SENATE—*Wednesday, August 18, 1982*

(Legislative day of Tuesday, August 17, 1982)

The Senate met at 10 a.m., on the expiration of the recess, and was called to order by the President pro tempore (Mr. THURMOND).

The PRESIDENT pro tempore. The opening prayer today will be offered by the Reverend Father George A. Paulin, Church of the Assumption of the Blessed Mother Mary, Canaan, Vt. He is sponsored by Senator ROBERT T. STAFFORD, the senior Senator from Vermont.

PRAYER

The Reverend Father George A. Paulin offered the following prayer:

Holy God, we pause to praise You at the beginning of this day filled with challenge for the Senate of this free Nation. Bind their hearts, minds, spirits and emotions to You. Bless the conscience of this body, and its ability to know, understand and respond to the people whom they serve. Bless the people of every State and let them grow in knowledge, cooperation, collaboration, interests, and support so that their citizenship may be an admirable expression of the intent of our Founding Fathers.

May we be an inspiration to the poor, forever expressing a thirst for justice and peace. May we effect in law the expression of Your mercy. May our capacity for sorrow show abundantly filled hearts creative with joy, and may we be blessed in our ability to sustain affliction for the cause of justice as we continue to create one nation with liberty and impartiality for all. Amen.

RECOGNITION OF THE MAJORITY LEADER

The PRESIDENT pro tempore. The majority leader is recognized.

Mr. BAKER. I thank the Chair.

THE JOURNAL

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

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

SENATE SCHEDULE

Mr. BAKER. Mr. President, after the recognition of the two leaders under the standing order the Senator from Georgia (Mr. NUNN) will be recognized on special order for not to exceed 5 minutes.

After the execution of the special order, there will be a period for the transaction of routine morning business in which Senators may speak for not more than 2 minutes each, said period to extend not past 10:45 a.m., at which time the Chair will lay before the Senate the pending business, which is the debt limit on which the pending question will be a Helms amendment.

Mr. President, it is hoped that today, tomorrow, and Friday we can finish the supplemental and the two reconciliation conference reports. There are other matters that we may be able to deal with. I hope to be able to finish the abortion debate and the debt limit before we go out on Friday. But it is urgently necessary that we finish those three items, the two reconciliation conference reports, and the supplemental.

Mr. President, I ask unanimous consent to reserve the remainder of my time under the standing order for use at any time.

The PRESIDING OFFICER (Mrs. KASSEBAUM). Without objection, it is so ordered.

Mr. BAKER. Madam President, I have no further need for my time under the standing order and I yield so that the minority leader may seek recognition.

RECOGNITION OF THE MINORITY LEADER

The PRESIDING OFFICER. The minority leader is recognized.

Mr. ROBERT C. BYRD. Madam President, I thank the majority leader.

SENATOR BOREN'S RESPONSE TO PRESIDENT REAGAN'S SPEECH

Mr. ROBERT C. BYRD. Madam President, Senator DAVID BOREN did an excellent job of representing Senate Democrats on Monday evening in responding to the President's speech on his tax increase bill. Senator BOREN was articulate and persuasive about the need to change our country's current economic policies.

On behalf of all my Democratic colleagues, I personally commend Senator BOREN and ask unanimous consent to have printed in the RECORD his statement.

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

RESPONSE DELIVERED ON BEHALF OF SENATE DEMOCRATS TO PRESIDENT REAGAN'S TELEVISED SPEECH THIS EVENING, GIVEN BY U.S. SENATOR DAVID BOREN

Thank you, Congressman Foley. We have all just heard the President discuss the serious economic problems facing us as Americans. He has outlined his support for a $99 billion package of tax increases which he feels are necessary.

It is not my purpose tonight to spend our time together trying to cast blame on the President or the other party for our economic trouble.

This weekend, I was visiting in Duncan, Oklahoma, with a group of my constituents. Their message to me was "We want you people in Washington to quit wasting your time blaming each other and start working together to solve our problems."

I agree with their advice 100 percent. Blaming each other will not put 10 million people back to work or save countless farmers and small businessmen from bankruptcy.

The late Sam Rayburn used to say, "To be a good Democrat, you must first be a good American." The Democratic response tonight is offered in that spirit.

Let's be frank with each other. We all know that our economy is in trouble. Many Democrats in the Congress, including myself, voted to give the President's program a chance. For the sake of America, I wish that it had been a resounding success.

But we must live in the real world and the fact is that the Administration's program is not working. As this chart indicates, unemployment has soared since the program became law. Three million more Americans are out of work than when it was passed. Unemployment is the highest since the depression of the 1930's. Small business failures and home and farm foreclosures are at the highest level in 50 years.

The problem is real. It is serious. Many people in our nation are truly suffering.

That doesn't mean we should give up. We Americans have faced far greater problems in the past; for example, in the 1930's with the depression and after our fleet was destroyed at Pearl Harbor. Each time we have met the challenge. We will again.

What should we do?

First, let's look at the tax increase program outlined by the President tonight.

It is absolutely true that deficits must be reduced. But it is estimated that even with the Reagan tax increase proposal, deficits may still run as high as $450 billion over this three-year period, more than triple the rate of increase in any other three-year period in our nation's history.

It is true that the tax bill now before Congress has some good features. It does close some tax loopholes that need closing. The average working American certainly pays his or her share of taxes. Everyone else should, too.

Democrats in the Senate worked hard to make it a fairer bill. We tried to take out the provision raising telephone taxes. We offered an amendment to retain the present

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

level of medical expense deductions. We attempted to take out the section of the bill which imposes withholding taxes on savings accounts. Senate Democrats also tried to knock out the $6.6 billion increase in unemployment taxes.

Unfortunately, the Democratic amendments lost. Now we are faced with a tax bill that has both good and bad provisions. Regrettably, at this point, members of Congress cannot vote for some provisions and against others. They have to vote for or against it as one package.

One thing is clear. Whatever the outcome on this tax package, it certainly is not going to end the recession and put people back to work. We can't simply keep saying prosperity is just around the corner. To ask the millions of unemployed to wait for some distant recovery is like a fireman telling the people in a burning building not to worry, it may rain next week.

In this time of economic crisis, all of us in Congress have a responsibility to work for positive solutions.

We Democrats are offering a positive plan to help end the recession.

It is aimed at bringing down the unfair, unworkable interest rates which are strangling our economy.

Let's look at what high interest rates are doing to all of us.

Five years ago, the average monthly payment on a $65,000 house was $500. Today, the payment on that same house would be $875 per month, just because of higher interest rates. Eighty-six percent of the people in the country can't even qualify to buy that house. Is it any wonder that there are hundreds of thousands of carpenters, electricians and brick layers out of work?

Is it any wonder that farmers are going broke when they cannot afford to borrow the money to plant their crops?

High interest rates are a major cause of the big government deficits. Everytime the interest rate goes up 1 per cent, the cost of government borrowing goes up $7 billion.

High interest rates also increase unemployment. If the 3 million people who lost their jobs in the last year could be put back to work, it would reduce the deficit by $90 billion.

For many years interest rates were rather stable. Usually interest rates ranged between one and three percentage points above inflation.

People who wanted to expand their farms and businesses and put people to work could get stable and reliable credit at reasonable rates.

In the last three years all of that changed. Interest rates have skyrocketed. Instead of being 2 or 3 points above inflation, they jumped to about 10 points above inflation.

Interest rates have not only been too high, they have been unstable and erratic. No one knew where they would go next. Investment decisions became impossible to make.

It is important for every American to understand why this has happened. In October of 1979, the Federal Reserve Board decided to embark on a controversial experiment with tight money and high interest rates. They decided to no longer use their powers to maintain reasonable and stable interest rates.

This dangerous experiment has obviously had tragic results—lost jobs, lost farms, lost homes.

Faced with this economic emergency, we have hoped that the Administration would act, but instead, they have continued to support this dangerous experiment with high interest rates and tight money. As Mr. Stockman said recently, "We endorsed it; we urged it; we have supported it."

The time has come to reverse this policy. Senate Democratic leader Robert Byrd and House Majority Leader Jim Wright, with a large number of Democrats from both Houses, have introduced a bill to require the Federal Reserve Board to bring down interest rates and maintain them at stable levels.

If interest rates today were at their historic level, in relation to inflation, they would range between 7 and 10 percent, instead of the 14 to 21 percent range of the past two years.

This proposal is a sound and reasonable one based on solid experience under both Democratic and Republican administrations.

I hope that the President will join us in this effort.

Interest rates should not be a partisan issue. We're all Americans. We are all in the same boat. Let's pull together to put people back to work.

ORDER OF PROCEDURE

Mr. BAKER. Madam President, will the minority leader yield to me?

Mr. ROBERT C. BYRD. I yield.

Mr. BAKER. Madam President, last evening when we had what appeared to be an impasse for the moment on a parlimentary subject, I recessed the Senate over until 10 a.m. this morning. There were a number of routine matters that would have been dealt with last evening.

I wonder if the minority leader will be prepared to deal with those now or shortly after the recognition of some Senator seeking recognition.

Mr. ROBERT C. BYRD. Yes. I will be prepared to do that, and I will be glad to do that.

Mr. BAKER. I thank the Chair.

