side economics failed to afford a lot of people a quality of life they not only desired but which even the supply siders conceded was desirable.

Such as:

Rural electrification. Prior to government's entry into financing rural electric systems, investment capital was not available to build rural lines or power plants to serve rural power systems. Investors quite accurately observed that rural rates would have to be exorbitant in order to provide a rate of return available in urban areas. Government assumed a role which Stockman's band of supply siders abhors. It directed capital to rural areas.

Education. Public school education was the result of public direction of capital into a service which did not attract private capital. In more recent years, government, by guaranteeing loans, elevated its goals to help students who otherwise would not receive a higher education.

Transportation. Railroads long ago recognized there was no money in people (especially rural ones) and set about abandoning them in favor of freight, except where government interceded. Thus, you can't take the train from Elkin to Ronda anymore.

Housing. Twenty years ago, no matter how prosperous you were, if you were a farmer and wanted to build a home, you put up 50% of the money and mortgages the whole farm in order to borrow the rest. Only when government started guaranteeing loans for poor and moderate-income families (under Farmers Home Administration) could rural people build houses on a parity with urban people.

Services. Almost always until the 1950s, and to some extent still, rural people could not readily buy electric appliances or get them serviced. Entrepreneurs found thickly populated, urban areas more profitable. Thus, rural electric cooperatives often merchandised appliances and even financed them. Rural people get just as sick as urban people but there aren't enough doctors in rural practice. Rural communities, operating as government, sometimes succeed in establishing clinics and attracting doctors; but most doctors who choose rural America aren't making economic decisions.

In summary, Stockman's supply side economics is bad news for areas and people which aren't attractive to investment capital. And for the most part, those are rural areas and rural people.

[From the Rural Electric Newsletter, June 12, 1981]

THE "PRIVITIZATION" OF THE PUBLIC

(By Les Nelson)

(EDITOR'S NOTE: The following article is excerpted from the "Alkali Ed" column of the June issue of Wisconsin Rural Electric News.)

A guest speaker at a board meeting of the Cooperative Finance Corporation back in March was one Lawrence Kudlow, chief economist in the Office of Management and Budget in Washington. Kudlow, a former Wall Street banker, is one of the molders and shapers of the Reagan administration's economic policy.

Kudlow talked in general terms about the new monetary and budgetary policies, and then answered a few questions.

Allen Beadles, a Jump River Electric Co-op director who also serves on the CFC board, brought back a tape of Kudlow's presentation. I've heard it, and I wish I hadn't because now I feel obligated to describe it, not an easy task.

SCORNFUL? CONTEMPTUOUS? DISDAINFUL? ARROGANT?

All of the above, and more. Insolent, flippant, or just downright disrespectful.

I'm glad this is an opinion column and not strictly a report, because many of the words Kudlow spoke, on paper, do not convey his attitude as effectively as his tone of voice.

I could give you a random quote and you might say, "Well, what's so bad about that?" For example:

"This is our approach to the incentivization of the American economy—or maybe we should call it the re-incentivization. We wish to increase after-tax rates of return on work effort and investment, and it is our old-fashioned view that if there is something in it financially, people will want to do it."

A lot of his presentation was like that, sprinkled with words such as "incentivization," "privitization" and "obligational authority," but not offensive.

But then came the question-answer session, and an answer that will be one of the more durable entries in the history of the rural electrification program.

"Don't start with agriculture," Kudlow said with a groan in his voice. "I mean you get into those credit programs and all of those government subsidies. What we've been doing with agriculture is absolutely fantastic, and there's no way we should be in this business. I mean if the market can't sustain it, then we shouldn't do it. You just can't ask us (at least, this Administration; I know you've asked past ones and you may ask future ones); you can't ask us to assume that we have to finance an on-going operation that the private money market would not, I mean, as a banker, I could tell you that makes bad financial decisions, and as a government policy marker, I just have to apply the same principles. And we're going to do more of this. We've just scratched the surface. Let me tell you, this credit budget stuff is one of the biggest obscenities in the entire budgetary structure."

That last sentence, about the "biggest obscenities," was so bad that CFC omitted it from a typed transcript of the presentation, apparently for fear of causing hard feelings.

I think we need some hard feelings. When we have a banker talking to us like that about government credit programs, we need some hard feelings.

Government credit programs were created only because there were needs that bankers could not or would not meet. If the government conducted itself by banking principles, then those needs would not be met.

So now we are going to have "privitization." I remember a time when the banks were so privatized they had to be shut down by the U.S. government for their own protection. I remember a time when the biggest word in banking was foreclosure. Privitization was a very small word at that time.

I don't believe the bankers are much more willing or able to meet the needs of rural America now than they were then. Neither is a government which applies their principles.●

SOUTHEAST ASIAN AID

● Mr. HAYAKAWA. Mr. President, I wish to commend our Secretary of State on his successful visit to Manila and his extensive meetings with the foreign ministers of the Association of Southeast Asian Nations.

Secretary Haig has told our friends in Asia that the United States is ready once again to bear the burdens that history has placed on our shoulders, and is prepared to "shore up those who are under threat and danger." I enthusiastically welcome that stand.

We will soon be meeting to discuss the foreign aid authorization bill for fiscal year 1982 and I would like to suggest that all of us take some time between now and then to consider how we can back up Secretary Haig's pledge to our friends and allies in Asia.

While we are doing so, we will learn that the five members of ASEAN have, since the Vietnamese invasion and occupation of Kampuchea (Cambodia) 2½ years ago, held to a unified position on two points. The first is that Vietnamese troops must be withdrawn from Cambodia before peace can come to that country. The second is that Thailand stands at the front line of Communist expansion activities in Southeast Asia.

They hold this position for a simple reason: A Cambodia occupied by Vietnam is a direct threat to the territorial integrity of Thailand and the other ASEAN states.

ASEAN is a group of developing nations whose prerequisite for economic advancement is peace and stability in Southeast Asia. So long as a foreign army occupies Kampuchea and controls the Khmer people, the security of Thailand is threatened and peace is imperiled throughout the region.

It is not difficult to see the force behind Vietnam's activities in Cambodia: It is the Soviet Union. Russia's invasion of Afghanistan and Vietnam's invasion of Cambodia are closely linked. Vietnam's eventual success or failure in subjugating all of Cambodia will directly affect Soviet influence in Southeast Asia and the Indian Ocean area. Thailand, in its frontline position, sees the threat to itself and the region clearly. A complete Vietnamese victory in Kampuchea would lead to further expansionist adventures by Vietnam; the first target would be Thailand. For this reason, Thai leaders are now working to strengthen the country's defense capabilities.

It is because Thailand is the country most threatened today by Soviet and Vietnamese activities that other ASEAN countries consider it the frontline state and view U.S. security assistance to the Thais as a clear measure of American commitment to the security of the rest of ASEAN. By maintaining this assistance to Thailand, the United States enables it and the other members of ASEAN to hold to a firm position on the Cambodian problem in international bodies and to stick to a unified call for the withdrawal of Vietnamese troops for Cambodian soil.

ASEAN governments have ample evidence to back up their fears of further Vietnamese adventurism. During the past

5 years Hanoi has declared that ASEAN members are not independent states but colonies of capitalist countries, that their peoples would someday force all ties with the United States to be severed, and that the Kampuchean revolution would serve as a model for future so-called liberation movements in other Southeast Asian countries. By revolution they mean the Vietnamese invasion of Kampuchea, a distinction not lost on the leaders of ASEAN countries.

Nor is it lost on them that, instead of rehabilitating its economy since its military victory in 1975, Vietnam has increased its armed forces by eight divisions, has pronounced its army "invincible," and has geared its government, economy, and society to the pursuit of only one national activity: war.

It is with this in mind that I note that the security of Thailand is crucial to keeping peace in Southeast Asia and to protecting American interests there.

This administration has affirmed our commitment to Thailand under the Manila Pact, as has every administration since the pact was signed in 1954, and we will soon be talking about how we can back up our assurances with concrete contributions.

When we are considering the sums involved in bolstering Thailand's security, we should weigh the alternatives in cost if Vietnam is successful in launching its war machine into Thailand and causing instability there.

Instability in Thailand would be a direct threat to the security of the Straits of Malacca, and to the three countries along whose shore it runs, Malaysia, Singapore, and Indonesia. It is through the straits that trade passes between the Pacific and Indian Oceans, between east Asia and the Middle East, Africa, and Europe. It is also through the straits that the "energy lifeline" from the Middle East reaches the second largest economy in world after our own, Japan's as well as the Philippines, Hong Kong, Taiwan, and South Korea.

Knowing these facts, and knowing as we do that the Soviet Union is busy building up its fleet in the Pacific, the South China Sea, and the Indian Ocean, we can easily imagine the economic disruption that would occur in the event of instability in Malaysia, Singapore, or Indonesia. We can also easily weigh the costs of much disruption against the cost of allocating funds for the purpose of maintaining the security of Thailand, a long-time friend and ally.

Finally, when we are considering the amounts requested for Thailand during our discussions of foreign aid authorizations for fiscal 1982, we should keep in mind Secretary Haig's pledge to the ASEAN leaders in Manila—that the United States of America is prepared to shore up those under threat and danger. We can start by giving concrete support to Thailand in its efforts to hold the line against Communist expansion activities in Southeast Asia.●

DOES THE U.S.S.R. SUPPORT INTERNATIONAL TERRORISM

● Mr. DENTON. Mr. President, I should like to bring to the attention of my colleagues an article entitled "Does the U.S.S.R. Really Support International Terrorism," written by Senator JOHN EAST. This article was printed in the June 13, 1981, issue of Human Events. As Senators are aware, Senator EAST has been very supportive of the efforts of the Subcommittee on Security and Terrorism, of which I am chairman.

I ask consent that this very informative article be printed in the RECORD.

The article follows:

DOES THE U.S.S.R. REALLY SUPPORT INTERNATIONAL TERRORISM

(By Senator JOHN P. EAST)

Approximately one week after Ronald Reagan was inaugurated as President of the United States, Secretary of State Alexander Haig, in his first press conference on January 28, affirmed that the Soviet Union is "involved in conscious policies which foster, support and expand international terrorism." National Security adviser Richard V. Allen has also stated that there is "ample evidence" of Soviet support for terrorism.

These statements by high-level government officials represent perhaps the first time that the United States government has officially accused the Soviet Union of supporting international terrorism. The evidence for this involvement is not new, however.

As long ago as 1975, Brian Crozier, director of the Institute for the Study of Conflict in London, testified before the Senate Internal Security subcommittee that the Soviets were deeply involved in the support for and training of terrorist cadres throughout the world.

Robert Moss, John Barron, and Miles Copeland, to name but a few, are among the many prominent and respected journalists who have developed compelling evidence in the last 10 years of Soviet involvement over a lengthy period of time. More recently, Samuel T. Francis has summarized and analyzed this evidence in a monograph entitled *The Soviet Strategy of Terror*, published early this year by the Heritage Foundation, Herbert Romerstein, in a monograph just published, *Soviet Support for International Terrorism*, also presents evidence for the allegation, based on both Soviet and terrorist primary sources.

Finally, Claire Sterling, an internationally respected journalist, has recently published *The Terror Network*, which shows in massive detail the role of the KGB and other Soviet or Soviet-satellite services in the fostering and support of international terrorism.

Yet, for some reason, the thesis that the Soviets support terrorism remains controversial. Although much of the evidence was available to the mass media throughout the 1970s, there was virtually no discussion of the Soviet role in major newspapers in this period. One reason for this black-out was purely ideological.

Both liberals as well as some government officials wished to promote detente with the Soviet Union. A basic assumption of detente was that the USSR is no longer a serious "revolutionary force," that it has matured into a "great power" which has responsible international commitments and goals and is no longer pursuing the goal of Marxist destabilization and revolution.

Of course, conservatives were all along skeptical of detente and of these claims for the Soviet Union. Long before the Soviet invasion of Afghanistan, we were pointing out the discrepancies between the carefully cultivated image of the Soviet Union as a "responsible power" in the West and the brutal realities of Soviet behavior.

Soviet assistance to North Vietnamese aggression in Indochina, the escalation of Soviet espionage efforts against the United States, Soviet and Cuban military involvement in southern Africa and the Horn of Africa, the Soviet military and naval buildup, reported Soviet violations of SALT I, and even the repetition of aggressive themes and slogans by Soviet leaders—all these were ignored or covered up or explained away by the proponents of detente, but were continually exposed and emphasized by conservative foreign policy spokesmen.

Because liberals and the far left exhibit a strong tendency toward "peace at any price" and were enthusiastic about "an end to the Cold War," they often refused to look at the evidence or to consider its implications. Because high-level diplomats and policymakers in previous administrations had a vested political interest in the policy of detente, the U.S. government itself refused to deal with what was becoming a serious threat to national security.

Instead of recognizing and responding to the growing Soviet threat, we entered into a decade of withdrawal and restrictions on our own intelligence services and foreign policymaking capacities.

The Church and Pike committees investigated our intelligence services and created a "black legend" of the CIA as "a rogue elephant out of control," in the words of former Sen. Frank Church. The Levi guidelines on domestic security investigations for the FBI, restrictive executive orders for the CIA and other parts of the intelligence community, the expanded Freedom of Information Act and the Privacy Act, the Foreign Intelligence Surveillance Act of 1978, internal dissension and demoralization in the intelligence community itself, and the collapse of the internal security apparatus in the executive and legislative branches and at many local law enforcement levels as well—all these undermined our ability even to know about and analyze, let alone respond effectively to, the dangers of Soviet military escalation, covert action, espionage, terrorism and propaganda.

Of course, the proponents of detente cannot admit that the Soviets support terrorism. To admit this well-documented fact would imply that the Soviets are actively engaged in promoting violent revolutionary attacks on Western society—in other words, that the Soviet Union is not a "mature" or "responsible" power eager to become an es tablished member of the international community.

Yet it is also true, on one level, that the Soviets do want to be accepted by the other responsible states of the West. The Kremlin desires respectability as well as the diplomatic and economic benefits that acceptance would bring.

Thus, on one level, the Soviets must pose and present themselves as a nation-state just like any other (just as the Communist party of the United States poses as a legitimate political organization like the Republican or Democratic parties), while on another level the Soviets continue to appeal to and support violent revolutionary movements all over the world and to undermine Western stability and strength.

This second level of Soviet policy is clear not only from accumulated evidence of its results for the world, but also from the propaganda statements of the Soviet Union's Marxist-Leninist leadership. Yet, because the revolutionary work of the Soviet Union is in contradiction to its image as a responsible government, Soviet support of revolutionary movements is usually disguised through secrecy and camouflage.