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

The PRESIDING OFFICER. The Senator has 7 minutes remaining.

Mr. ROBERT C. BYRD. How much time does the Senator from Wisconsin require?

Mr. PROXMIRE. One minute.

Mr. ROBERT C. BYRD. Madam President, I yield 1 minute to the Senator from Wisconsin, and I yield the remaining time to Mr. BOREN and ask unanimous consent that it be reserved for him.

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

Mr. ROBERT C. BYRD. I understand he is on his way to the floor shortly.

Mr. BAKER. Madam President, how much time do I have remaining?

The PRESIDING OFFICER. The majority leader has 8 minutes remaining.

Mr. BAKER. Madam President, will the minority leader be willing to utilize my 5 minutes after the Senator from Wisconsin speaks to do the wrap-up or does he prefer to do that later?

Mr. ROBERT C. BYRD. Yes.

Mr. BAKER. All right.

PHYSICIANS SPEAK OUT ON NUCLEAR WAR

Mr. PROXMIRE. Madam President, perhaps no other group of individuals in our society can speak with as much authority on the effects of nuclear war as America's physicians. They are not theoreticians who calmly calculate millions of deaths on a chart and make assumptions as to how many years it will take before economic recovery can take place. They do not deal with the complex nuclear strategies of how many warheads of what types should be laid over how many targets.

Instead they deal with the most immediate and practical consequences of the aftermath of a nuclear war—treating the casualties.

They have recognized that there is absolutely no way for the American medical profession to provide the needed care to tens of millions of casualties in a nuclear war. The nature of medical assistance following a nuclear exchange would change fundamentally from that which is known today. Postattack conditions involving radiation, burying of the dead, sanitation, food supply, and the risk of epidemics are only a few of the critical medical situations that will face a devastated nation.

Many physicians conclude that nuclear war would be the final epidemic. It would be useful if those who have spent their lives planning for nuclear attacks in both the United States and the U.S.S.R. would spend some time with the physicians of their countries so that they would have an understanding of the consequences of the failure of arms control. The planning table is often too far from reality.

Madam President, I ask unanimous consent that an article from the New York Times on the role of physicians in a nuclear war be printed in the RECORD.

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

[From the New York Times, Aug. 11, 1982]

DOCTORS: NO RX'S IN A-WAR

(By Arnold S. Relman and Alexander Leaf)

BOSTON—Physicians are as diverse in their political and social views as any other large group of citizens and rarely speak in unison on matter of public policy. But today they are virtually united in their effort to convey a simple, urgent message about nuclear war to the American public and the Administration.

The message is this: Nuclear war—any kind of nuclear war—would cause death and suffering on a scale never seen before in all of history, and modern medicine with all its skills could do little or nothing to help.

The public is by now accustomed to hearing dry statistics about the immense destructiveness of nuclear war, but many

people probably assume that afterward the uninjured survivors would pick up the pieces, and the wounded would be tended as they have been after every other war.

What the physicians are saying is that such an assumption is simply not consonent with the medical facts and what we know about the effects of nuclear explosions.

By any reasonable estimate, American casualties in a nuclear war would number at least in the tens of millions regardless of any civil defense efforts. Those killed instantly would be the luckiest of the casualties, because most of the wounded would lie untended, and those with serious blast, burn or radiation injuries would die sooner or later, their agony unrelieved by medication or any medical attention.

To understand why such an apocalyptic vision is no figment of the imagination, one need only consider a few basic facts about just one form of major injury: burns. Immediately after a thermonuclear attack on our cities, the number of survivors with serious burns would be at least several hundred thousand, perhaps several million. To have a chance for recovery, such victims would need prompt, sustained medical attention and an array of resources that would be in short supply: surgical and nursing specialists, complex hospital facilities, intravenous fluids and nutrients, and much more.

In the entire country, our hospitals are equipped to provide this kind of care for fewer than 2,000 patients at any one time. Even if all our medical resources remained miraculously intact after a nuclear attack, we could not begin to take care of the huge number of serious burns that would have been instantaneously produced. But of course hospitals, medical personnel, supplies, transportation and electrical power would not remain intact; they would be largely destroyed, and medical care would be almost nonexistent. Similarly, the medical response to all the other millions of victims with serious blast injuries and radiation sickness would also be totally inadequate.

There can be no comparison with the successful medical responses to previous modern wars in which the United States had participated. In World War II, in Korea and in Vietnam, most of the seriously injured survived because casualties occurred at a manageable rate, the wounded could be rapidly evacuated and medical services were largely intact. But after a nuclear attack, most of the millions of injured would die, without medical care, of hemorrhage and shock, radiation sickness, infection, thirst, starvation or exposure—because none of the conditions necessary for an adequate medical response would exist.

The physicians' warning does not end there. People who survived the initial attack without injury would still be at major risk. In the fallout shelters and in the ruined countryside and burned-out cities, the delayed effects of radiation would take a terrible toll, as would infection, dehydration and malnutrition.

One recent medical study suggests that after a large-scale nuclear attack, as many as one-third of those who survived the first few months might succumb to epidemic diseases caused by overcrowding, poor sanitation, malnutrition, proliferation of insects and vermin and the long-term effects of radiation. To this horror would be added the incalculable damage wrought by the psychological stresses and social trauma that such a terrible experience would cause.

Most physicians are convinced that nuclear war is the greatest threat to health and survival that society has has ever faced. It would indeed be the "final epidemic," for which medicine has no treatment. When there exists no cure for a disease, the only course is to take preventive measures. That is why physicians believe it is their professional responsibility to urge their fellow citizens and their Government to make certain that nuclear weapons are never used. Unlike natural catastrophes, over which man has no control, nuclear war would be a disaster of man's making. It should be preventable.

SAVE THE ENDANGERED PEOPLES

Mr. PROXMIRE. Madam President, the International Whaling Commission recently voted to impose a ban on all commercial hunting of whales starting in 1986. This firm action was taken to save a family of great and beautiful animals. The extinction of these species would be a tragic and irrevocable loss to the Earth and to countless generations of our descendants. It would be sad indeed if our children had to live in a world so scarred by mankind's thoughtless slaughter of peaceful creatures, if they could only view whales as works of taxidermy on display next to dinosaurs and other zoological relics.

The international regulation of the destruction of endangered species is a noble and necessary action. The United States has ratified treaties dealing with seals in 1957 and with polar bears in 1976, as well as with whales in 1935. And yet we do not see fit to extend similar protection to the species most dear to us: humanity itself. Why have we not ratified the Genocide Convention, which aims to ban the extinction of national, ethnical, racial, or religious groups? Are not endangered peoples entitled to the same vigorous exertions devoted to endangered animals? Is not diversity in nationality, ethnicity, race, and religion just as precious as the diversity of the animal kingdom? Would not it be tragic if some existing cultures would be recalled only in museums or by silent gravesites, at least as tragic as the loss of a magnificent life form?

Of course the world's peoples deserve our utmost efforts, for the murder of a person is far more atrocious than the killing of a wild beast. But some of my colleagues insist that murder is already handled by domestic legislation, that genocide is not a fit topic for treatymaking. Yet the conservationist treaties I have cited prove that many problems that would otherwise fall under national jurisdiction must be dealt with in the international arena.

The elimination of one human life is indeed a crime; the elimination of a whole group, however, is a crime of an entirely different order. The malicious and hateful purpose behind genocide makes for a crime so monstrous, so vile, that it surely warrants far more condemnation than we have been willing to support. If the annihilation of peoples is so ghastly, why cannot we outlaw this despicable offense just as we outlaw the annihilation of endangered species, or as we may outlaw the murder of a single human being?

Madam President, genocide is an outrage of international proportions; it calls for international censure. Let us affirm our commitment to life in all its forms everywhere, and let those of my colleagues who disagree with me end their senseless opposition to the Genocide Convention.

I thank the minority leader and yield the floor.

MARKET REACTION TO TAX REFORM AND SPENDING CUT BILLS

Mr. DOMENICI. Madam President, the financial markets have given dramatic evidence in recent days of the importance of passage of the tax reform and spending cut bills now awaiting congressional action. And, for those who contend that these bills will not do what we claim, this market reaction is the best refutation.

Yesterday, the stock market rocketed almost 39 points. Three-month Treasury bills are trading lower than at any time since July of 1980. Six-month Treasury bills are trading lower now than at any time since August of 1980. Not surprisingly, housing starts jumped more than 30 percent last month. And, short-term T-bill rates peaked at 16 percent in May of 1981 and have declined by 7 points—almost a 50-percent drop. In addition, long-term treasuries exceeded 15 percent last month, as well as early last year, and this very day, I have learned from my staff, are trading at a little over 12 percent—a 20-percent drop in a month.

The market's message is clear. If Congress will act, if we pass the two critical bills now pending before the House, we have a chance to get and keep interest rates down and to get and keep the economy going. I say to all of my colleagues that the next 3 days may be as critical to the health of our economy, and to the jobs we must have for the 10 million Americans now out of work, as any days in the past 20 months.

As a point of important information, I must point out the enormous impact of lower interest rates on the deficit we may face in the years ahead. For each point of lower interest that the Government must pay on its debt, we save about $3.7 billion in gross terms.

Madam President, I repeat that: For each point of lower interest rate that the Government must pay on its debt, we save about $3.7 billion in gross terms. So the more than 6-point drop we have seen in both 3-month and 6-month Treasury instruments means a

savings to the Government, and to the taxpayer, of about $25 billion. And, if these rates continue to decline below our projections—which, incidentally, in the budget resolution are projected at 10.7 percent for the 1983 fiscal year, we will save additional billions from the deficit.

So, the choices are stark, Madam President. We can vote for tax reform and spending cuts and for lower interest rates. Or, we can vote against tax reform, against spending cuts, and for higher interest rates and continuing misery for tens of millions of American workers and businesses.

In short, I believe we have no choice. We must act with courage and with dispatch and pass both H.R. 6955 and H.R. 4961.

THE NEED FOR A PERMANENT CHANGE IN FEDERAL RESERVE POLICY

Mr. BOREN. Madam President, the remarks just made by the Senator from New Mexico bear directly on what I am getting ready to say. As he has pointed out, the recent declines in interest rates have been the fundamental factor spurring the recovery of the stock market yesterday. They also have a very positive impact on reducing the size of the deficits because, as interest rates decline, Government borrowing costs decline, unemployment tends to decline, people are put back to work, and revenue collections increase with the growth of the economy.

I could not agree more with that part of this remarks dealing with the positive impact of declining interest rates. What happened yesterday is indeed good news. I am very pleased that Mr. Kaufman has made a prediction of declining interest rates, but we should not fool ourselves into thinking that the problems are over or that all necessary action has been taken or that tax increases, standing by themselves, are going to solve our economic problems.

I quote from the same article in the New York Times of today, which began by being so optimistic about the stock market rally. One paragraph of that article says:

> The slowdown in the growth of the money supply, which precipitated an easing of the Federal Reserve's monetary policy, will probably reverse and begin to increase as the economy begins to recover, the economists said.

In other words, if we are still stuck with the same policy of the Federal Reserve that we have now, it is very likely that if we have an economic recovery, the Federal Reserve will react by again returning to high interest rates, choking off that recovery. It is for that reason there is a need for a permanent policy change and a return to the tried and true policy methods of the Federal Reserve of the past.

The Senator from Michigan, DON RIEGLE, ranking member of the Economic Policy Subcommittee and the chairman of the Democratic Task Force on High Interest Rates, and I have written a letter to the President of the United States this morning. I want to read the text of our letter to the President so that it may appear in the RECORD. I think that the subject of our letter to the President is the issue of paramount concern facing us in our economy today. I now read that letter from Senator RIEGLE and myself to the President:

U.S. SENATE,
Washington, D.C., August 18, 1982.

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

DEAR MR. PRESIDENT: The stock market rally yesterday is certainly good news. The reason for it is clear, there are signs that interest rates may be coming down.

The Washington Post report said today, "Much of Wall Street's excitement yesterday was generated by the continued signs of falling interest rates with the optimistic forecast by Wall Street analyst Henry Kaufman leading the way."

If a prediction of lower interest rates by a Wall Street analyst could spur the largest one day jump in history in the stock market, just think what it would do for the economy if the Chairman of the Federal Reserve Board, Mr. Volcker, would announce that the Board was going back to its tried and true pre-1979 policy of maintaining the stability of interest rates at reasonable levels.

Mr. Kaufman's prediction that interest rates are likely in the near term to keep falling should not lead us into a false sense of euphoria. First, he thinks they are falling largely because the economy is slowing down. Second, we not only need reduced rates now, we need to have a policy change to assure that they remain stable at more reasonable levels so that people can make investment decisions.

When interest rates are unstable and erratic and no one knows where they will go next, it is impossible to make investment decisions. We need the announcement of a long term policy by the Federal Reserve Board so that we can have long term credit once again and long term investments. Investors need to know that if the economy begins to recover, the Federal Reserve will not allow that recovery to be choked off by high and wildly fluctuating interest rates.

Mr. President, the plea made to you Monday evening to join Senator Byrd, Congressman Wright and many other Democrats who have introduced a bill aimed at getting the Federal Reserve Board to abandon its dangerous experiment with free floating interest rates was completely sincere. The high interest rates more than anything else have frustrated your own economic goals.

If you as President could prevail upon Mr. Volcker and the Federal Reserve Board to abandon this experiment and return to methods which have worked in the past, further legislative action would not be necessary. If the Board failed to respond to your plea, many of us in the Congress would back you up in taking action to require them to change.

For the sake of a true economic recovery, join us in our efforts. Please pick up the phone and call Mr. Volcker.

Sincerely,

DONALD W. RIEGLE, JR.,
U.S. Senator.

DAVID L. BOREN,
U.S. Senator.

The letter is signed by myself and by the Senator from Michigan (Mr. RIEGLE).

Madam President, I only hope that the President of the United States will urgently respond to the letter which Senator RIEGLE and I have sent to him today so that the good news of yesterday in the stock market can be just the beginning of a prolonged, sustained recovery in our economy.

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

Mr. BOREN. I am happy to yield to the minority leader.

Mr. ROBERT C. BYRD. Madam President, as I understand Mr. Kaufman, he has indicated that one of the reasons the rates have fallen is that the economic recovery is not materializing as expected and that there is not the demand for loans that there would otherwise be. So the very slack demand for loans was cited as a major cause for the fall in the interest rate.

I join the Senator in hoping that recovery will come, but if that recovery comes, then I think the legislation we have joined in introducing would be very necessary in order to keep those interest rates from soaring again into outer space. They would be kept within the historic range of inflation, the historic range being 2 to 4 points for prime, 1 to 3 points for the Federal fund rate.

I think it is very necessary that that legislation be supported and be enacted. I join the distinguished Senator in hoping the President will join the Senate Democrats and the House Democrats—and, hopefully, Senate and House Republicans whom we hope to enlist in support of this legislation—in expressing his support for the legislation so that we may prevent another stratospheric rise in interest rates in the event recovery comes, which we are hopeful will be the case.

I congratulate the Senator.

Mr. President, I ask unanimous consent to have printed in the RECORD excerpts from the statements issued yesterday by Henry Kaufman and Albert M. Wojnilower.

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

KAUFMAN, WOJNILOWER STATEMENT EXCERPTS

Following are excerpts from the statements on interest rates issued yesterday by Henry Kaufman, chief enconomist at Salamon Brothers, and on Monday by Albert M. Wojnilower, chief economist of the First Boston Corporation:

KAUFMAN

Recent events in the economy and financial markets necessitate a fresh look at the prospects for U.S. interest rates. These events suggest that the present decline in interest rates will continue, although irregularly, with perhaps some dramatic interruptions.

The decline in interest rates and the length of time such a decline will take will largely be determined by both the extent to which the U.S. credit market has been impaired and the level of interest rates that will rejuvenate sustained economic activity. In this context, conventional cyclical benchmarks are no guide. On balance, however, such benchmarks may be the following: long-term U.S. Government bonds now yielding 12¾ percent falling into the 9 percent to 10 percent range within the next 12 months; the Federal funds rate now at 10 percent declining to a low of 6 percent to 7 percent.

A smart recovery in economic activity in the second half of this year is not likely to materialize. This removes the immediate threat to long-term interest rates. Consumer spending, although holding at a high plateau, has failed to respond to tax initiatives, while the rest of the economy is straitjacketed by financial blockages and fear of international competition. Generally poor economic prospects also make businessmen less confident that the economy is able to support substantially higher prices. Thus, [while] inflation expectations are generally eroding, significant economic expansion will require further declines in interest rates and considerable time to unwind major financial impediments.

WOJNILOWER

The business outlook has deteriorated. The risks of a flareup in interest rates have therefore diminished, and the prospect of later and lasting declines has been enhanced. Industry sources report, and substantially adverse revisions in June statistical data confirm, that the economic climate turned gloomier toward mid-year after having improved during the spring. Capital spending plans were slashed again, and consumption fell, with the result that inventories, particularly of autos but also of materials, resumed piling up at wholesale and retail.

Thus the July 1 tax cut—its immediate cash aspect reduced substantially by niggardly adjustments in withholding schedules—has been more like a life preserver thrown to a struggling swimmer than additional stimulus to an economy already at the point of lift-off.

July performance was little better than June, and gentle improvement will probably be sustained and become more visible in subsequent months. Nevertheless, both the immediate and longer-range outlooks have sobered, and this appears to be recognized by the public as well as governmental authorities.

All this reinforces the view that both short- and long-term interest rates on top-quality obligations will be noticeably lower next year.

Mr. BOREN. I thank the distinguished minority leader for his remarks. He is absolutely right. Mr. Kaufman has said that the current downturn in interest rates is due to the downturn in the economy, due to the slack demand. We must have a fundamental policy change that is called for in this Democratic policy, one we have urged the President to get behind, so that we do not have those interest rates going right back up again the minute there is a hint of a recovery, choking it all off again and putting us back on a downhill slide.

I thank the distinguished leader for his remarks.

I yield to the Senator from Michigan who has joined with me in sending this letter to the President today.