So it is with Soviet support of terrorism. Less than a month after Secretary Haig's press conference, Soviet Defense Minister Dmitri Ustinov responded with a vitrolic attack in *Pravada* on February 21, denying Soviet support of terrorism. Said Ustinov:

"Here they [the United States] are in effect equating terrorism with the people's just struggle for national, economic and social liberation. But terrorism is an instru-

ment of extremism and neo-fascism, one of the most terrible manifestations of the moral and political crisis of capitalist society and the embodiment of lawlessness, while the national liberation struggle is progressive in nature and its legitimacy has long been recognized by the international community and confirmed by U.N. decisions. . . .

"The aim of imperialism's latest act of political sabotage is clear: to discredit the national liberation movements, with which the Soviet Union and the other Socialist countries are in solidarity."

Now there are several significant features of this seemingly strong disavowal of terrorism by a top Soviet leader. First, Ustinov defines terrorism as "an instrument of extremism and neo-fascism" and relates it to the decadence of capitalism—that is, he manages to limit terrorism to the political right and to the West. Thus, under this concept of terrorism, the Soviets have no difficulty in denying that they support it. Obviously, the Marxists of the Kremlin are opposed to the political right and the "decadence" of capitalism.

Second, Ustinov distinguishes between terrorism (which is bad) and "national liberation movements" (good). The Soviets support the latter and regard them as "progressive," while the imperialists of the decadent West opposes them and label them as terrorist.

Thus, it is not entirely accurate to say that the Soviets are simply lying when they condemn terrorism in statements such as Ustinov's. Rather, the Soviets have managed to design their own "Newspeak," or political language, by which they can develop definitions and manipulate language and values to support terrorism themselves covertly, deny that they do so, and then cast the blame for terrorism on the West.

This Soviet manipulation of language is, of course, a distortion of the truth. The term "terrorism," as it is used in the West, refers to violence directed against civilian or non-combatant persons or institutions for political purposes, whether it comes from the right or the left.

One of the clearest examples of Soviet support for terrorism is the so-called "national liberation movement," the African National Congress (ANC), an appendage of the South African Communist party, the official publications of which are printed in East Germany. The leader of the ANC is Oliver Tambo, and its campaign of terrorism and sabotage against South Africa is directed by a native-born Lithuanian, Joseph Slovo, a member of the Communist party who is headquartered in the Marxist ally of the Soviet Union, Mozambique.

In January 1980, three operatives of the ANC attempted to raid a bank in Pretoria. They took 25 persons hostage and murdered a 19-year-old teller and another hostage before they themselves were killed by the police. The terrorists used AK-47 rifles in their attack. In June 1980 the ANC detonated bombs at the coal-oil conversion plants at Sasolburg in South Africa.

These and similar incidents are clear examples of terrorism—not guerrilla warfare (in which regular military units are engaged in combat with irregular, non-military forces).

Yet a recent article in an official organ of the South African Communist party, *The African Communist*, denied that the ANC campaign of violence is terrorism; rather, the terrorist attack is described as "effective and sustained guerrilla operations including a nationwide sabotage campaign reminiscent of the early '60," and the terrorism of the ANC is described as a "liberation struggle."

The Soviets and their terrorist surrogates therefore admit that they support terrorism; they simply do not call it by that name, and they reserve that term for their enemies.

The Soviets describe many of the terrorist movements that they support as "national liberation movements" and regard them as "progressive." There are many examples of this deliberately confusing practice from terrorist organizations themselves, as well as from the Soviets.

One of the most dangerous terrorist groups now operating in the United States is the Puerto Rican FALN—the abbreviation for the Spanish name, "Armed Forces of National Liberation." It was FALN that claimed credit for the bombing of Fraunces Tavern in New York City in January 1975, when several individuals were killed. Another example is the infamous "Tupamaros" of Uruguay, the official name of which is the "Movement for National Liberation."

Just as members of organized crime syndicates like to call their activities—vice, narcotics, extortion, fraud—by the name of "business," so the perpetrators and supporters of terrorism like to call their activities "liberation." There is no reason to take either euphemism seriously.

Unfortunately, some who have been critical of the Administration's counter-terrorist policy have failed to understand this trick of language.

Arthur Schlesinger, Jr., writing in the Wall Street Journal on Feb. 23, 1981, states that "Abundant evidence exists that the Soviet Union trains people for 'wars of national liberation'—i.e., insurrections and guerrilla wars—but that is not what the Secretary [Haig] was talking about."

Mr. Schlesinger has apparently fallen victim to Soviet disinformation; he takes the Soviet distinction between terrorism and "national liberation" seriously, although in the case of self-proclaimed "national liberators" such as the ANC, FALN, the Tupamaros, and dozens of other terrorist groups, including the PLO and its components, there is no objective difference in their activities and the targets of their violence.

The inability to cut through the Newspeak and propaganda line of the Soviets and the terrorists has apparently become imbedded in the CIA itself.

On March 29, the New York Times and the Washington Post both reported that a draft National Intelligence Estimate (NIE) of the CIA cast doubt on the Soviets' support of terrorism. One source was quoted as saying that the NIE (which was classified but leaked to the press some time before it was completed) "strongly disagrees with Reagan and Haig's contention that the Soviet's are behind international terrorism." Many of my colleagues and I, as well as many professional experts who are familiar with the evidence for the Soviet-terrorist connection, were initially dismayed by these reports. If abundant evidence for the connection exists and is available in the public record, why could the CIA not rely on this as well as on other, classified information?

William Colby himself, the former director of the CIA, recently confirmed that the Soviets are deeply involved in terrorism in several ways in his testimony before the Subcommittee on Security and Terrorism on April 24. If Mr. Colby is persuaded of Soviet complicity in terrorism, why is the current CIA skeptical?

I tend to agree with what some of the critics of the leaked National Intelligence Estimate have called "definitional" problems in the CIA's approach to terrorism and with what one official of the Defense Intelligence Agency reportedly called the "weasel-worded" conclusion of the NIE.

In the first place, the confused and largely erroneous distinction between national liberation movements and terrorism appears to befuddle the minds of many journalists, academic experts and even some CIA analysts. As I have tried to show, there is no necessary difference between the two, and many of the so-called "national liberation movements" that the Soviets support engage in and rely on terrorism.

A second reason for the alleged CIA skepticism may lie in the exaggerated claim that the Soviets are "behind" terrorism. But one of the several authorities who have written about the Soviet link to international terrorism claims that the USSR formally directs terrorists. There is no reason to believe, on available evidence, that international terrorism is centrally controlled by the Soviets or by anyone else.

What the Soviets do—and what Communists have historically done—is *support* terrorism, feed on and manipulate and pervert for their own ulterior ends the grievances and complaints that motivate political violence and insurgency.

It is true that world terrorism would not be anywhere near as dangerous or as effective without the training, supply and propaganda support given it by the Soviets, but it is doubtful that the Kremlin or the KGB actually gives the orders for terrorist groups or operations. The source cited by the New York *Times* therefore set up a strawman argument when he denied that the Soviets are "behind" (that is, control, cause, or direct) terrorism.

Finally there is a problem of the meaning of "evidence." Under the Carter Administration, say experienced and recently retired CIA officers, the standard of evidence that CIA insisted on was not the *preponderance of circumstance*, but rather *proof beyond a reasonable doubt*. While this standard is proper and necessary in a formal criminal prosecution, it is inappropriate and unnecessary for investigative and intelligence purposes.

Terrorist activities and the support given them by the Soviets are often illegal and clandestine. Hence, it is difficult to collect evidence for the relationship, and even circumstantial evidence is hard to come by. Some of it may not be legally admissible in an American court of law and some may not be absolutely definitive. Yet the bulk of the evidence for Soviet support of terrorism is compelling to any reasonable person.

Moreover, much of the evidence, collected over the past decade, is cumulative; that is, over a period of time, it reveals a pattern of activities, each part of which may not be compelling but the overall implications of which are clear.

When the evidence from one part of the world is added to evidence from other parts and other periods of time and considered in the light of publicly available Soviet and terrorist statements and propaganda, these implications lead inescapably to the conclusion that the Soviets are and for some time have been deeply involved in the support of international terrorism.

An intelligence service is one of the most important institutions modern governments have for the protection of their national security, and it is especially important for the United States today. We do not possess the military and economic strength that we once had, and during the time it will take to rebuild our military and economic strength, a strong intelligence service capable of collecting information about our adversaries and analyzing, predicting and neutralizing future crises and hostile political forces is indispensable in an era of increasing challenges.

The CIA for over 30 years has done valuable work for the United States, but we must recognize that it has sometimes failed us in the accuracy of its analyses and estimates. As The Heritage Foundation's *Mandate for Leadership* points out, CIA estimates have been wrong on such questions as the stability of Iran under the shah, the Egyptian attack on Israel in 1973, the Arab oil embargo, the Italian opening to the left" in the 1960s, and, most seriously of

all, the size, scope and purpose of the Soviet buildup of strategic forces for nearly 15 years.

Whatever the reasons, then, for the CIA's inability to substantiate Secretary Haig's allegations of Soviet support for terrorism, I find it difficult to take the estimate seriously in the light of well-documented evidence to the contrary and in view of previous CIA errors. What I do take seriously—and what I urge President Reagan and CIA Director William Casey to ponder long and deeply—are the past failures of the CIA and the present laws and executive orders that so often prevent American intelligence from fulfilling its mission.●

EXTENSION OF TIME FOR ROUTINE MORNING BUSINESS

Mr. BAKER. Mr. President, I am advised that the Senator from Virginia (Mr. HARRY F. BYRD, JR.) and the Senator from Wisconsin (Mr. PROXMIRE) wish to speak for approximately 15 minutes each yet this evening. I ask unanimous consent now, Mr. President, that the time for the transaction of routine morning business be extended by 30 minutes.

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

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

ORDER OF BUSINESS

The PRESIDING OFFICER. The Senator from Virginia is recognized.

Mr. JEPSEN. Mr. President, will the Senator from Virginia yield 30 seconds?

Mr. HARRY F. BYRD, JR. I yield to the Senator from Iowa.

ANNIVERSARY OF TAFT-HARTLEY ACT OF 1947

Mr. JEPSEN. Mr. President, today is the 34th anniversary of the Labor Management Relations Act of 1947, more commonly referred to as the "Taft-Hartley Act." It was on June 23, 1947, that Congress passed legislation under 14(b) of the act which provided that—

> Nothing in this act should be construed as authorizing the execution of application of agreements requiring membership in a labor organization as a condition of employment in any State or territory in which such execution or application is prohibited by State or territorial law.

In short, the language of section 14(b) became the focus of what has become known as the "right to work" controversy. In summary, the Federal law permits union security agreements in section 8(a)(3) which establishes compulsory unionism as a condition of employment unless such agreements are prohibited under section 14(b) by State law.

Repeal of section 14(b) would remove the authority of States to prohibit union security agreements to mandate compulsory unionism.

Therefore, it is with a great sense of history and equal sense of dedication to the issue of "right to work" that, today, I have introduced two legislative items amending the Taft-Hartley Act of 1947 on this historic day.

VOTING RIGHTS: END FEDERAL INTRUSION

Mr. HARRY F. BYRD, JR. Mr. President, I wish to express my strong opposition to S. 895, a bill which would extend the provisions of the Voting Rights Act until 1992.

The proposed 10-year extension would perpetuate the burden unjustly laid upon several States, including Virginia, by the act's passage in 1965.

The act was targeted principally at the South under an oddly contrived formula which took into account the use of voting or literacy tests and the percentage of the voting age population which registered or voted in the 1964 elections.

Let me make clear at the outset that I am addressing today the temporary requirements of sections 4 and 5, which establish and mandate preclearance for certain States.

Virginia was one of six Southern States which, along with Alaska and parts of four other States, originally were subjected to the preclearance provisions of section 5.

It requires officials in covered areas to submit proposed changes in local election procedures to the Justice Department for approval. Thus even the most trivial change—changing registration hours, for example—must be approved by the Attorney General of the United States.

If the Attorney General objects to a proposed change, the State or locality has but one recourse: An appeal to the U.S. District Court for the District of Columbia.

This requirement clearly was unprecedented in our history and virtually turned upside down the constitutional distinctions between State and Federal powers.

Mr. Justice Black, in a trenchant dissenting opinion in the case of South Carolina against Katzenbach, asserts:

> . . . Section 5, by providing that some of the states cannot pass state laws or adopt state constitutional amendments without first being compelled to beg federal authorities to approve their policies, so distorts our constitutional structure of government as to render any distinction drawn in the Constitution between the state and federal power almost meaningless. One of the most basic premises upon which our structure of government was founded was that the Federal Government was to have certain specific and limited powers and no others, and all other power was to be reserved either "to the States respectively, or to the people." Certainly if all the provisions of our Constitution which limit the power of the Federal Government and reserve other powers to the States are to mean anything, they mean at least that the States have power to pass laws and amend their constitutions without first sending their officials hundreds of miles away to beg federal authorities to approve them.

(For full text, see appendix I.)

Under section 5, an affected State or locality must in effect prove that a proposed election law change is not discriminatory in intent or effect. This is a reversal of that traditional American principle that presumes innocence until guilt is proven.

The act places a disproportionate burden on Southern States and, despite extensions in 1970 and 1975 which expanded coverage to other areas, the onus of the preclearance requirement still falls chiefly on the South.

Some critics of the act contend that its scattered application is its principal flaw. They say the act should be expanded to cover the entire Nation.

I disagree. Wherever it is applied, the act constitutes unwarranted and unreasonable Federal intervention in the electoral processes of the States and localities.

In my judgment, the act clearly violates the constitutional authority of the States to set voter qualifications and to prescribe electoral methods. Article I, section 4 states in part:

> The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof . . .

Supporters of the act are fond of citing the 17th amendment, which grants Congress the power to enforce voting rights "by appropriate legislation."

But that provision does not alter the primary authority of the States with respect to voting and elections.

Any congressional action which overrides the States' authority should be justified only by extraordinary circumstances. And it should be of strictly limited duration.

Yet now, after nearly 17 years and two extensions, Congress is again being asked to continue this exceptional Federal intrusion into the affairs of States.

And what extraordinary circumstance exists to justify 10 more years of Federal control of matters vested in the States? In Virginia—I shall not presume to speak for the other covered States—there is none.