Mr. RIEGLE. Madam President, I thank the Senator. I think this is an important initiative, both the effort to reach the President on this issue and to persuade the President, but as well to see if we cannot move this legislative initiative forward in one form or another.

I want to say, too, with respect to the interest rates, when Paul Volcker was before the Banking Committee recently to give their midyear assessment as to monetary policy in the future, it was obvious that while interest rates would likely drop down through the period of the election, as we go into next year the Fed's own plan calls for the money supply to actually give us higher interest rates. So these interest rates now are on a spring, and the spring is being pulled down, but the great concern is that very shortly somebody is likely to let that spring go and again these rates will go right back up.

I commend the Senator and I thank him for yielding.

Mr. BOREN. I thank the Senator. He is absolutely right. I think the interest rates, as he has said, are unlikely to stay down after the election, unlikely to stay down after the hint of any recovery, but also we have such instability in the rates. I just checked. We have had 78 changes in the prime interest rate since the Fed embarked on this wild experiment with monetary policy less than 3 years ago—78 changes. How could anyone make policy like that?

SUPPORT FOR CONFERENCE REPORT ON H.R. 4961

Mr. DODD. Madam President, I commend the Senator from Oklahoma and the Senator from Michigan for initiating that letter this morning. I could not agree more with them.

In fact, it is in light of the comments of the Senator from Oklahoma as well as the letter that is being sent to the President, which highlights the overall economic condition we find ourselves in, that I have decided to support the adoption of the conference report on H.R. 4961, the tax package.

I have disagreed strongly and forthrightly with many of the economic measures advocated by the current administration over the past 1½ years.

But, quite candidly, the President's position on this particular issue makes sense. We certainly cannot tolerate the budget deficits which will total almost a half trillion dollars over the next 3 years. It is imperative that we raise revenues to reduce that incredible prospect.

I regret to see the debate on this issue degenerate into definitional sparring. Whether you call the provisions of H.R. 4961 tax hikes, tax reform, or better collection of taxes already owed, the bottom line is that the bill raises $99 billion in revenues.

The old cliche is if it walks like a duck and talks like a duck and looks like a duck, there is a good chance it is a duck. That is what we have with this particular tax package.

American taxpayers will be paying $99 billion that they would not pay in the absence of this legislation.

The important point I think is that the necessity for raising revenue has been a matter of elementary arithmetic for some time. If a lopsided across-the-board tax cut of $282 billion over 3 years is accompanied by massive increases in the defense budget, the deficit is going to soar, and that is just what has happened.

In other words, Mr. President, it is right I think to pass this tax increase because we were wrong to cut taxes as deeply as we did last year. The economic program lacks balance. This action that we will decide on in the next several days is a belated acknowledgment that last year's policy was at the very least excessive. In a very real sense the conference report on H.R. 4961 represents the counterattack of commonsense economics to voodoo economics.

Obviously, the sensible thing to do would be to repeal the third year of the tax cut as well. It would have made more sense not to have adopted the lengths of the cuts in the first place.

But it is a fact of life that the deep cuts are in place. It is a political reality that they will not be altered, and the deficit that those realities breed is something we will have to deal with.

The tax provisions of H.R. 4961 are not the final answer. But they represent a reasonable start, a signal to the business operators, workers and citizens of this country that we will not allow ballooning deficits to choke off credit, inflate interest rates and preclude any hopes for economic recovery.

Finally, Madam President, I should note that the snide and inaccurate comments of OMB Director Stockman reported in today's Washington Post serve neither the President nor the national interest well.

For the good of the economy and those who are suffering from high interest rates, it is important that we move toward a consensus on how to deal effectively with deficits. The

President's televised appeal the other evening was a tacit acknowledgment that his economic program must be moderated. Mr. Stockman's attempt to shift the blame hinders that effort and diminishes even further his own eroding personal credibility.

EXECUTIVE CALENDAR

Mr. BAKER. Madam President, I believe we are prepared now to go forward with routine matters that have been cleared, I trust, on both sides.

Madam President, the Executive Calendar on this side indicates that certain items are cleared for action by unanimous consent. I refer specifically to the nominations appearing on page 3, beginning under Legal Services Corporation, Calendar Order No. 845, and continuing through page 4 to Department of Energy and then beginning on page 5 with the U.S. International Development Cooperation Agency, with the exception of item No. 906, and page 6, all the remaining items.

I wonder if the minority leader is prepared to consider all or any part of those nominations?

Mr. ROBERT C. BYRD. Madam President, the following nominations to which the distinguished majority leader has referred have been cleared on this side of the aisle. Beginning with the Department of Energy on page 4, going through page 5, and going through all of the nominations on page 6.

Mr. BAKER. I thank the Senator.

EXECUTIVE SESSION

Mr. BAKER. Madam President, I ask unanimous consent that the Senate now go into executive session for the purpose of considering certain nominations.

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

Mr. BAKER. Madam President, before the Chair lays before the Senate the nomination under the U.S. International Development Cooperation Agency, I may say to the distinguished minority leader that the item under Department of Energy is also cleared on this side. However, I have a request from another Senator for a rollcall vote, and I postpone that for the time being.

U.S. INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

The assistant legislative clerk read the nomination of Charles W. Greenleaf, Jr., of Virginia, to be an Assistant Administrator of the Agency for International Development.

The PRESIDING OFFICER. Without objection, the nomination is considered and confirmed.

DEPARTMENT OF STATE

The assistant legislative clerk read the nomination of James Malone Rentschler, of Pennsylvania, to be Ambassador to the Republic of Malta.

The PRESIDING OFFICER. Without objection, the nomination is considered and confirmed.

The assistant legislative clerk read the nomination of Theodore George Kronmiller, of Virginia, to be Deputy Assistant Secretary of State for Oceans and Fisheries Affairs.

The PRESIDING OFFICER. Without objection, the nomination is considered and confirmed.

Mr. BAKER. Madam President, I now ask unanimous consent that beginning with Calendar Order No. 907, Robert John Hughes, of Massachusetts, to be an Assistant Secretary of State, and continuing for the remainder of those nominations on page 5 and all the nominations on page 6 that those nominations be considered en bloc.

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

Without objection, the nominations so identified are considered and confirmed en bloc.

The nominations considered and confirmed en bloc follow:

DEPARTMENT OF STATE

Robert John Hughes, of Massachusetts, to be an Assistant Secretary of State, vice Dean E. Fischer, resigned.

FARM CREDIT ADMINISTRATION

Tom H. Carothers, of Texas, to be a member of the Federal Farm Credit Board, Farm Credit Administration, for a term expiring March 31, 1988, vice William Dale Nix, Sr., term expired.

Leonard R. Fouts, of Indiana, to be a member of the Federal Farm Credit Board, Farm Credit Administration, for a term expiring March 31, 1988, vice M. R. Bradley, term expired.

DEPARTMENT OF AGRICULTURE

Wilmer D. Mizell, Sr., of North Carolina, to be an Assistant Secretary of Agriculture, vice James C. Webster, resigned.

THE JUDICIARY

William M. Acker, Jr., of Alabama, to be U.S. district judge for the Northern District of Alabama, vice Frank H. McFadden, resigned.

Bruce M. Selya, of Rhode Island, to be U.S. district judge for the District of Rhode Island, vice Raymond J. Pettie, retired.

DEPARTMENT OF JUSTICE

Charles L. Dunahue, of Colorado, to be U.S. marshal for the District of Colorado for the term of four years, vice Rafael E. Juarez, resigned.

Clinton T. Peoples, of Texas, to be U.S. marshal for the Northern District of Texas for the term of four years. (Reappointment)

Mr. BAKER. Madam President, I ask unanimous consent that it may be in order to move to reconsider the vote by which all the nominations were just approved by the Senate en bloc.

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

Mr. BAKER. Madam President, I move to reconsider the votes by which the nominations were confirmed en bloc.

Mr. ROBERT C. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. BAKER. Madam President, I ask unanimous consent that the President be immediately notified that the Senate has given its consent to these nominations.

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

NOMINATION OF WILLIAM ACKER TO BE U.S. DISTRICT COURT JUDGE FOR THE NORTHERN DISTRICT OF ALABAMA

Mr. HEFLIN. Madam President, it is my distinct honor and pleasure to recommend to the U.S. Senate William M. Acker of Birmingham, Ala., for the position of U.S. district court judge for the northern district of Alabama.

As a former judge, I believe that one of the most crucial functions of those of us who serve on the Senate Judiciary Committee is the examination of fitness of judicial nominees for service on the Federal bench. Fitness to serve as a U.S. district judge should be carefully examined.

It is this entry level trial court of the Federal judiciary to which aggrieved parties look for equity and justice. The vast majority of the numerous cases filed in Federal court never reach the Supreme Court, not because they are not meritorious, but because they have been disposed of, and the parties have been given redress, at the district court level. Recognizing the importance of the district court in our system of jurisprudence, it is apparent that the nomination with which we are now dealing is certainly not insignificant.

I commend Senator DENTON and President Reagan on this nomination. Mr. Acker has had a long and distinguished career as an outstanding attorney, and I am fully confident that he will serve with distinction upon confirmation.

No less should be expected from an alumnus of Birmingham-Southern College, even if Mr. Acker did graduate from that fine institution a few years after I did.

After graduating from Birmingham-Southern with memberships in Phi Beta Kappa and Omicron Delta Kappa, Bill Acker went on to study with distinction at Yale Law School. He was graduated from that internationally esteemed law school in 1952.

Since graduation from law school, Mr. Acker has practiced continuously in Birmingham. Since 1972, he has been a senior partner in the distinguished firm of Dominick, Fletcher, Yelding, Acker, Wood & Lloyd. Earlier in his career he practiced with a firm of which the Honorable Shuford Smyer was the senior partner. Mr. Smyer was Alabama's finest real

estate lawyer. Mr. Smyer's tutorship continues as one of Mr. Acker's finest assets. His present senior partner Frank Dominick is likewise one of Alabama's finest attorneys. Mr. Acker is admitted to practice in all of the courts of the State of Alabama, the U.S. District Court for the Northern District of Alabama, the U.S. Circuit Court of appeals for the 5th and 11th Circuits, and the U.S. Supreme Court. He is a member of the Birmingham, Ala., and American Bar Associations. He has practiced across a broad spectrum of the law, and has gained a reputation as being an excellent advocate.

In addition to all his other qualifications, Bill Acker is also painstakingly precise in his attention to detail, to such a degree that he personally folds and stuffs into the envelope every piece of mail he sends out. It seems that, early in his legal career, in the course of handling a particularly difficult case, Bill dictated a letter to his client. In this letter, he detailed all the weaknesses in his case and explained how it would be quite difficult for them to win.

At the same time, Bill dictated another letter to his adversary in the case, setting out all the various copelling legal arguments as to why it would be wise for the adversary to settle while he had a chance. Unfortunately, for Bill and his client, his secretary stuffed the letters into the wrong envelopes. Nobody knows, or will say, how Bill straightened the mess out—but ever since, he has personally stuffed every piece of mail that leaves his office. I am confident that his regard for detail will be an asset in performing his judicial responsibilities.

Madam President, it is my belief that justice is the guardian of all liberty. I believe that we best insure justice when we insure a quality judiciary, composed of individuals of the highest integrity.

Madam President, William Acker is an example of what is known as a lawyer's lawyer. I have known him for many years. While I served on the Supreme Court of Alabama, he appeared before the court, and I had the opportunity to witness his ability on a firsthand basis. Mr. Acker wrote excellent and scholarly briefs, and made well-organized, cogent, and articulate oral arguments. From my personal observations, I can say he is exceptionally well qualified.

Based upon these observations, together with the nominee's eminent reputation within the legal community of Alabama, I am confident that he will serve with great distinction on the Federal bench, and with each case he tries, provide proof of the wisdom of this nomination. It is with a great deal of pleasure that I recommend and wholeheartedly support, the nomination of William Acker for this most important position.

NOMINATION OF THEODORE GEORGE KRONMILLER TO BE AMBASSADOR

Mr. STEVENS. Mr. President, yesterday, the Senate Foreign Relations Committee met to consider the nomination of Mr. Theodore Kronmiller to have ambassador status at the Department of State.

For the last 18 months, Ted has been Deputy Assistant Secretary for Oceans and Fishery Affairs at the Department of State. During his brief tenure he has shown exemplary leadership and ability in dealing with a number of very complex international fishery matters. Many of those issues have directly affected the fishing industry in my home State. I know this from personal experience for my office has been directly involved in working with Mr. Kronmiller in solving a number of problems.

Ted has shown great responsiveness to the concerns voiced by Members of Congress and industry. To his credit he has been remarkably successful in gaining cooperation from our trading and fishing partners in areas of development and fishery trade matters. Ted has successfully negotiated the European reference price on Pacific salmon. Currently, he is completing new negotiations on governing international fishery agreements with our most important fishing partners. Recently he has concluded work on an Atlantic Salmon Treaty, and has been a great leader in resolving disputes affecting U.S. tuna fleets worldwide.

Ted's leadership has been especially demonstrated by the work he completed on the reference price that was suggested by the European Economic Community last year, which would have effectively barred our access to a $100 million European food market. He came in at a time after EEC had announced that it would impose such a price floor, and he successfully turned around the European Economic Community just prior to their vote on the matter.

He is exceptionally qualified to fill this job as the top U.S. negotiator in the matters of fishery and trade policy. The background he has makes him particularly qualified for this position. Ted worked for several years as a valuable assistant to my good friend Congressman JOHN BREAUX on the staff of the House Subcommittee on Fisheries and Wildlife Conservation and the Environment. Time and time again he has demonstrated a strong understanding of the concerns and intent of Congress in these matters.

My interests in assuring that Mr. Kronmiller be given this ambassadorial status is based upon the extraordinary interest that my State of Alaska has in U.S. domestic and international fishery policies. Many of you are aware that Alaska has over one-half of the exploitable fishery resource in the U.S. fishery conservation zone. In addition, over 95 percent of all foreign directed fishing in U.S. waters occurs in the waters off of Alaska. We face a major challenge in the next few years in the Pacific to an exploited food resource that can provide a major contribution to food supplies around the world. Ted Kronmiller understands the vast complexity of this task, and he has been instrumental during the last year to enforce that the U.S. fishing industry has the opportunity to develop jointly with our foreign fishing partners, a strategy that will insure that this food resource be exploited to its maximum potential. I ask unanimous consent to include following my statement, comments of the Honorable DON YOUNG of Alaska.

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

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D.C., August 16, 1982.

Hon. CHARLES PERCY,
Chairman, Committee on Foreign Relations, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: It has come to my attention that your Committee will shortly be meeting to consider the nomination of Mr. Theodore Kronmiller to the rank of Ambassador. Because I will be unable to testify at the Committee hearing, I am writing to express my strong support for Mr. Kronmiller's appointment.

As you know, Mr. Kronmiller currently serves as Deputy Assistant Secretary of State for Oceans and Fisheries Affairs. Incumbents in that position have traditionally held the rank of Ambassador due to the nature of their duties. The Deputy Assistant Secretary is responsible for representing the United States in a variety of areas dealing with fisheries and other oceans matters. Frequently, his foreign counterparts hold ambassadorial rank or its equivalent. At the very least, to demonstrate the importance which our nation places on oceans and fisheries matters, the U.S. official in the Department of State who is responsible for these matters should hold an appropriate rank.

Of greater importance is the commitment and professionalism which Mr. Kronmiller has shown while performing his duties as Deputy Assistant Secretary. To provide but a few examples, Mr. Kronmiller has successfully negotiated a number of Governing International Fishery Agreements with European and Asian nations. He has upheld the U.S. position on a number of discussions involving tuna fisheries. He has actively supported the development of the U.S. fishing industry through his decisions involving foreign fishing allocations in our 200 mile zone. He has worked successfully to lower tariff barriers affecting the importation of U.S. fisheries products. In sum, Mr. Kronmiller has consistently demonstrated his strong and active support for U.S. fisheries and oceans policies.

As the only Representative from the State of Alaska, a State with 35 percent of the nation's coastline, 75 percent of the nation's outer continental shelf, and a State adjacent to U.S.-controlled waters containing 14 percent of the world's marine protein

supply, I have always been reluctant to support any individual in the Department of State because of that Department's bad habit of trading away fishing privileges for insignificant benefits in other foreign policy areas. I am therefore pleased finally to be able to support an individual who recognizes the importance of maintaining a strong domestic fishing industry. Further, this support of Mr. Kronmiller is reflected in comments I have received from representatives of the U.S. fishing industry in Alaska and in other areas of the country.

Mr. Chairman, I urge you and the Committee to vote quickly and favorably on Mr. Kronmiller's nomination.

Sincerely,

DON YOUNG,
Ranking Republican, House Subcommittee on Coast Guard and Navigation.

LEGISLATIVE SESSION

Mr. BAKER. Madam President, I move that the Senate now turn to legislative session.

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

THE CALENDAR

Mr. BAKER. Madam President, there are certain items on the calendar of business of a legislative nature that are cleared for action on this side, and I will inquire of the minority leader if he might be in position to consider Calendar Order 755, House Concurrent Resolution 385, a concurrent resolution expressing the sense of Congress in respect to the Government of the Soviet Union to allow Yuri Balovlenkov to emigrate.

Mr. ROBERT C. BYRD. Madam President, I am ready to proceed.

EMIGRATION OF YURI BALOVLENKO

The PRESIDING OFFICER. The clerk will state the concurrent resolution by title.

The assistant legislative clerk read as follows:

A concurrent resolution (H. Con. Res. 385) expressing the sense of the Congress that the Government of the Soviet Union should allow Yuri Balovlenkov to emigrate.

The Senate proceeded to consider the concurrent resolution.

Mr. MATHIAS. Madam President, it was in November 1978 that Elena Kuzmenko first visited my Baltimore office. She had fallen in love with a Soviet citizen, and she sought my help to clear the impediments to their marriage. Happily, the Soviet authorities cooperated. Elena and Yuri Balovlenkov were married in Moscow in December 1978. Permission for the wedding was the first and last flicker of cooperation the couple had seen from the Soviet authorities.