Mr. President, former Senator Sam J. Ervin, Jr., who served a long and distinguished career in this body from 1954 through 1974, during which time he served on the Senate Judiciary Committee and is considered one of the foremost students of the Constitution in the country, recently forwarded me a copy of an article he has written. (This was inserted in full in the CONGRESSIONAL RECORD by Senator THURMOND on April 2, 1981, beginning at page S3334.) Although the subject matter of that statement relates to another issue, in his footnote 41 he discusses the South Carolina against Katzenbach decision at some length and the violence perpetrated upon the Constitution as a result of it. (See appendix II.)

In 1965, Virginia used a simple literacy test which required objective information such as age, address, and occupation. That was the only requirement for voting.

In 1961, the U.S. Commission on Civil Rights reported that blacks in Virginia "encounter no significant racially motivated impediments to voting." That was 1961, 20 years ago, that the Civil Rights Commission reached that conclusion and so stated.

Clearly, the State's literacy require-

ment did not impose a significant hurdle to voting by black or white. Indeed, the Justice Department never attempted to prove that voter discrimination existed in Virgiina.

In fact, the act was triggered in Virginia, not so much by reason of its nondiscriminatory literacy test, but because although more than 50 percent of its voting age population was registered, less than 50 percent voted in the 1964 Presidential election.

Thus the presumption of past discrimination which the act unjustly lays on Virginia is the result of an arbitrary mathematical formula.

Under the act, States may "bail out" of coverage by meeting certain requirements. Accordingly, in 1973, Virginia applied to the District Court for the District of Columbia to be released from coverage.

The court concluded that Virginia met the requirements specified in section 4 (d) of the act, but denied the request because Virginia had allowed "past educational disparities," arising from a dual school system 10 years before the enactment of the Voting Rights Act.

This ruling went far beyond the scope of the act, which was designed to deal solely with discrimination in voting and not educational or other types of discrimination.

Mr. Anthony F. Troy, a former attorney general of Virginia, has shared with me part of a legal memorandum relating to constitutional questions generated by the Voting Rights Act, which I now submit. I commend it to the reading of my colleagues, and I will submit it for printing in the RECORD (appendix III).

States covered by the act must obtain preclearance of even the most minor changes in election procedures. This involves untold volumes of unnecessary paperwork and labor.

I think "unnecessary" is the proper word, as the Justice Department tables of the number of submissions and objections listed in appendix IV very graphically illustrate.

Between 1975 and 1980, all areas covered by section 5 submitted 28,800 proposed changes to the Justice Department. The Department raised objections to only 526, or 1.8 percent of them.

The six Southern States and 39 counties in North Carolina covered by the original act submitted 10,612 changes during the same 5-year period. Some 386, or 3.6 percent, were objected to.

Virginia has made 2,913 submissions since the act took effect, to which only 14 objections were raised. That is less than one-half of 1 percent. Since 1975, there have been only two objections.

According to a congressional research service study, the rate of objections is declining. The study states, "The rate of objections to proposed election law changes submitted by southern jurisdictions was 45 percent less during the period 1975 through 1980 than during that of 1965 through 1974."

The act also provides that Federal examiners may be sent to covered areas to register voters. Between 1965 and 1974, the Justice Department sent examiners to 73 counties in the South, and they registered 170,000 voters.

Between 1975 and 1980, examiners registered only 655 persons in two counties. These figures hardly suggest a pervasive pattern of discrimination in the Southern jurisdictions.

No examiners have ever been sent to Virginia, evidently because there has been no need for them.

According to the CRS study:

> It appears that, apart from two counties, black citizens in the Southern States have not encountered significant difficulty in registering to vote during the past 5 years.

The report further states, "The Voting Rights Act effected the greatest increase in black registration during the first five years of its implementation."

In 1965, according to CRS, roughly 30 percent of the qualified blacks in the Southern States were registered to vote. In 1967, 52 percent were registered.

After noting the initial gains in registration, the report adds, "But black registration in these seven States as a whole has increased little if at all during the past 8 years despite the banning of literacy tests, Federal preclearance of election law changes, listing of qualified voters by Federal examiners, and supervision of eelctions by Federal observers."

The burden which section 5 imposes on the affected jurisdictions is considerable, and I understand the 60-day period the Department of Justice has to consider a preclearance request has frequently resulted in hampering, rather than enhancing, voter registration.

For example, the registrar in my hometown of Winchester, Va., tells me that she is frequently asked to provide a registrar for voter registration drives sponsored by civic groups.

The groups typically ask several weeks before the drive begins, thus running afoul of the 60-day requirement. She also said her ability to hold registration drives twice yearly at the local high school has been hampered by the need to furnish hours and dates 60 days beforehand. That leaves little room for flexibility when the inevitable scheduling conflicts arise.

Many registrars have told me that they receive more requests to extend registration hours and deadlines as elections draws near and public interest in them mounts.

However, the requests often come too late to meet the 60-day preclearance requirement. Thus the act frustrates, rather than advances, its stated goal.

In Winchester, it was also necessary for the registrar to obtain the attorney general's approval to move her office from the second floor to the basement of the same building, and of course, any change in office hours must be similiarly cleared here in Washington, D.C. under this so-called Voting Rights Act.

Another example involves the Friendship Fire Co. in Winchester, which built a new station and was no longer available as the polling place for Friendship precinct. Preclearance was required to change the precinct voting place to the nearby War Memorial Building.

All preclearance applications must first go to the local Commonwealth's attorney or prosecutor, thus adding to his or her workload.

It is a ridiculous situation, Mr. President.

Some years back in the city of Suffolk, Va., the city decided to stop renting a trailer to serve as a precinct voting place. City officials cited the cost and noted that there was a permanent voting place just a quarter mile away in the next precinct.

However, the Justice Department objected to the consolidation, saying it could make it more difficult for blacks in the trailer precinct to vote.

So the city electoral board, registrar, and attorney, armed with photographs, maps, and supporting documents, traveled to Washington to make their case for the quarter mile move.

The Justice Department relented and allowed the consolidation. Yet it is inconceivable to me that the Federal Government should take such an interest—a very suspicious interest—in a simple, commonsense precinct consolidation in Suffolk, Va.

In a more serious case in Richmond, Va., the act caused a 5-year delay in elections.

The city in 1969 annexed part of an adjoining county and the following year, a council election was held on an at-large basis, with both old and new residents voting. The next year, after the Supreme Court ruled in Perkins against Matthews that annexation was covered by the act, Richmond submitted its annexation to the Justice Department for approval.

The Department objected, and instructed the city to switch to a ward system, in which councilmen are elected from single-member districts.

Yet earlier that year, the courts and the Justice Department had approved a plan for election of five delegates to the State legislature on an at-large basis. In addition, a floater seat for Richmond and an adjoining county was approved.

The city reasoned that if the addition of new citizens was nondilutive in a State legislative election, the same would hold true of a councilmatic election.

The Justice Department would not budge, however, and it blocked an election scheduled for May 1972. The matter was in litigation for 5 years with no elections until it was settled in 1977.

I am certain that almost every community covered by the act can report similar incidents of bureaucratic interference.

Incidents like these are typical of the kind of problems that arise whenever the Federal Government intrudes in the business of States and localities. They illustrate why we must return to the States their proper sovereignty over local elections.

Those who are now clamoring for the extension of the Voting Rights Act hint darkly of dire consequences should it be allowed to die.

They claim the affected jurisdictions will adopt more "subtle" methods to deny the vote to members of minority groups.

Changes from district to at-large representation, gerrymandering and an-

nexation will be used, they charge, to dilute minority voting power and so deny them their constitutional right to vote.

Such allegations are as mistaken as they are insulting. Virginians, like people across the Nation, have been touched by the vast social changes of the last several decades. They are not, as some would have us believe, standing by, ready to march backward into the past the moment the act expires.

These charges are an affront to the registrars and electoral boards of Virginia communities who have worked diligently to engage citizens in the electoral process.

Should Virginia not be allowed to demonstrate that her commitment to the voting rights of all her citizens is equal to that of any State?

Regardless of whether the act is extended, State and local officials in Virginia will continue to encourage all citizens to participate in every aspect of public life.

Just as Virginia does not relegate any of her citizens to second-class status, there should be no State in America reduced to second-class status.

It is high time, then, that Congress remove the stigma of discrimination imposed on Virginia by the preclearance provisions of the act.

Mr. President, I detect a self-righteous attitude among some who would continue the act, a desire to punish certain States for supposed past sins.

This attitude is all the more repugnant when expressed by some whose own States are not covered by the act, despite their less-than-perfect record regarding discrimination.

Why have Virginia and a handful of other States been singled out for special treatment? In his memorandum, Mr. Troy suggests a reason. I quote:

> By restricting the special burdens of the Act just to a minority of its member states, the majority in Congress has isolated itself from political retribution and political responsibility for its actions.

The measure that would extend the act until 1992, S. 895, also proposes to amend section 2 of the original act. This provision, according to the bill's sponsors, would "clarify" the burden of proof in voting discrimination cases in light of the Supreme Court's ruling in City of Mobile against Bolden.

In an eminently sound decision, the Court held that an election law which has the effect of diluting the black vote violates the Constitution only if the law was enacted for the purpose of abridging black voting power.

Yet under section 5 of the act, the Federal Government, through administrative action, may object to an election law even if it was enacted without any intent to discriminate, but merely has the effect of limiting the voting power of a minority group.

Mr. President, I am convinced that those who support extension of the act have lost sight of its original purpose—to eliminate discrimination at the polling place.

I think the proposed amendment in S. 895 demonstrates that a new goal has been set—to achieve proportional representation on the basis of racial and ethnic groups.

Let us consider how this specious doctrine of proportional representation works. Imagine a city whose tax base has been eroding, whose inner core has been deteriorating and whose more affluent citizens have been fleeing to the suburbs.

For city officials, annexation would surely be a rational response to their plight. Yet, annexation could increase the white population and so have the effect of diluting black voting strength. Thus, the decision to annex—while based on sound economic judgment—could be construed as discriminatory under the act.

In my judgment, this is stretching the meaning of discrimination—and the concept of voting rights—past the breaking point.

The Constitution guarantees the right of citizens to vote, not the right to vote in a block.

Democracy in America is not based on the rights of groups, but on the rights of individuals.

In my view, those obsessed with visions of diluted minority voting power are being unduly pessimistic. Their argument ultimately rests on the false—and racist—premise that whites will not vote for qualified minority candidates.

The steadily rising number of minority officeholders in areas where whites are a majority suggests that is not the case.

Whether or not one agrees with the original premise upon which the act was based—that voting tests were an evil requiring, as the Supreme Court put it, "uncommon exercise of Congressional power" to justify short-term remedial action—the fact remains that the short term has passed.

The proposed extension would continue coverage of Virginia and other areas another 10 years, or a total of 27 years. That is more than a generation—hardly a short-term remedy.

Whether or not the original legislation was justified, the act surely has served its avowed purpose by now. The continuation of its so-called temporary sanctions cannot be justified.

As a simple matter of prudent Government, Federal oversight of State and local functions must not be allowed to continue.

The voting rights of all citizens can be protected without relying on law of dubious constitutionality. The courts are the proper recourse for anyone who feels his or her right to vote has been abridged.

In a recent opinion, Supreme Court Justice Lewis F. Powell argued that the preclearance provisions of the act violate the constitutional distinctions between State and Federal power.

He added:

> The right freely to vote must be safeguared vigilantly. If a State law denies or impairs this right, in violation of the Constitution or a valid federal law, the courts are the proper and traditional forum for redress.

The distinguished chairman of the Senate Judiciary Committee, Senator THURMOND, has stated that the preclearance requirement for the covered States would not end automatically if no extension is enacted.

Eliminating the act would give covered States the right to be freed of the preclearance requirement by demonstrating in court that no discriminatory test or device had been used since 1965.

I vigorously oppose the extension of the so-called Voting Rights Act and I urge my colleagues to do likewise.

It is an imposition on Virginia and a few other States that is unjust, unfair, and unreasonable and constitutes a dangerous centralization of power in the Federal Government.

Mr. President, I ask unanimous consent to have printed in the RECORD a number of documents dealing with the so-called Voting Rights Act.

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

[Appendix I]

SOUTH CAROLINA V. KATZENBACH

OPINION OF BLACK, J.

Mr. Justice Black, concurring and dissenting.

I agree with substantially all of the Court's opinion sustaining the power of Congress under § 2 of the Fifteenth Amendment to suspend state literacy tests and similar voting qualifications and to authorize the Attorney General to secure the appointment of federal examiners to register qualified voters in various sections of the country. Section 1 of the Fifteenth Amendment provides that "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude." In addition to this unequivocal command to the States and the Federal Government that no citizen shall have his right to vote denied or abridged because of race or color, § 2 of the Amendment unmistakably gives Congress specific power to go further and pass appropriate legislation to protect this right to vote against any method of abridgment no matter how subtle. Compare my dissenting opinion in *Bell* v. *Maryland*, 378 U.S. 226, 318. I have no doubt whatever as to the power of Congress under § 2 to enact the provisions of the Voting Rights Act of 1965 dealing with the suspension of state voting tests that have been used as notorious means to deny and abridge voting rights on racial grounds. This same congressional power necessarily exists to authorize appointment of federal voting registrars. I also agree with the judgment of the Court upholding § 4(b) of the Act which sets out a formula for determining when and where the major remedial sections of the Act take effect. I reach this conclusion, however, for a somewhat different reason than that stated by the Court, which is that "the coverage formula is rational in both practice and theory." I do not base my conclusion on the fact that the formula is rational, for it is enough for me that Congress by creating this formula has merely exercised its hitherto unquestioned and undisputed power to decide when, where, and upon what conditions its laws shall go into effect. By stating in specific detail that the major remedial sections of the Act are to be applied in areas where certain conditions exist, and by granting the Attorney General and the Director of the Census unreviewable power to make the mechanical determina-

tion of which areas come within the formula of § 4(b), I believe that Congress has acted within its established power to set out preconditions upon which the Act is to go into effect. See, *e.g., Martin* v. *Mott*, 12 Wheat. 19; *United States* v. *Bush & Co.*, 310 U.S. 371; *Hirabayashi* v. *United States*, 320 U.S. 81.