Elena Balovlenkov returned home to the United States, and subsequently, their daughter was born. Since the Balovlenkovs' marriage, 4 years have passed, years filled with false hope, frustration, and heartache for this young family. Repeatedly denied permission to leave the Soviet Union and desperate to join his family in Baltimore, Yuri Balovlenkov began a hunger strike on May 10, 1982, and though he is now being force-fed, still lies near death in Moscow.

Elena Balovlenkov has been unable to persuade the Soviet officials to let her husband leave the country. It rests with the U.S. Government and the American people to persuade the Soviet authorities that the case of Yuri Balovlenkov is important to them—that they care about the fate of a single human being.

In numerous letters and meetings with Soviet and American officials spanning several years, I have pointed to the provisions of the Helsinki accords as they relate to this case. The provisions state that governments will "deal in a positive and humanitarian spirit" toward family reunification. There has been little positive about the way Yuri Balovlenkov has been treated. While other members of the "divided families group" have been allowed to reunite, the decision on Balovlenkov's case has been endlessly delayed. Denying a family the right to live together violates not only the spirit of the Helsinki accords and the United Nations Declaration on Human Rights, but our sense of decency as well. In these critical days, our efforts to see the Balovlenkovs reunited must intensify. Time is running out.

I ask that my colleagues join me in supporting this concurrent resolution, so that we may present a unanimous Senate voice in this matter to the Soviet Government.

Mr. SARBANES. Madam President, the purpose of this resolution is simple and direct: to express to the Soviet Government the sense of the Congress that Yuri Balovlenkov be allowed to emigrate.

Yuri Balovlenkov is a Soviet citizen married to an American citizen, the former Elena Kuzmenko of Baltimore. Although they were married in 1978, they have lived most of their married life apart. Unitl last month, when Elena Balovlenkov made an emergency trip to see her husband, he had never seen his daughter, Katya, who is now 2 years old.

Since his marriage 4 years ago, Mr. Balovlenkov has sought to persuade the Soviet Government to issue the exit permit that would permit him to be reunited with his family. All his efforts have been unavailing, although the Soviet argument that his access 8 years ago to computer technology information is unconvincing. Faced with the refusal of Soviet authorities to heed reasonable requests or to honor its commitment, as a signatory to the Helsinki Final Act, to the principle of family reunification, Mr. Balovlenkov undertook the first of a series of hunger strikes earlier this year. On June 21, after 43 days without food, he was informed that the exit visa requisite for his departure would be issued within 3 days. Contrary to that pledge the visa was not forthcoming, and on July 6 Mr. Balovlenkov resumed his fast. There was no official response when Mrs. Balovlenkov traveled to the Soviet Union to be with her husband and talk once more with Soviet authorities. Mr. Balovlenkov is now very ill and his wife is once again at his side.

Mr. Balovlenkov asks only to be permitted to live with his wife and daughter outside the U.S.S.R. Important human rights principles are at stake here and, in view of the grave deterioration in Mr. Balovlenkov's health, it is no exaggeration to say that his life may now hang in the balance. The House of Representatives has approved House Concurrent Resolution 385, and the Senate should also take prompt positive action. I urge passage of the resolution to impress upon the Soviet Government the importance and the urgency which the House of Congress attach to the Balovlenkov case. Mrs. Balovlenkov is with her husband in Moscow. Let us hope that our action will convince the Soviet Government, to permit Yuri Balovlenkov's departure at the earliest practicable date.

The PRESIDING OFFICER. The question is on agreeing to the concurrent resolution.

The concurrent resolution (H. Con. Res. 385) was agreed to.

The preamble was agreed to.

Mr. BAKER. Madam President, I move to reconsider the vote by which the concurrent resolution was agreed to.

Mr. ROBERT C. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

H.R. 6308 HELD AT THE DESK PENDING FURTHER DISPOSITION

Mr. BAKER. Madam President, I ask unanimous consent that H.R. 6308 be held at the desk pending further disposition.

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

H.R. 6204 HELD AT THE DESK PENDING FURTHER DISPOSITION

Mr. BAKER. Madam President, I ask unanimous consent that H.R. 6204 be held at the desk pending further disposition.

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

PRETRIAL SERVICES ACT OF 1982

Mr. BAKER. Madam President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 923.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the House insist upon its amendment to the bill (S. 923) entitled "An Act to amend chapter 207 of title 18, United States Code, relating to pretrial services", and ask a conference with the Senate on the disagreeing votes of the two Houses thereon.

Ordered, That Mr. RODINO, Mr. HUGHES, Mr. CONYERS, Mr. KASTENMEIER, Mr. GLICKMAN, Mr. MCCLORY, Mr. SAWYER, and Mr. FISH be the managers of the conference on the part of the House.

Mr. BAKER. Madam President, I move that the Senate disagree to the amendment of the House and agree to the conference requested by the House and the Chair be authorized to appoint conferees on the part of the Senate.

The motion was agreed to, and the Presiding Officer (Mrs. KASSEBAUM) appointed Mr. THURMOND, Mr. MATHIAS, Mr. LAXALT, Mr. BIDEN, and Mr. LEAHY conferees on the part of the Senate.

MILITARY CONSTRUCTION AUTHORIZATION, 1983

Mr. BAKER. Madam President, I ask the Chair to lay before the Senate a message from the House of Representatives on S. 2586.

The PRESIDING OFFICER laid before the Senate the amendment of the House of Representatives to the bill (S. 2586) to authorize certain construction at military installations for fiscal year 1983, and for other purposes.

(The amendment of the House is printed in the RECORD of August 11, 1982, beginning at page 20596.)

Mr. BAKER. Madam President, I move that the Senate disagree to the amendment of the House and agree to the request of the House for a conference on the disagreeing votes of the two Houses, and that the Chair be authorized to appoint conferees on the part of the Senate.

The motion was agreed to; and the Presiding Officer (Mrs. KASSEBAUM) appointed Mr. TOWER, Mr. THURMOND, Mr. WARNER, Mr. HUMPHREY, Mr. DENTON, Mr. BRADY, Mr. STENNIS, Mr. HART, Mr. JACKSON, Mr. CANNON, and Mr. EXON conferees on the part of the Senate.

ACCESS TO TELEPHONE SERVICE FOR THE HEARING IMPAIRED

The Senate proceeded to consider the bill (S. 2355) to amend the Communications Act of 1934 to provide that persons with impaired hearing are insured reasonable access to telephone service, which had been reported from the Committee on Commerce, Science, and Transportation with an amendment to strike out all after the enacting clause, and insert the following:

That the Congress hereby finds that—

(1) all persons subscribing to or otherwise receiving telephone service in the Nation should receive the best service which is technologically and economically feasible;

(2) currently available technology is capable of providing telephone service to some of those individuals who, because of hearing impairments, require telephone reception by means of hearing aids with induction coils, or other inductive receptors;

(3) the lack of technical standards ensuring compatibility between hearing aids and telephones has prevented receipt of the best service which is technologically and economically feasible; and

(4) adoption of technical standards is required in order to ensure compatibility between telephones and hearing aids, thereby accommodating the needs of individuals with hearing impairments.

SEC. 2. Title II of the Communications Act of 1934 (47 U.S.C. 201 et seq.) is amended by adding at the end thereof the following new section:

"TELEPHONE SERVICE TO PERSONS WITH IMPAIRED HEARING

"SEC. 225. (a) The Commission shall establish such regulations as are necessary to ensure reasonable access to telephone service by persons with impaired hearing.

"(b) In ensuring such access, the Commission shall require that coin-operated public telephones be designed, manufactured, and operated so as to provide internal means for coupling with hearing aids. The Commission may also require that other telephones frequently used by the public or provided for emergency use by similarly designed, manufactured, and operated.

"(c) The Commission may establish such technical standards as are required in order to ensure compatibility between telephones and hearing aids.

"(d) The Commission shall establish such requirements for the labeling of packaging materials for equipment as are needed to provide adequate information to consumers on the compatibility between telephones and hearing aids.

"(e) In any rulemaking to implement the provisions of this section, the Commission shall specifically consider the costs and benefits to all telephone users, including persons with and without hearing impairments. The Commission shall ensure that regulations adopted to implement this section encourage the use of currently available technology and do not discourage or impair the development of new technology.

"(f) The Commission shall complete rulemaking actions required by this section and issue such rules and regulations resulting therefrom within one year after the date of enactment of this section of the Act. Thereafter the Commission shall periodically review such rules and regulations. Except for coin-operated public telephones and telephones provided for emergency use, the Commission may not require the retrofitting of equipment to achieve the purposes of this section."

Mr. GOLDWATER. Madam President, I am pleased to be a cosponsor of S. 2355, a bill designed to insure that the hearing-impaired have reasonable access to telephone service. This bill will accomplish its worthwhile goals with minimal fiscal and regulatory impact.

The Senate Committee on Commerce, Science and Transportation report which accompanies this bill estimates that the legislation will cost the Federal Communications Commission $200,000 for staff time and overhead. The committee intends that this sum is to be paid out of the FCC's already available funds. Furthermore, while the regulations that this bill will require will include the monitoring of manufacturers and telephone companies, we expect that this monitoring will not place significant paperwork burdens on these parties.

Mr. MATHIAS. Madam President, we are a nation with an advanced case of telephonitis. We Americans use 180 million telephones to go about our daily work, arrange our family lives and cope with unexpected events. Most of us could not carry on in our homes, at our jobs or anywhere else for as much as 1 day without using a telephone.

For Americans with hearing aids, however, one out of five of those telephone does not work. And every day more telephones are installed in homes, businesses, hospitals and public accommodations with receivers that are useless to hearing aid users.

The problem is serious because using the telephone has become an essential part of modern life. It is essential to find a job and keep a job; it is essential to maintain normal contact with other people; it is essential for emergency protection; and it is essential for mobility.

The bill before us does not offer much hope for correcting this problem.

The prospect of establishing telephone compatibility through the Federal Communications Commission and through the courts points to years of unnecessary confusion, delay, frustration and expense—both for telephone users and for the industry. Issues of compatibility between telephones and hearing aids have been on the docket before the Federal Communications Commission for several years, but the Commission has been moving at a snail's pace.

The bill before us calls for "reasonable" access to telephones for people with hearing aids. But this issue would not be before the Senate tonight if people could agree on what is reasonable. Universal access is what hearing impaired people want.

This bill directs the Federal Communications Commission to require compatibility for coin-operated public telephones only. Thus this measure would assure compatibility only where indus-

try has already provided compatibility and insists that it has no plans to change that compatibility. The bill does nothing about compatibility for the telephones most frequently used by everyone, the telephones at home and at work.

It is well known that the telephone is a byproduct of Alexander Graham Bell's search for a device to help the hearing-impaired. It is long past time to bring full and assured access to telephones into the lives of people who rely on hearing aids.

The amendment was agreed to.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

Mr. CANNON. Madam President, I am very pleased that the Senate has approved S. 2355, which I introduced along with Senators GOLDWATER and RIEGLE. It addresses problems in using telephones experienced by persons with hearing impairments while avoiding the possibility that the legislation will impair the development of new technology. Most importantly, this legislation directs the FCC to insure reasonable access to telephone service by persons with hearing impairments. This legislation is the first specific congressional guidance for the FCC to concern itself with the needs of the hearing impaired. Further, the bill:

First, directs the FCC to require the use of magnetic field/induction coils (or similar internal coupling systems) on coin-operated public phones;

Second, permits the FCC to impose similar requirements on phones frequently used by members of the public or provided for emergency use;

Third, permits the FCC to establish technical standards to insure compatibility between hearing aids and telephones;

Fourth, permits the FCC to require consumer information on the compatibility between hearing aids and telephones; and

Fifth, directs the FCC to consider the cost and benefits to both hearing impaired persons and nonhearing impaired persons in any rulemaking, to insure that their rules do not block the development of new technology, and to complete their initial rulemaking within 1 year.

This is excellent proconsumer legislation which addresses serious concerns of the hearing impaired and does so in a manner that does not impose unnecessary burdens on the industries affected. I appreciate the help of all concerned in making possible the unanimous approval of this legislation. I hope that our colleagues in the House of Representatives will act rapidly on this legislation.

FEDERAL COMMUNICATIONS ACT AMENDMENTS

Mr. BAKER. Madam President, I ask the Chair to lay before the Senate H.R. 3239, Calendar Order No. 166.

The PRESIDING OFFICER. The clerk will state the bill by title.

The assistant legislative clerk read as follows:

A bill (H.R. 3239) to amend the Communications Act of 1934 to authorize appropriations for the administration of such act, and for other purposes.

Mr. ROBERT C. BYRD. Madam President, there is no objection on this side to proceeding to the consideration of this measure.

The Senate proceeded to consider the bill.

Mr. PACKWOOD. Madam President, I ask unanimous consent to have printed in the RECORD a statement that sets forth what is contained in H.R. 3239.

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

WHAT H.R. 3239 CONTAINS

A. S. 929/H.R. 5008

1. S. 929—Senator Goldwater's Amateur Radio and Land Mobile bill—a bill that passed the Senate in September, 1981.

2. H.R. 5008—A bill to amend the 1934 Communications Act to make technical, non-controversial changes. It also contains amateur radio and land mobile provisions which are virtually the same as those in S. 929. H.R. 5008 is awaiting House floor action. There is no disagreement between the two Houses on passing this legislation.

B. S. 2181/H.R. 6162

1. S. 2181 authorizes the National Telecommunications and Information Administration (NTIA) for 1 year (FY 1983) at a level of $12.4 million. S. 2181 passed the Senate on June 9, 1982.

2. H.R. 6162 authorizes NTIA for 2 years (FY 1983 and FY 1984) at $13.4 million and $12.3 million, respectively. H.R. 6162 awaits floor action in the House.

3. The House has proposed that the conference authorize NTIA for 2 years (FY 1983 and FY 1984) at $12.9 million and $11.8 million, respectively.

UP AMENDMENT NO. 1250

Mr. BAKER. Madam President, I send an amendment to the desk in the nature of a substitute on behalf of the distinguished Senator from Oregon (Mr. PACKWOOD).

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Tennessee (Mr. BAKER), on behalf of Mr. PACKWOOD, proposes an unprinted amendment numbered 1250.

Mr. BAKER. Madam 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 all after the enacting clause and insert in lieu thereof the following:

SECTION 1. (a) There is authorized to be appropriated for the administration of the National Telecommunications and Information Administration $12,917,000 for fiscal year 1983, and $11,800,000 for fiscal year 1984, together with such sums as may be necessary for increases resulting from adjustments in salary, pay, retirement, other employee benefits required by law, and other nondiscretionary costs.

(b)(1) The National Telecommunications and Information Administration shall conduct a comprehensive study of the long-range telecommunications and information goals of the United States, the specific telecommunications and information policies necessary to promote those goals and the strategies that will ensure that the United States achieves them. The Administration shall further conduct a review of the structures, procedures, and mechanisms which are utilized by the United States to develop international telecommunications and information policy.

(2) In any study or review conducted pursuant to this subsection, the Administration shall not make public information regarding usage or traffic patterns which would damage United States commercial interests. Any such study or review shall be limited to international telecommunications policies or to domestic telecommunications issues which affect such policies.

TITLE I—COMMUNICATIONS ACT AMENDMENTS

SHORT TITLE

SECTION 101. This Act may be cited as the "Communications Technical Amendments Act of 1982".

FINANCIAL INTERESTS OF MEMBERS AND EMPLOYEES OF FEDERAL COMMUNICATIONS COMMISSION

SECTION 102. Section 4(b) of the Communications Act of 1934 (47 U.S.C. 154(b)) is amended to read as follows:

"(b)(1) Each member of the Commission shall be a citizen of the United States.

"(2)(A) No member of the Commission or person employed by the Commission shall—

"(i) be financially interested in any company or other entity engaged in the manufacture or sale of telecommunications equipment which is subject to regulation by the Commission;

"(ii) be financially interested in any company or other entity engaged in the business of communication by wire or radio or in the use of the electromagnetic spectrum;

"(iii) be financially interested in any company or other entity which controls any company or other entity specified in clause (i) or clause (ii), or which derives a significant portion of its total income from ownership of stocks, bonds, or other securities of any such company or other entity; or

"(iv) be employed by, hold any official relation to, or own any stocks, bonds, or other securities of, any person significantly regulated by the Commission under this Act;

except that the prohibitions established in this subparagraph shall apply only to financial interests in any company or other entity which has a significant interest in communications, manufacturing, or sales activities which are subject to regulation by the Commission.

"(B)(i) The Commission shall have authority to waive, from time to time, the application of the prohibitions established in subparagraph (A) to persons employed by the Commission if the Commission determines that the financial interests of a

person which are involved in a particular case are minimal, except that such waiver authority shall be subject to the provisions of section 208 of title 18, United States Code. The waiver authority established in this subparagraph shall not apply with respect to members of the Commission.

"(ii) In any case in which the Commission exercises the waiver authority established in this subparagraph, the Commission shall publish notice of such action in the Federal Register and shall furnish notice of such action to the appropriate committees of each House of the Congress. Each such notice shall include information regarding the identity of the person receiving the waiver, the position held by such person, and the nature of the financial interests which are the subject of the waiver.

"(3) The Commission, in determining whether a company or other entity has a significant interest in communications, manufacturing, or sales activities which are subject to regulation by the Commission, shall consider (without excluding other relevant factors)—

"(A) the revenues, investments, profits, and managerial efforts directed to the related communications, manufacturing, or sales activities of the company or other entity involved, as compared to the other aspects of the business of such company or other entity;

"(B) the extent to which the Commission regulates and oversees the activities of such company or other entity;

"(C) the degree to which the economic interests of such company or other entity may be affected by any action of the Commission; and

"(D) the perceptions held by the public regarding the business activities of such company or other entity.

"(4) Members of the Commission shall not engage in any other business, vocation, profession, or employment while serving as such members.

"(5) Not more than three members of the Commission may be members of the same political party.".

APPOINTMENT, TERMS OF OFFICE, SALARY, AND COMPENSATION OF MEMBERS OF COMMISSION

SEC. 103. (a) Section 4(c) of the Communications Act of 1934 (47 U.S.C. 154(c)) is amended—

(1) by striking out "The";

(2) by striking out "first appointed" and all that follows through "but their successors"; and

(3) by striking out "qualified" and inserting in lieu thereof "been confirmed and taken the oath of office".