Though, as I have said, I agree with most of the Court's conclusions, I dissent from its holding that every part of § 5 of the Act is constitutional. Section 4(a), to which § 5 is linked, suspends for five years all literacy tests and similar devices in those States coming within the formula of § 4(b). Section 5 goes on to provide that a State covered by § 4(b) can in no way amend its constitution or laws relating to voting without first trying to persuade the Attorney General of the United States or the Federal District Court for the District of Columbia that the new proposed laws do not have the purpose and will not have the effect of denying the right to vote to citizens on account of their race or color. I think this section is unconstitutional on at least two grounds.

(a) The Constitution gives federal courts jurisdiction over cases and controversies only. If it can be said that any case or controversy arises under this section which gives the District Court for the District of Columbia jurisdiction to approve or reject state laws or constitutional amendments, then the case or controversy must be between a State and the United States Government. But it is hard for me to believe that a justiciable controversy can arise in the constitutional sense from a desire by the United States Government or some of its officials to determine in advance what legislative provisions a State may enact or what constitutional amendments it may adopt. If this dispute between the Federal Government and the States amounts to a case or controversy it is a far cry from the traditional constitutional notion of a case or controversy as a dispute over the meaning of enforceable laws or the manner in which they are applied. And if by this section Congress has created a case or controversy, and I do not believe it has, then it seems to me that the most appropriate judicial forum for settling these important questions is this Court acting under its original Art. III, § 2, jurisdiction to try cases in which a State is a party.[1] At least a trial in this Court would treat the States with the dignity to which they should be entitled as constituent members of our Federal Union.

The form of words and the manipulation of presumptions used in § 5 to create the illusion of a case or controversy should not be allowed to cloud the effect of that section. By requiring a State to ask a federal court to approve the validity of a proposed law which has in no way become operative, Congress has asked the State to secure precisely the type of advisory opinion our Constitution forbids. As I have pointed out elsewhere, see my dissenting opinion in *Griswold* v. *Connecticut*, 381 U.S. 479, 507, n. 6, pp. 513–515, some of those drafting our Constitution wanted to give the federal courts the power to issue advisory opinions and propose new laws to the legislative body. These suggestions were rejected. We should likewise reject any attempt by Congress to flout constitutional limitations by authorizing federal courts to render advisory opinions when there is no case or controversy before them. Congress has ample power to protect the rights of citizens to vote without resorting to the unnecessary circuitous, indirect and unconstitutional route it has adopted in this section.

[1] If § 14(b) of the Act by stating that no court other than the District Court for the District of Columbia shall issue a judgment under § 5 is an attempt to limit the constitutionally created original jurisdiction of this Court, then I think that section is also unconstitutional.

(b) My second and more basic objection to § 5 is that Congress has here exercised its power under § 2 of the Fifteenth Amendment through the adoption of means that conflict with the most basic principles of the Constitution. As the Court says the limitations of the power granted under § 2 are the same as the limitations imposed on the exercise of any of the powers expressly granted Congress by the Constitution. The classic formulation of these constitutional limitations was stated by Chief Justice Marshall when he said in *McCulloch* v. *Maryland*, 4 Wheat. 316, 421, "Let the end be legitmate, let it be within the scope of the constitution, and all means which are appropriate, which are plainly adapted to that end, *which are not prohibited, but consist with the letter and spirit of the constitution*, are constitutional." (Emphasis added.) Section 5, by providing that some of the States cannot pass state laws or adopt state constitutional amendments without first being compelled to beg federal authorities to approve their policies, so distorts our constitutional structure of government as to render any distinction drawn in the Constitution between state and federal power almost meaningless. One of the most basic premises upon which our structure of government was founded was that the Federal Government was to have certain specific and limited powers and no others, and all other power was to be reserved either "to the States respectively, or to the people." Certainly if all the provisions of our Constitution which limit the power of the Federal Government and reserve other power to the States are to mean anything, they mean at least that the States have power to pass laws and amend their constitutions without first sending their officials hundreds of miles away to beg federal authorities to approve them.[2] Moreover, it seems to me that § 5 which gives federal officials power to veto state laws they do not like is in direct conflict with the clear command of our Constitution that "The United States shall guarantee to every State in this Union a Republican Form of Government." I cannot help but believe that the inevitable effect of any such law which forces any one of the States to entreat federal authorities in far-away places for approval of local laws before they can become effective is to create the impression that the State or States treated in this way are little more than conquered provinces. And if one law concerning voting can make the States plead for this approval by a distant federal court or the United States Attorney General, other laws on different subjects can force the States to seek the advance approval not only of the Attorney General but of the President himself or any other chosen members of his staff. It is inconceivable to me that such a radical degradation of state power was intended in any of the provisions of our Constitution or its Amendments. Of course I do not mean to cast any doubt whatever upon the indisputable power of the Federal Government to invalidate a state law once enacted and operative on the ground that it intrudes into the area of supreme federal power. But the Federal Government has heretofore always been content to exercise this power to protect federal supremacy by authorizing its agents to bring lawsuits against state officials once an operative state law has created an actual case and controversy. A federal law which assumes the power to compel the States to submit in advance any proposed legislation they have for approval by federal agents approaches dangerously near to wiping the States out as useful and effective units in the government of our country. I cannot agree to any constitutional interpretation that leads inevitably to such a result.

[2] The requirement that States come to Washington to have their laws judged is reminiscent of the deeply resented practices used by the English crown in dealing with the American colonies. One of the abuses complained of most bitterly was the King's practice of holding legislative and judicial proceedings in inconvenient and distant places. The signers of the Declaration of Independence protested that the King "has called together legislative bodies at places unusual, uncomfortable, and distant from the depository of their public Records, for the sole purpose of fatiguing them into compliance with his measures," and they objected to the King's "transporting us beyond Seas to be tried for pretended offences." These abuses were fresh in the minds of the Framers of our Constitution and in part caused them to include in Art. 3, § 2, the provision that criminal trials "shall be held in the State where the said Crimes shall have been committed." Also included in the Sixth Amendment was the requirement that a defendant in a criminal prosecution be tried by a "jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law."

I see no reason to read into the Constitution meanings it did not have when it was adopted and which have not been put into it since. The proceedings of the original Constitutional Convention show beyond all doubt that the power to veto or negative state laws was denied Congress. On several occasions proposals were submitted to the convention to grant this power to Congress. These proposals were debated extensively and on every occasion when submitted for vote they were overwhelmingly rejected.[3] The refusal to give Congress this extraordinary power to veto state laws was based on the belief that if such power resided in Congress the States would be helpless to function as effective governments.[4] Since that time neither the Fifteenth Amendment nor any other Amendment to the Constitution has given the slightest indication of a purpose to grant Congress the power to veto state laws either by itself or its agents. Nor does any provision in the Constitution endow the federal courts with power to participate with state legislative bodies in determining what state policies shall be enacted into law. The judicial power to invalidate a law in a case or controversy after the law has become effective is a long way from the power to prevent a State from passing a law. I cannot agree with the Court that Congress—denied a power in itself to veto a state law—can delegate this same power to the Attorney General or the District Court for the District of Columbia. For the effect on the States is the same in both cases—they cannot pass their laws without sending their agents to the City of Washington to plead to federal officials for their advance approval.

In this and other prior Acts Congress has quite properly vested the Attorney General with extremely broad power to protect voting rights of citizens against discrimination on account of race or color. Section 5 viewed in this context is of very minor importance and in my judgment is likely to serve more as an irritant to the States than as an aid to the enforcement of the Act. I would hold § 5 invalid for the reasons stated above with full confidence that the Attorney General has ample power to give vigorous, expeditious

[3] See Debates in the Federal Convention of 1787 as reported by James Madison in Documents Illustrative of the Formation of the Union of the American States (1927), pp. 605, 789, 856.

[4] One speaker expressing what seemed to be the prevailing opinion of the delegates said of the proposal, "Will any State ever agree to be bound hand and foot in this manner. It is worse than making mere corporations of them. . . ." *Id.*, at 604.

and effective protection to the voting rights of all citizens.[5]

[Appendix II]

By ignoring Title IV of the Act in the *Green Case* and nullifying it in the *Swann Case*, the Supreme Court exhibited its determination to impose the personal notions of its members in respect to matters having racial implications upon the people of our country, anything in the Constitution and laws of the United States to the contrary notwithstanding.

This is undoubtedly a drastic assertion. Its truthfulness is fully corroborated, however, by these additional decisions of the Supreme Court:

a. *South Carolina v. Katzenbach*, (1966) 383 U.S. 301.

b. *Katzenbach v. Morgan*, (1966) 384 U.S. 641.

c. *Jones v. Alfred H. Mayer Co.*, (1968) 292 U.S. 409; *Sullivan v. Little Hunting Park, Inc.*, (1969) 396 U.S. 229; *District of Columbia v. Carter*, (1973) 409 U.S. 418 (dicta); and *Tillman v. Wheaton-Haven Recreation Association*, (1973) 410 U.S. 431.

d. *Johnson v. Railway Express Agency*, (1975) 421 U.S. 454; *Runyon v. McCrary*, (1976) 427 U.S. 160; *McDonald v. Santa Fe Trail Transportation Company*, (1976) 427 U.S. 160.

e. *United States Steel Workers of America v. Weber*, (1979) 443 U.S. 193.

These decisions have been hailed in some quarters as enlightened judicial achievements. It would be more consonant with truth to call them amazing judicial performances. In each of them the Supreme Court committed linguistic mayhem or judicial verbicide on words of the Constitution, or words of an Act of Congress, or on words of both to reach their amazing rulings.

The explanation of these rulings is to be found in a story which may be apocryphal. Representative Timothy J. Campbell, who had been sent to the House by Tammany, sought to persuade President Grover Cleveland to sign into law a pet bill which he had induced Congress to pass. The President demurred on the ground the bill was unconstitutional. Congressman Campbell responded to the President's objection with this rhetorical question: "What's the Constitution between friends?"

When all is said, the Supreme Court did constitutional evil in these rulings to achieve ends it deemed beneficial to blacks and the country. These decisions were not concerned with the assignment of students to state schools. For this reason, I hold my comments on them to a minimum.

To understand the drastic impact of two of them, *South Carolina v. Katzenbach*, and *Katzenbach v. Morgan*, upon constitutional government in America, it is necessary to understand what the Constitution decrees concerning the power to prescribe qualifications for voting.

The Power to prescribe qualifications for voting for state officers is reserved to the state by the Tenth Amendment. The power to prescribe qualifications for voting for federal officers is conferred upon the state and denied to Congress by these provisions of the Constitution: Article I Section II, Clause 1; Article II, Section I, Clause 2; and the Seventeenth Amendment.

The constitutionality of the highly praised, but completely devious, Voting Rights Act of 1965 was upheld in *South Carolina* v. *Katzenbach*. In reaching this astonishing decision, the Supreme Court was compelled to make and did make these rulings.

a. That the absolute prohibition of congressional bills of attainder embodied in Article I, Section IX, Clause 3, and the due process clause of the Fifth Amendment afford no protection to a State, or its officers, or its citizens in their corporate or collective capacity.

b. That the power of Congress to enforce by appropriate legislation the Fifteenth Amendment's prohibition of racial discrimination in voting confers upon that body the autocratic authority to suspend for at least 5 years the constitutionally guaranteed powers of politically selected Southern States to prescribe qualifications for voting for both state and federal officers.

c. That the constitutional doctrine of the equality of the states is a worthless shibboleth which is effective only at the precise moment of a State's admission to the Union, and does not prevent Congress from robbing a state thereafter of constitutional powers other states exercise and thus reducing it to the status of an inferior state.

d. That Article III, Section II, Clause 2, empowers Congress to close to the politically selected Southern States condemned by the bill of attainder violative of due process all federal courts in the land except the United States District Court for the District of Columbia, and to vest in that faraway court exclusive jurisdiction of all cases in which the condemned states seek relief from the autocratic provisions of the Act.

South Carolina v. *Katzenbach* is irreconcilable with *United States* v. *Lovett*, (1946) 328 U.S. 303, and Ex Parte Milligan, (1866) 4 Wall. (U.S.) 2, 120–121.

The *Lovett Case* rightly invalidated a congressional bill of attainder applying to federal executive officers suspected of subversive leanings. The *Milligan Case* rightly ruled that the Constitution is an unalterable law for rulers and people alike at all times and under all circumstances, and that no notion involving more pernicious consequences was ever invented by the wit of man than that any of its provisions can ever be suspended.

Consistency may be either a jewel or the hobgoblin of little minds and fools. But it is neither to Supreme Court Justices.

The Supreme Court adjudged in *Katzenbach* v. *Morgan* that the power vested in Congress by Section 5 of the Fourteenth Amendment to enforce the equal protection clause by appropriate legislation confers on Congress the contradictory power to nullify the equal protection clause. In that case, the Supreme Court made a ruling irreconcilable with the provisions of the Constitution governing the power to prescribe qualifications for voting, and its own sound interpretation of equal protection clause in *Lassiter* v. *Board of Education of Northampton County*, (1959) 360 U.S. 35. It declared that Section 5 of the Fourteenth Amendment empowered Congress to do these things:

a. To nullify a New York law which established a qualification for voting, namely, literacy in the English language, which was in harmony with the equal protection clause.

b. To substitute for the nullified New York law a federal qualification for voting, which Congress was forbidden to establish by all of the provisions of the Constitution governing the power to prescribe qualifications for voting.

The opinion which undertakes to rationalize this linguistic mayhem or judicial verbicide is intriguing, despite the disconsolation it gives to those who, like Chief Justice Marshall, believe the Supreme Court ought to interpret the Constitution to mean what it says.

It is simply this: When Congress exercises its power to legislate under Section 5 of the Fourteenth Amendment, the Supreme Court cannot inquire whether the congressional legislation offends the equal protection clause. It is limited to determining whether the legislation is calculated to prevent the state from violating the equal protection clause in the future.

Americans who cherish local government ought to pray that Congress will not carry the illogical ruling in *Katzenbach* v. *Morgan* to its logical conclusion. If it did, Congress would prevent all future violations of the equal protection clause by enacting legislation denying states the power to make, enforce, and interpret laws.

The Supreme Court ruled in *United States Steel Workers* v. *Weber* that an employer in an industry covered by Title VII of the Civil Rights Act of 1964 is authorized by it to discriminate in favor of black employees and against more senior white employees, notwithstanding Title VII expressly forbids all racial discrimination in all industries covered by the Title.

Jones v. *Alfred H. Mayer Company* may be described as the bellwether of the decisions cited in subdivisions 3 and 4. It was decided in 1968, and the other decisions merely follow its indefensible lead.

Undoubtedly the decision in the *Mayer Case* and the decisions which follow it have committed the most monstrous linguistic mayhem or judicial verbicide on the Constitution and Acts of Congress in the annals of America.

By these forbidden processes, the Supreme Court Justices have arrogated to Congress and themselves virtually unlimited power to punish every individual who refuses to make a contract with or to sell property to another individual anywhere in America if his refusal is motivated by racial discrimination or racial preference. In so doing, they reflect their purpose to eradicate by constitutional and legal perversions racial prejudice and racial preferences from the minds and hearts of Americans.

To confer their newly invented power on Congress and themselves, the Justices revamp the history and objectives of the Thirteenth Amendment and the Civil Rights Act of 1863 (42 U.S.C. Sections 1981, 1982); place upon that Amendment and that Act constructions totally repugnant to every word in them; and repudiate sound Supreme Court decisions of the past which span a period of 100 years and demonstrate the invalidity of the new construction.

It is worthy of note that some of the litigants argued for the same distorted construction of the Constitution in the Civil Rights Cases of 1883. The Supreme Court wisely rejected their argument by observing that these litigants were "running the slavery argument into the ground."

The Supreme Court further declared in those cases: "When a man has emerged from slavery, and by the aid of beneficent legislation has shaken off the inseparable concomitants of that state, there must be some stage in the progress of his elevation when he takes the rank of a mere citizen, and ceases to be the special favorite of the laws, and when his rights, as a citizen or a man, are to be protected in the ordinary modes by which other men's rights are protected." (109 U.S. 3, 27 L.Ed. 835, 844.)

One of America's most profound constitutional scholars, Charles Fairman, makes some cogent comments on the Mayer Case in his illuminating book "Reconstruction And Reunion 1864–88, Part I." This book is Volume VI of the *History of the Supreme Court of the United States*, which is being financed by the Oliver Wendell Holmes Devise.

Fairman states that in the Mayer Case, the Supreme Court "appears to have had no feeling for the truth of history" and "allowed itself to believe impossible things." (p. 1258)

To illustrate what "believing impossible things" is, Fairman invokes Chapter 5 of "Through the Looking Glass" by Lewis Car-

[5] Section 19 of the Act provides as follows: "If any provision of this Act or the application thereof to any person or circumstances is held invalid, the remainder of the Act and the application of the provision to other persons not similarly situated or to other circumstances shall not be affected thereby."

roll, the creator of Alice in Wonderland, and recounts the colloquy which occurs between Alice and the Queen after the Queen had been telling Alice how to remember "things that happened the week after next."

"I can't believe it," said Alice.

"Can't you?" the Queen said with a pitying tone. "Try again: draw a long breath, and shut your eyes."

Alice laughed. "There's no use trying," she said, "one can't believe impossible things."

"I daresay you haven't had much practice," said the Queen. (pp. 1298–1299, footnote 160.)

I cite and quote these observations of Fairman by the permission of The MacMillan Company, which holds the copyright of his book.

Disciples of linguistic mayhem or judicial verbicide glibly assert it proves that the Constitution is a living document. Not so. It proves that the Constitution is dead, and that Americans are being governed by the personal notions of Supreme Court Justices rather than by constitutional precepts.

Nobody denies the good intentions of the Justices. They undoubtedly believe their linguistic mayhems or judicial verbicides are superior to the handiwork of the Founding Fathers.

[Appendix III]

LEGAL MEMORANDUM BY ANTHONY TROY ON CONSTITUTIONALITY OF THE VOTING RIGHTS ACT

III. THE CASE FOR UNCONSTITUTIONALITY

A. Constitutional provision involved

Congress based its power to prescribe the federal controls in the Voting Rights Act on the second section of the fifteenth amendment. Section 1 of that amendment provides that: "[t]he right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude."

Section 2 adds: "Congress shall have power to enforce this article by appropriate legislation."

That second section must form the basis for any attack on the Voting Rights Act. The Supreme Court held in *South Carolina* v. *Katzenbach*, 383 U.S. 301 (1966), that a state does not itself have standing to challenge the Act under the Due Process Clause of the fifth amendment, the Bill of Attainder Clause of Article I, or the principle of Separation of Powers. Nor does a state have standing as the parent of its citizens to invoke those constitutional provisions against the federal government, 383 U.S. at 323–24. To the extent those provisions are relevant, the Court held they may be considered:

"only as additional aspects of the basic question presented by the case: Has Congress exercised its powers under the Fifteenth Amendment in an appropriate manner with relation to the states?"

383 U.S. at 324.[1]

B. General overview

The Supreme Court's reaction to Virginia's constitutional arguments will depend primarily on its perception of the intrusion imposed by section 5. In the view of Congress, Section 5 did no more than impose a slight administrative inconvenience on the states. *See 1975 House Hearings* at 760–62 (questions posed by Congressman Parker to Attorney General Miller and Deputy Attorney General Troy). So long as Congress viewed section 5 in that way—simply as a matter of administrative convenience—it was quite easy to extend the controls imposed by that section with very little consideration of the basis or the need for those controls.

If the Court views section 5 in much the same way as Congress, its reaction is likely to be the same. The Court traditionally defers to the legislature, unless it considers some fundamental principle to be involved.[2] Virginia must impress on the Court that section 5 of the Voting Rights Act does intrude on fundamental constitutional principles, and that close scrutiny of the legislative scheme is required.

C. Nature of the intrusion

Section 5 does involve far more than just questions of administrative conveniences. That section poses the most basic questions concerning the role intended for the States by the Constitution. The right of a state to govern itself in local matters without begging prior approval from federal administrative officials would seem to be one of the predicates of our system of representative government. Indeed, as Justice Black pointed out in *South Carolina* v. *Katzenbach*, the power of prior review over state legislation was one denied by the framers of the Constitution even to Congress:

"The proceedings of the original constitutional convention show beyond all doubt that the power to veto or negative state laws was denied Congress. On several occasions, proposals were submitted to the convention to grant this power to Congress. These proposals were debated extensively and on every occasion when submitted for vote they were overwhelmingly rejected." 383 U.S. at 360–61.

Yet, Congress—denied that power itself—in section 5 of the Voting Rights Act has delegated that same power to intrude into the state legislative process to others. Moreover, that intrusion occurs not in an area within the primary domain of Congress under the Constitution, such as commerce, but in an area where primary power traditionally and under the Constitution belongs to the States.

The Supreme Court has consistently recognized that primary power over voting—to determine the qualifications for electors and to set the procedures for elections—is granted by the Constitution of the States. For example, in *Carrington* v. *Rash*, the Court took care to note that:

"There can be no doubt . . . of the historic function of the States to establish, on a nondiscriminatory basis, and in accordance with the Constitution, . . . qualifications for the exercise of the franchise. Indeed, '[t]he States have long been held to have broad powers to determine the conditions under which the right of suffrage may be exercised.' . . . 'In other words, the privilege to vote in a State is within the jurisdiction of the State itself, to be exercised as the State may direct, and upon such terms as to it may seem proper, provided, of course, no discrimination is made between individuals in violation of the Federal Constitution.'" 380 U.S. 89, 91 (1965), quoting from *Lassiter* v. *Northampton Electon Bd.*, 360 U.S. 45, 50 (1959) and *Pope* v. *Williams*, 193 U.S. 621, 632 (1904).

The Court in recent years has emphasized the importance of the right to vote, and the inability of the States to restrict that right in a manner violating the specific prohibitions of the Constitution. Nonetheless, the Court has continually reaffirmed that primary power over voting rests with the States, not Congress. In *Oregon* v. *Mitchell*, 400 U.S. 112 (1970), the Court struck down the provision of the 1970 Amendments to the Voting Rights Act reducing the voting age to 18 in state elections. Congress power to enforce the Civil War Amendments by "appropriate" legislation, the Court found, did not grant Congress power to substitute its own judgment in the area of voter qualifications for that of the States. The power to fix voter qualifications at least in state and local elections is vested by the Constitution in the States:

"It is obvious that the whole Constitution reserves to the States the power to set voter qualifications in state and local elections, except to the limited extent that the people through constitutional amendment have specifically narrowed the powers of the States." 400 U.S. at 125, at 294.

Indeed, four Justices in that case (Harlan, Stewart, Berger, and Blackmun) believed that the constitutional power of the States to set voter qualifications extended to federal elections, and that Congress was without power to invalidate states laws establishing voter qualifications even in those elections.

D. Basis for upholding the section 5 controls in South Carolina v. Katzenbach

In upholding the constitutionality of the 1965 Voting Rights Act in *South Carolina* v. *Katzenbach*, the Court recognized that section 5 was an exceptional intrusion into state power. That section posed the only point of disagreement in the Court. Justice Black did not question the power of Congress, based on the extensive evidence of the actual manipulation of literacy tests, to ban those tests or to authorize the appointment of federal examiners. In his opinion, however, section 5 just went too far:

"Congress has here exercised its power under § 2 of the Fifteenth Amendment through the adoption of means that conflict with the most basic principles of the Constitution. . . . Section 5, by providing that some of the States cannot pass State laws or adopt state constitutional amendments without first being compelled to beg federal authorities to approve their policies, so distorts our constitutional structure of government as to render any distinction drawn in the Constitution between State and Federal power almost meaningless. . . . A federal law which assumes the power to compel the States to submit in advance any proposed legislation they have for approval by federal agents approaches dangerously near to wiping the States out as useful and effective units in the government of our country." 383 U.S. at 358, 360.

The majority did not disagree with Justice Black's characterization of section 5, or with his description of the potential impact of that section. It disagreed only with his conclusion that such a distortion of the federal system could never, under any circumstances, be justified. The Court upheld section 5, stating:

"This may have been an *uncommon* exercise of Congressional power, as South Carolina contends, but the Court has recognized that *exceptional conditions* can justify legislative measures *not otherwise appropriate*." 383 U.S. at 334 (emphasis added).

In short, section 5 controls, although not otherwise appropriate and constitutional, were justified only by exceptional conditions. The Court found those exceptional conditions in the evidence before Congress of "pervasive" and "flagrant" violations of the fifteenth amendment primarily through the "discriminatory application of voting tests." 383 U.S. at 311. That evidence demonstrated further that where such discriminatory application of tests had been found, judicial decrees often were not alone effective to prevent the evil from recurring:

"Even when favorable decisions have finally been obtained, some of the States affected have merely switched to discriminatory devices not covered by the federal decrees or have enacted difficult new tests. . . ." 383 U.S. at 314.

Section 5 was designed to prevent those states that had shown a bent for purposefully disenfranchising voters through the manipulation of voting tests from achieving the same result through other means after

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Footnotes at end of article.

the tests were suspended. The Court found this to be an appropriate response by Congress "under the compulsion of these unique circumstances." 383 U.S. at 335.

E. Explansion of section 5 since South Carolina v. Katzenbach

The nature and degree of federal intrusion imposed by section 5 has increased considerably since *South Carolina* v. *Katzenbach*. That section has now been interpreted to require federal approval for every change in voting rules or procedures, no matter how minor or beneficial. *Allen* v. *State Board of Elections*, 393 U.S. 544 (1968). Moreover, that section has been extended beyond changes in voting rules and procedures to require prior federal approval for any state legislative change that could even arguably have an impact on black voting power. *See Perkins* v. *Matthews*, 400 U.S. 379 (1971). The District Court for the District of Columbia has even held recently that a state is not free to implement a legislative change after receiving approval from the Attorney General. Even after that approval, the state can be forced by a private party into the long and expensive process of defending its law before the court in the District of Columbia. *Harper* v. *Levi*, —— F.2d —— (U.S. App. D.C., Nos 73-1766, 73-2035, July 24, 1975).

Perhaps most significant, it appears fairly clear now that even valid, constitutional state laws might not pass muster under section 5. Federal administrative and judicial officials under section 5 can review, condition, and even invalidate state laws which would not violate the strictures of the fourteenth or fifteenth amendments, and indeed which have been expressly held valid under those amendments. Compare *Holt* v. *City of Richmond*, 459 F.2d. 1093 (4th Cir. 1972), *cert. denied*, 408 U.S. 931 (1972), and *Chavis* v. *Whitcomb*, 403 U.S. 124 (1971), with *City of Richmond* v. *United States*, ——— U.S. ——— (June 24, 1975). The consequences of that power must be drawn in focus. We have indicated that the Supreme Court in *Oregon* v. *Mitchell* held that Congress itself does not have the power in attempting to enforce the fourteenth and fifteenth amendments to invalidate state laws setting voter ages. Under section 5 of the Voting Rights Act, however, federal officials delegated by Congress are now given the power to invalidate just such state laws—even though passed by the state after lengthy consideration free of any impermissible racial motive.

It might be argued with some force that Congress—itself denied the power to invalidate constitutional state voting laws—cannot under any circumstances delegate that same power to others.[3] Of course, this is neither an appropriate time nor the appropriate case to raise an unconstitutional delegation argument. The important point here is simply that section 5 is indeed an extraordinary intrusion into state power justified, if at all, only by "exceptional conditions."

F. Basis for imposing section 5 controls on Virginia

The "exceptional" conditions found by the Court in *South Carolina* v. *Katzenbach* to justfy imposition of section 5 controls simply did not exist in Virginia.[4] In its former action Virginia proved a total absence of any discriminatory application of its former literacy test. Without exception, that test—which was little more than a requirement that a prospective registrant sign his name and address—was applied in a completely fair and nondiscriminatory manner. That fact was never disputed by the Justice Department, and simply confirmed the conclusion previously reached by the U.S. Commission on Civil Rights in 1961 that blacks "encounter no significant racially motivated impediments to voting" in Virginia. In short, Virginia has proved that it was free from discrimination in its voting process once, and it is willing to do so again.

Virginia is subjected to intrusive federal control of its voting process not because of any manipulation of that process, but solely on the basis of past educational disparities. Disparities in such factors as pupil/teacher ratios, teachers' salaries and certifications, and value of school property, are presumed to have resulted in a significant, racially discriminatory abridgement of the franchise. Moreover, that presumption is irrebuttable. Virginia cannot even show that, in fact, an abridgement did not occur.[5] Educational disparities in themselves, and as a matter of law, are preclusive. Moreover, those educational disparities, which now form the basis for imposing section 5 voting controls on Virginia, did not take place in the 1960's or even the 1950's. Rather, it is sufficient under this new basis for section 5 controls that disparities existed at the first part of this century when a substantial portion of the electorate had gone to school.

G. Past educational disparities do not justify section 5 voting controls

The Voting Rights Act of 1965 was aimed at a specific and fundamental abuse—the discriminatory application of tests to bar blacks from voting. *See Hearings on H.R. 6400 before Subcom. No. 5 of the House Com. on the Judiciary*, 89th Cong., 1st Sess., Ser. 2 at 6-7, 16 (1965) ("1965 *House Hearings*") (testimony of Attorney General Katzenbach); *South Carolina* v. *Katzenbach*, 383 U.S. at 312, 331. The coverage formula in section 4(b) of the Act was carefully drawn to mark those areas where there was a significant danger that such discriminatory application of tests had occurred. *See 1965 House Hearings* 105: *South Carolina* v. *Katzenbach*, 383 U.S. at 329. And, "this was the evil for which the new remedies [of the Act] were specifically designed." 383 U.S. at 331.

Specifically, the Act imposed three special remedies on those areas where the discriminatory application of tests were presumed to have occurred: First, voting tests—the vehicle of discriminatory abuse—were prohibited. Second, in order to assure future fairness in the voting process, the Attorney General was authorized to appoint Federal Examiners. Third, because the Justice Department's experience showed that jurisdictions in which discriminatory administration of tests had been found often enacted new tests or similar devices to bar blacks from voting following a federal court order, an additional control was considered necessary. Accordingly, under section 5 of the Act those states that were presumed to have applied their literacy tests in a consciously discriminatory fashion were prohibited from changing their voting qualifications without prior federal approval. Section 5, in short, was specifically designed to prevent those states that had manifested an intent to consciously manipulate their electoral process to bar blacks from voting from achieving the same results through other means after their tests were suspended. Absent that intent—absent any evidence of affirmative discrimination in the voting process—section 5 controls are not justified.

The court recognized in *South Carolina* v. *Katzenbach*, that section 5 controls—involving such a basic intrusion into the power granted to the States by the Constitution—require more than just some conceivable, rational basis to be sustained. Rather, the legislature must demonstrate compelling and "exceptional" conditions to justify those controls. Here not even a logical basis can be found, however. One might argue that a certain logic would exist if Congress, on the basis of evidence of past educational disparities, were to impose prior federal review of all state legislation with respect to education. No logic can be found, however, in imposing prior review of voting legislation on a state that has demonstrated a total absence of any prior abuses in that process, solely because of disparities in education occurring in the state during the first part of this century.

The plain fact is that section 5 review of voting changes was specifically designed to deal with conscious discrimination in voting, not with educational or other types of discrimination. Educational disparities—regrettable though they are and no matter how relevant they might be in determining whether to eliminate literacy tests in the future—are simply not the type of affirmative and exceptional discriminations in voting that justifies federal intrusion into the state voting process.

Moreover, Congress recognized that fact—at least with respect to states not already covered by the Act.

Several amendments were offered during the 1975 debates to extend the impact of section 5 controls beyond the already covered jurisdictions. Senators Talmadge, Nunn, and Stennis offered amendments that would have extended those controls to all the states. Senator Stone offered an amendment to impose those controls on any jurisdiction in which the Attorney General found the situation serious enough to warrant suit under section 3 of the Act. Senator Tunney, floor manager of the Bill that was finally enacted, strenuously opposed those amendments, and they were rejected.

Senator Tunney repeatedly emphasized that Congress could constitutionally impose section 5 controls only on the basis of compelling and exceptional conditions showing serious violations of voting rights:

"Mr. TUNNEY. . . . It is clear from the majority opinion in South Carolina against Katzenbach . . . that you have to have a serious violation of voting rights in order to impose a special remedy such as preclearance. . . . The Chief Justice wrote:

"The act suspends new voting regulations pending scrutiny by Federal authorities. . . . This may have been an uncommon exercise of congressional power, as South Carolina contends; but the court has recognized that exceptional conditions can justify legislative measures not otherwise appropriate."

"There is no indication that there are exceptional circumstances in other parts of the country so as to justify what is clearly an exception to the provisions of article I, section 4, of the Constitution." 121 Cong. Rec. 24142 (July 22, 1975).

Senator Tunney specifically rejected the suggestion that educational discrimination constituted the type of exceptional condition that would justify section 5 voting controls:

"Mr. TUNNEY. . . . The Supreme Court has made it very clear that to have an intervention like that by the Federal government in the state election process, there have to be exceptional circumstances. . . .

"*We are talking about voting discrimination here. We are not talking about educational discrimination or other forms of discrimination. We are talking about voting discrimination.*" 121 Cong. Rec. 24222 (July 23, 1975) (emphasis added).

Senator Tunney and others reaffirmed that point repeatedly in opposing the amendments to extend section 5 controls beyond the already covered states:

"Mr. TUNNEY. . . I would like to point out . . . that in Oregon versus Mitchell, the Supreme Court struck down the 18-year-old vote as unconstitutional as it related to State elections. Preclearance is a much greater intrusion into the State election process.

"Almost certainly, this amendment is unconstitutional under the Oregon case. Now, the constitutional precedents are very clear that the only way we can have this kind of

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intervention by the Federal Government in local elections is if we have a severe constitutional abridgement of another right, namely, the 15th amendment right to vote. . . .

"This has nothing to do with busing, this has nothing to do with economic discrimination of another kind in other parts of the country. There may be that discrimination, we all know it and none of us are hypocrites on that point. We know that on various matters.

"But voting rights have not been abridged the way they have in other regions of the country on the basis of race or on the basis of color." *Id.* at 24225-26 (emphasis added).

Senator Brooke also emphasized that section 5 controls did not relate to educational discrimination:

"Mr. BROOKE. . . . We are not talking about busing. We are talking about voting. . . .

". . . *we are not talking about busing, and we are not talking about school systems. We are talking about voting.* We are talking about the Voting Rights Act of 1965."

Mr. NUNN. If the Senator would read the court decisions, he would find that a device under this act, a part of the triggering mechanism, is defined as a dual school system.

Mr. BROOKE. That is specious, as the Senator from Georgia very well knows. *Id.* at 24226-27 (emphasis added).

That educational discrimination certainly existed in the areas not covered by the Act was admitted. As Senator Kennedy stated:

"There is discrimination in the North, as well as in the South. As the result of the finding of a judgment, the Federal district court in Boston, Mass., such discrimination was found in the public school system." *Id.* at 24229.

Senator Kennedy emphasized, however, that the controls in the Voting Rights Act could only be justified by discrimination of another type:

"The Constitution is quite clear in pointing out that determining the time, manner, and place of elections will be reserved for the several States. In reviewing those legal decisions which uphold the voting rights cases, it is quite clear that they stated that it was only with the obstruction of the basic and fundamental right to vote guaranteed by the 15th amendment, that the court has recognized the power of Congress to be able to initiate procedures or requirements that would strike down the various tests and devices and other voting procedures which have been used as means for discrimination." *Id.* at 24229.

Again as Senator Javits emphasized:

"The structure of the law depends for its constitutionality on the fact that there has been a history in given areas based upon the triggering device of patterns or practices of the denial of voting." *Id.* at S. 13395.

The view consistently stated above, that intrusive federal oversight of the state electoral process must be based on discrimination in that process, is correct. A State which is free of substantial discrimination in its electoral process cannot be subjected to section 5 controls because of past educational disparities—regrettable though they might be. And, that reasoning is certainly as applicable to States in the South, as in the North.[6]

H. The imposition of section 5 controls on Virginia is entirely arbitrary and inappropriate

As the statements quoted in the previous section indicate, Congress was well aware when it considered the 1975 Amendments, that educational inequality was not an exceptional circumstance confined just to the South. Indeed, Congress based its permanent ban on literacy tests primarily on the finding that educational inequalities were prevalent throughout the country. Whether defined in terms of unequal expenditures, segregated schooling, or unequal literacy rates, the problem of unequal educational opportunity is national in scope. Congress refused however, to impose section 5 controls on states in the North and West where that problem existed. That problem, it concluded, did not justify the far-reaching intrusion of federal control of the electoral process. It could not then, on the basis of that same condition, impose those controls on Virginia.

Jurisdictions are exempted from or subjected to section 5 controls in the first instance as a consequence of the mathematical coverage formula in section 4(b) of the Act. That formula "triggers" section 5 controls with respect to any state or political subdivision that maintained a "test or device" and in which less than 50 percent of the total voting age citizens—black and white—had either registered to vote or voted in the Presidential elections of 1964 or 1968.[7]

That formula has never been justified simply as a mathematical line drawn by Congress to determine when section 5 controls should apply. The Supreme Court in *South Carolina* v. *Katzenbach* refused to hold that Congress had the power to place the sanctions of the Act on some jurisdictions, but not on others, simply on the basis of mathematical disparities in voting statistics. Rather, the Court upheld that formula precisely because it had been carefully drawn to mark just those areas where there was a significant danger of voting discrimination through the discriminatory application of literacy tests—the precise evil the Act was designed to correct. Specifically, the Court found that Congress had been confronted with evidence of such purposeful voting discrimination in the great majority of the states falling under the formula, and was "therefore entitled to infer a significant danger of the evil in the few remaining states and political subdivisions covered by § 4(b) of the Act." 383 U.S. at 329.

It was not enough to the Court, however, just that the formula was rational. States still could not be subjected to the sanctions of the Act simply on the basis of a mathematical formula. The formula in effect established a presumption that literacy tests had actually been applied in a discriminatory manner. But the states falling within the formula must be given an opportunity to rebut that presumption. As to those states—such as Virginia—for which there was no evidence of such purposeful manipulation of literacy tests, the Court stated that it was nevertheless permissible to impose the remedies of the Act "at least in the absence of proof that they have been free of substantial voting discrimination in recent years." 383 U.S. at 329-30. Moreover, the Court made it clear that the procedures for relief from the Act were not intended to be a nullity, stating that the burdens imposed by these procedures were "quite bearable." 383 U.S. at 332.

The Court's reasoning in upholding the statutory formula in *South Carolina* v. *Katzenbach* demonstrates that, as now applied to Virginia, that formula is inappropriate.[8] Whatever logic the formula had to mark areas of actual voting discrimination, is not present with respect to educational discrimination.

As Congress has found, disparities in educational expenditures and in literacy rates, as well as segregated schooling, existed throughout the nation. If a distinction exists between the type of educational inequalities that occurred in those areas within the coverage formula that requires section 5 controls, and the type of inequalities that occurred in jurisdictions outside the formula that make those controls unnecessary, Congress has not suggested it. Nor can any such rational distinction be found.[9]

In short, the mathematical coverage formula in the Act was not intended to and does not mark out a distinct type of educational inequality particularly appropriate for section 5 controls. That formula was designed to indicate areas of flagrant and purposeful voting discrimination—the evil that the remedies of the Act were designed to strike—not areas of educational discrimination. With respect to educational inequalities the formula is simply an arbitrary mathematical line for treating the same problem differently in different jurisdictions.

As now applied, the coverage formula in section 4(b) of the Act is directly at odds with the Court's holding in *South Carolina* v. *Katzenbach*. The Court upheld the formula in that case not only because it marked those areas where the problem of voting discrimination was most likely to have occurred, but because it did not exempt other areas, known to Congress, where the same problem had also occurred.

South Carolina had attacked the formula for failing to trigger several states for which there was certain evidence of voting discrimination through means other than voting tests. Attorney General Katzenbach advised Congress that the racial discrimination in voting in those states, not involving the widespread use of the tests, did not require the extraordinary remedies of section 5 of the Act. Congress adopted that advice, and the Court upheld it:

"Congress had learned that widespread and persistent discrimination in voting during recent years has typically entailed the misuse of tests and devices, and this was the evil for which the new remedies were specifically designed. . . . Legislation need not deal with all phases of a problem in the same way, so long as the distinctions drawn have some basis in practical experience. . . . *There are no states or political subdivisions exempted from coverage under § 4(b) in which the record reveals recent racial discrimination involving tests and devices. This fact confirms the rationality of the formula.*" 383 U.S. at 331 (emphasis added).

The record before Congress in 1975 was quite different. To the extent that educational inequalities are considered "racial discrimination involving tests and devices", the record before Congress in 1975 revealed such discrimination in the great majority of state exempted from coverage under section 4(b). With respect to that discrimination, the coverage formula does not distinguish between distinct phases of the problem, but treats the same problem in different ways.

The Justice Department might contend that the language used by the Supreme Court to uphold the Act's coverage formula in *South Carolina* v. *Katzenbach*, was largely gratuitous and that, although not called upon to do so in that case, the Court could just as well have held that the 50 percent figure in the formula was itself an appropriate basis upon which to key section 5 controls. The Department might make two arguments to support that position.

First, the Department might argue that 50 percent voting participation is relevant to the problem of voting discrimination. Voting participation at least 12 percent below the national average does indicate a problem that Congress was empowered to address.

Second, the Department might argue that even if the formula is nothing more than a mathematical line for dealing with only a part of the same problem, Congress was authorized to draw that line. Congress might well have decided that national application of section 5 controls would impose too great an administrative burden upon the Justice Department.[10] Moreover, the remedies Congress did enact, the Department would argue, are not invalid merely because Congress

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might have gone further. *See McGowan* v. *Maryland*, 366 U.S. 20 (1961) (upholding a Maryland statute which exempted retailers in certain counties from the statewide prohibition of sales of certain articles on Sunday); *Salsburg* v. *Maryland*, 346 U.S. 545 (1954) (upholding Maryland law making illegally obtained search and seizure evidence admissible in only certain counties of the state); *Williamson* v. *Lee Optical Co.*, 348 U.S. 483 (1955) (refusing to invalidate an Oklahoma statute imposing certain requirements upon opticians but not upon sellers of ready-to-wear glasses); *Railway Express Agency, Inc.* v. *New York*, 336 U.S. 106 (1949) (upholding a New York City traffic regulation prohibiting advertising on trucks except for advertisements of products sold by the owner of the truck).

There are several answers to these arguments.

First, with respect to the argument that the 50 percent figure is itself relevant to voting discrimination:

1. Of all the figures that might have been chosen by Congress, the one contained in the formula is the least relevant to voting discrimination. That figure is not directed at the registration or voting participation of any particular race. Rather, a state is triggered by the Act if less than half of its *total* voting age citizens voted. In Virginia in 1964, far less than half of the white voting age citizens voted. 1965 *Senate Hearings*, at 1472; "What Happened To The South?", Release of the Southern Regional Council, Inc., at 11 (November 15, 1964). Virginia, in short, would have been triggered by the formula even if not a single black resided in the state.

2. Statistics showing the gap between black and white registration or voting might arguably be relevant. In that respect, however, Virginia stands up quite well compared to the rest of the nation. The registration rate of black citizens in Virginia was 10 percent lower than the rate among whites just prior to the enactment of the Act. 1975 House Hearings at 242–43 (Ex 17 & 18 to testimony of Assistant Attorney General Pottinger). But there was a differential of 11.5 percent in the nation as a whole in 1968, the year following passage of the Act. U.S. Bureau of the Census, Current Population Reports, Series P–20, No. 208 (1970). Moreover, the gap between black and white registration and voting rates in areas exempted from the Act's coverage was actually greater than that in the South. In 1972, there was a differential between black and white voting rates of 10.8 percent in the North and West, and of 9.2 percent in the South. In that same year the gap between black and white registration rates in the North and West was 7.9 percent, but only 5.8 percent in the South. U.S. Bureau of the Census, Voting and Registration in the Election of November 1972, Series p. 20, No. 253 (1973). In short, voting statistics, if they are by themselves relevant to trigger section 5 controls, indicate that the Act is being misapplied.

Second, with respect to the argument that Congress is empowered to remedy only those parts of a problem that, for reasons of scarce resources or for some other reason, it wishes to address:

1. The cases relied upon to support that argument could be distinguished on their facts. Justification could be found for the classification made by the legislature in each of those cases. Indeed, the Court in *South Carolina* v. *Katzenbach* cited the decisions in *Lee Optical* and *Railway Express* to support its conclusion that Congress, in enacting the Voting Rights Act to deal with the primary problem of discriminatory application of voting test, did not have to deal directly with discrimination not involving such tests. Distinguishing between states on the basis of whether or not they employed a literacy test is a far cry, however, from drawing a line between states, each of which employed a literacy test and engaged in educational "discrimination", solely on the basis of whether more than 50 percent of their total voting age population voted in a particular election. The second classification is nothing but mathematical.

2. More important, the several cases relied upon deal with the area of economic regulation. In that area the Court has traditionally, and quite properly, deferred to the legislative classification if any reason can even be conceived of that would justify it.[11] Such deference to the legislature is not appropriate here, however. Section 5, providing for prior federal review of state legislative action intrudes on the most fundamental rights granted the States by the Constitution. As the Court held in *South Carolina* v. *Katzenbach*, that intrusion must be justified by compelling and "exceptional" circumstances. Certainly, the convenience of the Justice Department is not sufficient. Indeed, the Court recently rejected administrative convenience as a justification where far less basic principles were involved.

In *Cleveland Board of Education* v. *Lafleur*, 42 U.S.L.W. 4186 (1974), the Court struck down School Board rules that required pregnant teachers to take maternity leave for a fixed period before and after delivery. Justice Stewart speaking for the majority, stated:

"The school boards have argued that the mandatory termination dates serve the interest of administrative convenience since there are many instances of teacher pregnancy, and the rules obviate the necessity for case-by-case determinations. Certainly, the boards have an interest in devising prompt and efficient procedures to achieve their legitimate objectives in this area. But as the Court stated in *Stanley* v. *Illinois* . . . '[T]*he Constitution recognizes higher values than speed and efficiency.*' " *Id.* at 4190–91 (emphasis added). *See also Vlandis* v. *Kline*, 412 U.S. 411 (1973); *Stanley* v. *Illinois*, 405 U.S. 645 (1972).

3. There is another reason, perhaps the most important, why close scrutiny of the legislative scheme is particularly necessary here. The danger of just such legislation as this was alluded to by Justice Jackson in his concurring opinion in *Railway Express:*

"The framers of the Constitution knew, and we should not forget today, that there is no more effective practical guaranty against arbitrary and unreasonable government than to require that the principles of law which officials would impose upon a minority must be imposed generally. Conversely, nothing opens the door to arbitrary action so effectively as to allow those officials to pick and choose only a few to whom they will apply legislation and *thus to escape the political retribution that might be visited upon them if larger numbers were affected.*" 336 U.S. at 112–13 (emphasis added).

It can be strongly argued that Justice Jackson's warning was never more directly in point. By restricting the special burdens of the Act just to a minority of its member states, the majority in Congress has isolated itself from political retribution and political responsibility for its actions. The classification Virginia complains of is not only arbitrary in itself, it is the vehicle by which arbitrary action is allowed to continue. Conversely, so long as the impact of the Act is arbitrarily restricted to just a minority of the states, Virginia has no effective voice in Congress to argue its case. It is precisely in this situation that careful review of the Congressional action is not only appropriate—it is necessary.

FOOTNOTES

[1] Although the Court defined the question strictly in terms of § 2 of the fifteenth amendment, it appears that the basic principles incorporated in the other constitutional provisions mentioned—including the principle of equal protection—would enter into the Court's determination of that question. The term "appropriate" in § 2 of the fifteenth amendment is certainly as broad as the "due process" language of the fifth amendment which, the Court has held, includes equal protection guarantees. *See Johnson* v. *Robinson*, 415 U.S. 361, 364–65, n. 4 (1974); *Shapiro* v. *Thompson*, 394 U.S. 618, 641–42 (1969); *Bolling* v. *Sharpe*, 347 U.S. 497 (1954). *See also Griswold* v. *Connecticut*, 381 U.S. 479 (1965), in which Justice Douglas indicated that constitutional provisions must be read together and that specific constitutional guarantees "have *penumbras*, formed by emanations from those guarantees that help give them life and substance." 381 U.S. at 484.

[2] Perhaps the strongest statements of judicial deference are found in the opinions testing legislative classification in the economic field under the Equal Protection Clause. The Court will sustain the classification if "any state of facts can be conceived of" that would support it—even though the legislature itself might not have considered those facts. *See, e.g., McGowan* v. *Maryland*, 366 U.S. 420, 426 (1961); *Madden* v. *Kentucky*, 309 U.S. 83, 88 (1940); *Lindsley* v. *Natural Carbonic Gas Co.*, 220 U.S. 61, 78–79 (1911). Under that standard the Court has upheld classifications which, at least on their face, appear blatantly discriminatory. *See Goesart* v. *Cleary*, 335 U.S. 464 (1948) (permissable to prohibit women from serving liquor, unless the barmaid's father owns the bar); *Knotch* v. *Board of Pilot Comm.*, 330 U.S. 552 (1947) (permissable to confine pilotage on the Mississippi River only to relatives of previous pilots).

On the other hand, where the Court considers the classification to involve fundamental principles, such as the right to vote or to travel, it is quite willing to substitute its own judgment for that of the legislature. In those cases the Court demands, and rarely finds, a "compelling interest" to sustain the classification. *See, e.g., Kramer* v. *Union Free School Dist.*, 395 U.S. 621 (1969); *Levy* v. *Louisiana*, 391 U.S. 68 (1968).

[3] The unconstitutional delegation argument might have some merit in an appropriate case. In *Katzenbach* v. *Morgan*, 384 U.S. 641 (1966), the Court held that Congress had the power under the enforcement clause of the fourteenth amendment to invalidate a specific state law with respect to voting which had not been, and probably would not have been, judicially held to violate the amendment. "That case," as Justice Stewart later said in *Oregon* v. *Mitchell*, "gave Congressional power . . . the furthest possible legitimate reach." 400 U.S. at 296. Even under the broad holding in *Morgan*, one might argue that if power to invalidate otherwise constitutional state law exists, it exists only in Congress and cannot be delegated to federal officials, whether executive or judicial. Indeed, as Professor Cox has pointed out, the justification for permitting Congress to "expand" the Constitution beyond the judicial interpretation is based precisely on the ability of Congress as a legislative body to assess and determine factual questions beyond the competency of the judiciary. A. Cox, *The Role of Congress in Constitutional Determinations*, 40 Cin. L. Rev. 199, 229 (1971).

[4] One might argue that even the same condition that justified the imposition of section 5 controls initially did not justify their

reimposition in 1975—that discriminatory manipulation of voting tests in 1965 at the latest does not justify continuous federal supervision of the state voting process through 1982. That argument is for others to raise, however. In Virginia, there was no manipulation.

[5] Thus, Virginia's proof in its former case that far less than one percent of those applying were denied registration on account of the test, and that black registration almost doubled over the relevant period, was to no avail. The District Court, while commending Virginia "for its good faith efforts in voter registration in the sixties," found that Virginia had not, *"and probably cannot,* rebut the evidence that many potential black voters stayed at home and never even tried to register out of the fear of rejection. . . ."

[6] One might argue on the basis of the above statements that Congress did not intend to impose section 5 controls on Virginia solely on the basis of educational disparities, and that Virginia's proper remedy is not an original action in the Supreme Court but a new action under section 4(a) of the Act raising that contention. Of course, Virginia would not object to a Supreme Court holding that educational disparities do not bar relief to a jurisdiction otherwise free of discrimination in the use of its literacy test—whether that holding is based on statutory interpretation or on the extent of Congress' power under the Constitution. It would be inefficient in the long run, however, to force Virginia to sue again under section 4(a) of the Act. Whether the Act applies solely on the basis of educational disparities must finally be settled by the Supreme Court in any case. Moreover, it would be difficult to contend, despite the statements quoted in the text, that Congress did not intend that Virginia should remain covered by the Act. Attorney General Miller's proposed amendment allowing Virginia an avenue of relief was rejected. The point is that in rejecting that amendment and intending Virginia to remain under the Act, as the debates make clear, Congress was acting irrationally and arbitrarily.

[7] Virginia was "triggered" under that formula because the Attorney General determined that it maintained a literacy test, and because less than half of its total voting age population voted in the 1964 Presidential election. Over 50 percent of Virginia's voting age citizens were registered in 1964, and more than half actually voted in the 1968 Presidential elections.

The 1975 Amendments also triggered section 5 controls with respect to jurisdictions with a significant language minority if less than half the voting age citizens voted in the 1972 Presidential election. See *supra*, p. 1, n.

[8] It must be emphasized that Virginia does not contend that the Act's coverage formula is no longer appropriate to mark those areas where there is a significant danger that purposeful discrimination in the voting process had occurred. As the Court pointed out, the evidence before Congress showed that the great majority of states falling within that formula actually had engaged in such purposeful discrimination. The possibility exists that the others might have as well. Virginia, however, did not. Section 5 controls are imposed on it solely because of past educational disparities.

[9] It must be emphasized that no such valid distinction can be found in the types of school segregation. *De jure* segregation occurred both in states within the formula and in many states outside the formula. Moreover, to the extent that segregation is important because of its presumed impact on the ability to meet a literacy test, no rational distinction can be made between *de jure* and *de facto* segregation. Segregation, no matter what the cause, it is argued, has a presumed discriminatory impact on the franchise.

[10] Senator Tunney's primary argument in opposition to the extension of section 5 controls to uncovered states was that those controls could not constitutionally be based on the type of discrimination—including educational discrimination—found in the uncovered states. He did argue, in addition, that extension of those controls to other states would unduly tax the administrative resources of the Department of Justice. 121 Cong. Rec. S13371 (daily ed. July 23, 1975).

[11] Even in the area of economic regulation, however, there is some limit on the Court's deference to the legislature. In *Morey* v. *Doud*, 354 U.S. 457 (1957), the Court invalidated an Illinois statute that exempted a specifically named company from regulations on the sale of money orders. *See also Dukes* v. *New Orleans*, 501 U.S. 706 (5th Cir. 1974); *Adams* v. *Park Ridge*, 293 F.2d 585 (7th Cir. 1961).

[APPENDIX IV]

NUMBER OF CHANGES SUBMITTED UNDER SEC. 5 AND REVIEWED BY THE DEPARTMENT OF JUSTICE, BY STATE AND YEAR, 1965 TO SEPT. 30, 1980

State	1965	1966	1967	1968	1969	1970	1971	1972	1973	1974	1975	1976	1977	1978	1979	1980	Total
Alabama	1	0	0	0	13	2	86	111	60	58	299	349	153	146	142	262	1,682
Alaska [1]	0	0	0	0	----	0	0	0	----	----	0	3	0	25	1	1	30
Arizona [2]	0	0	0	0	0	0	19	69	33	28	52	228	180	311	163	552	1,635
California [3]	----	----	----	----	----	0	0	6	1	5	0	382	99	105	8	57	663
Colorado [3]	----	----	----	----	----	----	----	----	----	----	0	12	4	34	147	31	228
Connecticut [4]	----	----	----	----	----	----	----	----	----	0	0	0	0	0	0	0	0
Florida [3]	----	----	----	----	----	----	----	----	----	----	1	57	8	46	28	22	162
Georgia	0	1	0	62	35	60	138	226	114	173	284	252	242	444	371	600	3,002
Hawaii [3]	0	0	0	0	0	0	0	0	0	0	0	6	0	0	0	3	9
Idaho [3]	0	0	----	----	----	0	0	0	0	0	0	0	0	0	0	1	1
Louisiana	0	0	0	0	2	3	71	136	283	137	255	303	460	254	336	313	2,553
Maine [4]	----	----	----	----	----	----	----	----	----	0	0	3	0	0	0	0	3
Massachusetts [4]	----	----	----	----	----	----	----	----	----	0	0	11	0	3	0	0	14
Michigan [4]	----	----	----	----	----	----	----	----	----	----	0	1	0	0	0	0	1
Mississippi	0	0	0	0	4	28	221	68	66	41	107	152	114	126	112	105	1,144
New Hampshire [4]	----	----	----	----	----	----	----	----	----	0	0	0	0	0	0	0	0
New Mexico [3]	----	----	----	----	----	----	----	----	----	----	0	65	----	----	----	----	65
New York [3]	----	----	----	----	----	0	4	----	----	84	78	106	96	72	27	24	491
Oklahoma [3]	----	----	----	----	----	----	----	----	----	----	0	1	0	0	----	----	
North Carolina [3]	0	0	0	0	0	2	75	28	35	54	293	125	183	156	89	138	1,178
South Carolina	0	25	52	37	80	114	160	117	135	221	201	419	299	212	138	156	2,366
South Dakota	----	----	----	----	----	----	----	----	----	----	0	0	0	2	4	0	6
Texas	----	----	----	----	----	----	----	----	----	----	249	4,694	1,735	2,425	2,917	3,110	15,013
Virginia	0	0	0	11	0	46	344	181	123	186	259	301	434	314	267	447	2,913
Wyoming [3]	----	----	----	----	----	----	0	0	0	1	0	0	----	----	----	----	1
Total	1	26	52	110	134	255	1,118	942	850	988	2,078	7,470	4,007	4,675	4,750	5,822	33,278

[1] Entire State covered 1965–68; selected election districts covered 1970–72; since 1975 entire State covered.
[2] Selected county (counties) until 1975; entire State now covered.
[3] Selected county (counties) covered rather than entire State.
[4] Selected town (towns) covered rather than entire State.
---- Not covered for years indicated.

NUMBER OF CHANGES [1] TO WHICH OBJECTIONS HAVE BEEN INTERPOSED, BY STATE AND YEAR, 1965 TO SEPT. 30, 1980

State	1965	1966	1967	1968	1969	1970	1971	1972	1973	1974	1975	1976	1977	1978	1979	1980	Total
Alabama					10	1	3	9	1	6	16	16	1	3	1	2	69
Alaska																	0
Arizona									1		2	2				3	8
California												3	2				5
Colorado																	0
Connecticut																	0
Florida																	0
Georgia				6			12	18	15	22	84	12	34	8	5	10	226
Hawaii																	0
Idaho																	0
Louisiana					2		36	13	6	10	5	52	1	3		8	136
Maine																	0
Massachusetts																	0
Michigan																	0
Mississippi					4	1	20	4	7	2	16	7	8	2	3	3	77
New Hampshire																	0
New Mexico																	0
New York										4	1						5
Oklahoma																	0

NUMBER OF CHANGES[1] TO WHICH OBJECTIONS HAVE BEEN INTERPOSED, BY STATE AND YEAR, 1965 TO SEPT. 30, 1980

State	1965	1966	1967	1968	1969	1970	1971	1972	1973	1974	1975	1976	1977	1978	1979	1980	Total
North Carolina							10				8		37	3	1	3	62
South Carolina								7	7	30	1	11	8	7	5		76
South Dakota														1	1		2
Texas											1	48	13	22	26	15	125
Virginia						1	6	1		3	1				1		13
Wyoming																	0
Totals	0	0	0	6	16	3	87	52	37	77	135	151	104	49	43	44	804

[1] Some submissions include more than 1 change affecting voting. Thus, the number of changes to which objections have been interposed exceeds the number of submissions which have resulted in objections.

The PRESIDING OFFICER (Mr. STEVENS). The Senator from Wisconsin is recognized.

CBS—THE DEFENSE OF THE UNITED STATES

Mr. PROXMIRE. Mr. President, the five-part series by CBS on "The Defense of the United States" was one of the most remarkable educational programs ever aired on television. It condensed the wealth of complex issues facing this country into a summary with very little distortion or bias. By juxtaposing Government officials with nongovernmental experts, the viewer was presented with a range of facts and issues sufficiently broad to encompass all views.

Let me quote what Time magazine said about that program:

> The picture that will remain longest in most viewers' minds will doubtless be the simulation of a 15-megaton thermonuclear fireball devastating Omaha. The $87,000 worth of special effects lavished on that sequence conveyed as much vivid horror as any megabucks sci-fi movie. But it would be a pity if that memory distracted attention from other merits of the CBS News series "The Defense of the United States," which aired for an hour on each of five successive nights last week. Complex issues, like that of high-technology vs. simpler weapons, usually the preserve of scholarly tomes, were tackled head-on—and in prime time. The series was not only the longest and most expensive network documentary ever but perhaps the most thoughtful and incisive TV examination of the American military as well.

Perhaps the most significant contribution of this program was the resulting attitude that one can be a critic of defense programs without being labeled, as some are so quick to do, antidefense. In fact, the responsible critic is the Pentagon's best friend. Every dollar of tax funds lost in some wasteful defense program is not only an economic loss but a potential threat to the safety of our Nation.

It is a shame that more people do not understand that fundamental fact. To be critical of defense waste is not to be antidefense. Those who look the other way at waste in defense programs do our Nation no lasting good. We should be as diligent with our defense dollars as we are with education, health, or transportation—perhaps even more so since so much rides on the outcome.

That is why "The Defense of the United States" was so important. It pointed out the problems as well as the challenges. It did not deny the threats this Nation faces. It did not neglect to focus on Soviet programs and the realities of Soviet industrial production rates. If exposed those issues head on. Given Soviet dominance in numbers of weapons, should the United States continue to concentrate its resources in declining numbers of more sophisticated weapons? And what of the byproduct of this single-minded adherence to state-of-the-art technology? Those few aircraft that we can produce, with their astronomical prices, are grounded 50 percent of the time with costly repairs. Our aircraft carriers are not rated as operationally ready. Our Army divisions are not fully combat ready. Training is inadequate. Pay is inadequate. Overly complex weapons do not work on the battlefield. Hardware becomes an intellectual substitute for tactics and strategy.

I have branded this cycle—the high unit price/lower quantity purchase cycle—our own unique form of unilateral disarmament. We goldplate our aircraft and give them increasingly sophisticated equipment coupled with new missions. They get heavier with each new black box. Each new mission demands additional weight here and there. Each pound of weight adds to the cost and degrades the performance. As the cost goes up the annual purchase request goes down. Every time the annual purchase rate goes down, the unit price goes up due to economy of scale efficiencies.

The end result is fewer planes acquired in any given year than the number lost in accidents and due to attrition. The Air Force gets smaller. No less than two former high Pentagon officials have now stated that at the rate we are going, 1 day we will have one exotic plane in the inventory that will do everything but the pilots will have to take turns flying it.

That is unilateral disarmament as surely as if it were Government policy. And the Government encourages it by bailing out contractors who bid so low that they cannot produce on time or at the agreed-upon price. We cave in to the demands of shipbuilders who hold the Nation's defense ransom to their economic demands. We turn a blind eye to cost overruns because, after all, where else would we get the defense goods we need. Any civilian private corporation president who operated his company on such a basis would not last a year.

It is to the credit of CBS that "The Defense of the United States" has opened the door to a broad public debate on these conventional arms issues.

As Time magazine said:

> CBS was on target with its main point, however. While not opposing President Ronald Reagan's plan for a $1.3 trillion military buildup over the next five years, it emphasized that money alone will not ensure a strong defense, and called for a national debate on just what the dollars should be used to buy.

But the program did not stop there. It did not neglect to inform and educate the viewer on the realities of nuclear warfare. The opening program examined the effects of a 15-megaton nuclear warhead exploding over Omaha. The facts of nuclear warfare, when presented on paper as statistics, make for cold reading. But the visual effect of the simulated explosion provokes the mind into action. Is nuclear war winable? Is it survivable? Would the survivors envy the dead? How long would it take for a nation to reconstruct its industrial base—if ever?

There is a school of thought that deterrence needs to be reinforced from time to time. Otherwise the technicians gain control with their paper calculations as to how many and how much would survive a strike of a given size on a certain day with particular characteristics. And after this calculation is made, all the caveats, all the ifs, ands, and buts, are forgotten and it becomes policy. The assumptions are stated in public as if they were certain facts. "A first strike would knock out all of our ICBM's and not allow us a sufficient retaliatory capability."

"Only 10 million would die in a limited nuclear strike."

"A limited nuclear strike could be contained."

"Given enough protection, U.S. industry will survive a nuclear war."

Mr. President, you can hear these absolute statements ring throughout our society. Absolute statements about a subject where there are no absolute facts. Calculations where the assumptions, much like our budget process, are mere guesses as to what would happen. Yet, the conclusions carry the authority of fact.

This CBS program. "The Defense of the United States," brings us back to reality by reinforcing the perceptions of the dangers and risks of nuclear war and the need to remain strong enough so that no one will ever take that chance.

Mr. President, as much as I have lauded this program, I think it is only just that a few words of disappointment should be offered—much in the spirit of the series itself, which was so balanced.

The series did not provide much insight into the role of women in the All-Volunteer Force, and what was examined was shallow in its presentation.

Sure, some drill sergeants do not want women in their platoons. That is to be expected. But how about the significant accomplishments of women in uniform? Women fly some of our most advanced aircraft. They maintain our most sophisticated equipment. They are specialists in electronics, in intelligence, in tactics. The test should be—Who can do the job?—not sex or race. And that point simply was not made.

Another absent, yet critical defense issue was the role of the National Guard and Reserves. The best air force in the world may not be the Russians, or the Israelis, or the United States Air Force. What is it? It probably is the Air National Guard. Not many people realize that. These units are better trained, more experienced and better prepared than the regular Air Force. Overall the National Guard, particularly the Army National Guard, supplies 40 to 50 percent of the combat capability of the total force. To overlook that element is to forget about one-half of our Nation's defenses.

Overall Mr. President, "The Defense of the United States," deserves plaudits and commendation. It should be replayed so that those who missed it would have another opportunity, even though it did capture 30 percent of the audience in prime time.

I hope they have a rerun with that program. In fact, I hope they have reruns several times so that those who missed it will have another opportunity, even though it captured 30 percent of the audience in prime time.

Apropos of that, Time, the issue of June 29, 1981, observed:

CBS's message reached a surprising number of viewers. Heavily promoted, the first two programs in the series outdrew the movies and entertainment shows spotted against them, attracting 30 percent of the viewing audience. That is a virtually unheard-of performance for a documentary.

The $1 million in production costs and 9 months of time were well spent.

Mr. President, I ask unanimous consent that an article from Time magazine about the defense of the United States be printed in the RECORD.

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

THE TELLING OF THE PENTAGON—IN A 5-HOUR DOCUMENTARY, CBS INCISIVELY PROBES U.S. DEFENSE

The picture that will remain longest in most viewers' minds will doubtless be the simulation of a 15-megaton thermo-nuclear fireball devastating Omaha. The $87,000 worth of special effects lavished on that sequence conveyed as much vivid horror as any megabucks sci-fi movie. But it would be a pity if that memory distracted attention from other merits of the CBS News series The Defense of the United States, which aired for an hour on each of five successive nights last week. Complex issues, like that of high-technology vs. simpler weapons, usually the preserve of scholarly tomes, were tackled head-on—and in prime time. The series was not only the longest and most expensive network documentary ever but perhaps the most thoughtful and incisive TV examination of the American military as well.

Putting the documentary together cost roughly $1 million and took nine months; Executive Producer Howard Stringer at one point or another brought in some 80 CBS News people. Camera crews roamed from the Egyptian desert to Moscow; correspondents interviewed everyone from Secretary of Defense Caspar Weinberger to a raw recruit getting his flowing locks shorn into a G.I. cut (asked why he had joined the Army, he replied laconically, "Can't find no jobs"). Walter Cronkite, in his first reportorial appearance since retiring as anchorman of the CBS *Evening News*, journeyed to Moscow and brought back some Soviet TV footage never before seen in the U.S. One sequence depicted draftsmen, incongruously garbed in what looked like chefs' aprons and hats, drawing up what appeared to be missile blueprints (the Soviets refused to specify what was going on) while a piano boomed classical music in the background.

Visually, the series was nearly always interesting, from its pictures of U.S. officeworkers wearing gas masks and rubber gloves while pecking away at typewriters during a chemical-warfare exercise to a shot of a live American MIRV (three nuclear warheads mounted on the nose of a Minuteman III missile). Understated ironies abounded. A fresh-faced American missileman exclaimed with Boy Scout enthusiasm that his task of getting ready to launch a Minuteman at a Soviet target gave him "more responsibility than I could obtain in a civilian world." Commenting on film showing a C–5A cargo plane losing a wheel during a landing, a Lockheed official remarked. "With respect to the wheel coming off, I don't like that."

Most striking was the consistent intelligence of the commentary by six on-camera reporters headed by Dan Rather. After the series opened with a bang over Omaha, illustrating the horrors of even a "limited" use of strategic nuclear weapons, Part 2 examined U.S. and Soviet preparation for tactical nuclear war in Europe and questioned whether the resulting devastation would allow the word victory to retain any meaning. The third segment explored manpower and readiness issues, ranging from the low retention rate of Navy petty officers to the reinstitution of the draft (favored by many training officers although opposed by the Administration); it also made a plea for increased spending on spare parts and realistic training to enhance the flashy weapons. The fourth followed the metamorphosis of the Navy's F–18A Hornet from a $5 million fighter into a $30 million, all-purpose plane and questioned whether the military would not be better off with less complex, more reliable weapons that could be turned out faster in much larger quantities. In the last hour, Cronkite tried to tot up the strengths and weaknesses of the U.S.S.R.

There were some disappointments. CBS could not get interviews with any of the U.S. Joint Chiefs of Staff, and former President Jimmy Carter canceled an appointment after a camera crew had arrived in Plains, Ga. "The reason given," says Stringer, "was that his advisers decided this was an 'inappropriate forum.'" Cronkite found the Soviets so uninformative that he was reduced to interviewing Alexander Bovin, a journalist who is said to be a speechwriter for Leonid Brezhnev, and exploring Moscow's motives by taping a long bull session with Western correspondents.

Inevitably, given the difficulties of jamming such complicated issues into five hours, the series had some regrettable omissions and some too-sweeping conclusions. CBS did not examine the possibility of fighting a European war without nuclear weapons or whether the 11.7% military pay boost last fall and another big one scheduled for Oct. 1 have eased manpower problems. Correspondent Ed Bradley criticized plans to spend $17 billion in 1982 on the four-service Rapid Deployment Force "when all they needed to do was send in the Marines." Matters are not quite that simple: Marine units are indeed organized and trained for quick assaults, but Army units that might be assigned to the R.D.F. would have more staying power for a long campaign because of their heavy equipment.

CBS was on target with its main point, however. While not opposing President Ronald Reagan's plan for a $1.3 trillion military buildup over the next five years, it emphasized that money alone will not ensure a strong defense, and called for a national debate on just what the dollars should be used to buy. The Pentagon huffed that "the series turned out to be an editorial rather than a documentary." Even so, Pentagon Spokesman Henry Catto Jr. applauded CBS "for its seriousness of purpose."

CBS's message reached a surprising number of viewers. Heavily promoted, the first two programs in the series outdrew the movies and entertainment shows spotted against them, attracting 30% of the viewing audience. That is a virtually unheard-of performance for a documentary. In this case, effort, quality and thought did more than draw critical plaudits; they produced something that would sell.

Mr. PROXMIRE. I do think this fine program has raised the level of dialog on defense, and probably has done as much to improve our defense as any action that has been taken in a long, long time.

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

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

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Is there further morning business? If not, morning business is closed.

RECESS UNTIL 8 A.M. TOMORROW

Mr. SYMMS. Mr. President, I move, in accordance with the previous order, that the Senate stand in recess until 8 a.m. tomorrow.

The motion was agreed to; and the Senate, at 6:31 p.m. recessed until Wednesday, June 24, 1981, at 8 a.m.