(b) Section 4(d) of the Communications Act of 1934 (47 U.S.C. 154(d)) is amended to read as follows:

"(d) Each Commissioner shall receive an annual salary at the annual rate payable from time to time for level IV of the Executive Schedule, payable in monthly installments. The Chairman of the Commission, during the period of his service as Chairman, shall receive an annual salary at the annual rate payable from time to time for level III of the Executive Schedule.".

(c) Section 4(f)(2) of the Communications Act of 1934 (47 U.S.C. 154(f)(2)) is amended by striking out "a legal assistant, an engineering assistant," and inserting in lieu thereof "three professional assistants".

(d) Section 4(g) of the Communications Act of 1934 (47 U.S.C. 154(g)) is amended by inserting "(1)" after the subsection designation, and by adding at the end thereof the following new paragraph:

"(2)(A) If—

"(i) the necessary expenses specified in the last sentence of paragraph (1) have been incurred for the purpose of enabling Commissioners or employees of the Commission to attend and participate in any convention, conference, or meeting;

"(ii) such attendance and participation are in furtherance of the functions of the Commission; and

"(iii) such attendance and participation are requested by the person sponsoring such convention, conference, or meeting;

then the Commission shall have authority to accept direct reimbursement from such sponsor for such necessary expenses.

"(B) The total amount of unreimbursed expenditures made by the Commission for travel for any fiscal year, together with the total amount of reimbursements which the Commission accepts under subparagraph (A) for such fiscal year, shall not exceed the level of travel expenses appropriated to the Commission for such fiscal year.

"(C) The Commission shall submit to the appropriate committees of the Congress, and publish in the Federal Register, quarterly reports specifying reimbursements which the Commission has accepted under this paragraph.

"(D) The provisions of this paragraph shall cease to have any force or effect at the end of fiscal year 1985.".

(e) Section 4(k)(2) of the Communications Act of 1934 (47 U.S.C. 154(k)(2)) is amended by striking out ": *Provided*, That the" and all that follows through "by such reports".

(f) Section 4(k) of the Communications Act of 1934 (47 U.S.C. 154(k)) is amended by redesignating paragraph (4) and paragraph (5) as paragraph (3) and paragraph (4), respectively.

(g) Section 4(k)(4) of the Communications Act of 1934, as so redesignated in subsection (f), is amended by striking out "Bureau of the Budget" and inserting in lieu thereof "Office of Management and Budget".

USE OF AMATEUR VOLUNTEERS FOR CERTAIN PURPOSES

SEC. 104. Section 4(f) of the Communications Act of 1934 (47 U.S.C. 154(f)) is amended by adding at the end thereof the following new paragraph:

"(4)(A) The Commission, for purposes of preparing any examination for an amateur station operator license, may accept and employ the voluntary and uncompensated services of any individual who holds an amateur station operator license of a higher class than the class license for which the examination is being prepared. In the case of examinations for the highest class of amateur station operator license, the Commission may accept and employ such services of any individual who holds such class of license.

"(B) The Commission, for purposes of administering any examination for an amateur station operator license, may accept and employ the voluntary and uncompensated services of any individual who holds an amateur station operator license of a higher class than the class license for which the examination is being conducted. In the case of examinations for the highest class of amateur station operator license, the Commission may accept and employ such services of any individual who holds such class of license. Any person who owns a significant interest in, or is an employee of, any company or other entity which is engaged in the manufacture or distribution of equipment used in connection with amateur radio transmissions, or in the preparation or distribution of any publication used in preparation for obtaining amateur station operator licenses, shall not be eligible to render any service under this paragraph.

"(C)(i) The Commission, for purposes of monitoring violations of any provision of this Act (and of any regulation prescribed by the Commission under this Act) relating to the amateur radio service, may—

"(I) recruit and train any individual licensed by the Commission to operate an amateur station; and

"(II) accept and employ the voluntary and uncompensated services of such individual.

"(ii) The Commission, for purposes of recruiting and training individuals under clause (i) and for purposes of screening, annotating, and summarizing violation reports referred under clause (i), may accept and employ the voluntary and uncompensated services of any amateur station operator organization.

"(iii) The functions of individuals recruited and trained under this subparagraph shall be limited to—

"(I) the detection of improper amateur radio transmissions;

"(II) the conveyance to Commission personnel of information which is essential to the enforcement of this Act (or regulations prescribed by the Commission under this Act) relating to the amateur radio service; and

"(III) issuing advisory notices, under the general direction of the Commission, to persons who apparently have violated any provision of this Act (or regulations prescribed by the Commission under this Act) relating to the amateur radio service.

Nothing in this clause shall be construed to grant individuals recruited and trained under this subparagraph any authority to issue sanctions to violators or to take any enforcement action other than any action which the Commission may prescribe by rule.

"(D)(i) The Commission, for purposes of monitoring violations of any provision of this Act (and of any regulation prescribed by the Commission under this Act) relating to the citizens band radio service, may—

"(I) recruit and train any citizens band radio operator; and

"(II) accept and employ the voluntary and uncompensated services of such operator.

"(ii) The Commission, for purposes of recruiting and training individuals under clause (i) and for purposes of screening, annotating, and summarizing violation reports referred under clause (i), may accept and employ the voluntary and uncompensated services of any citizens band radio operator organization. The Commission, in accepting and employing services of individuals under this subparagraph, shall seek to achieve a broad representation of individuals and organizations interested in citizens band radio operation.

"(iii) The functions of individuals recruited and trained under this subparagraph shall be limited to—

"(I) the detection of improper citizens band radio transmissions;

"(II) the conveyance to Commission personnel of information which is essential to the enforcement of this Act (or regulations prescribed by the Commission under this Act) relating to the citizens band radio service; and

"(III) issuing advisory notices, under the general direction of the Commission, to persons who apparently have violated any provision of this Act (or regulations prescribed

by the Commission under this Act) relating to the citizens band radio service.

Nothing in this clause shall be construed to grant individuals recruited and trained under this subparagraph any authority to issue sanctions to violators or to take any enforcement action other than any action which the Commission may prescribe by rule.

"(E) The authority of the Commission established in this paragraph shall not be subject to or affected by the provisions of part III of title 5, United States Code, or section 3679(b) of the Revised Statutes (31 U.S.C. 665(b)).

"(F) Any person who provides services under this paragraph shall not be considered, by reason of having provided such services, a Federal employee.

"(G) The Commission, in accepting and employing services of individuals under subparagraphs (A), (B), and (C), shall seek to achieve a broad representation of individuals and organizations interested in amateur station operation.

"(H) The Commission may establish rules of conduct and other regulations governing the service of individuals under this paragraph.".

ORGANIZATION AND FUNCTIONING OF COMMISSION

SEC. 105. (a) Section 5(b) of the Communications Act of 1934 (47 U.S.C. 155(b)) is amended—

(1) by striking out "Within" and all that follows through "and from" and inserting in lieu thereof "From"; and

(2) by striking out "thereafter".

(b) Section 5 of the Communications Act of 1934 (47 U.S.C. 155) is amended by redesignating subsection (d) and subsection (e) as subsection (c) and subsection (d), respectively.

(c) The first sentence of section 5(c)(1) of the Communications Act of 1934, as so redesignated in subsection (b), is amended by striking out "three" and inserting in lieu thereof "two".

JURISDICTION OF COMMISSION

SEC. 106. Section 301 of the Communications Act of 1934 (47 U.S.C. 301) is amended—

(1) by striking out "interstate and foreign";

(2) by inserting "State," after "any" the third place it appears therein;

(3) by inserting a comma after "Territory" the first place it appears therein; and

(4) by inserting "State," after "same".

INTERFERENCE WITH ELECTRONIC EQUIPMENT

SEC. 107. (a)(1) The first sentence of section 302(a) of the Communications Act of 1934 (47 U.S.C. 302(a)) is amended by inserting "(1)" after "regulations", and by inserting before the period at the end thereof the following: "; and (2) establishing minimum performance standards for home electronic equipment and systems to reduce their susceptibility to interference from radio frequency energy".

(2) The last sentence of section 302(a) of the Communications Act of 1934 (47 U.S.C. 302(a)) is amended by striking out "shipment, or use of such devices" and inserting in lieu thereof "or shipment of such devices and home electronic equipment and systems, and to the use of such devices".

(3) Section 302(b) of the Communications Act of 1934 (47 U.S.C. 302(b)) is amended by striking out "ship, or use devices" and inserting in lieu thereof "or ship devices or home electronic equipment and systems, or use devices,".

(4) Section 302(c) of the Communications Act of 1934 (47 U.S.C. 302(c)) is amended—

(A) in the first sentence thereof, by inserting "or home electronic equipment and systems" after "devices" each place it appears therein; and

(B) in the last sentence thereof, by inserting "and home electronic equipment and systems" after "Devices", by striking out "common objective" and inserting in lieu thereof "objectives", and by inserting "and to home electronic equipment and systems" after "reception".

(5) The heading for section 302 of the Communications Act of 1934 (47 U.S.C. 302) is amended to read as follows:

"INTERFERENCE WITH RADIO COMMUNICATIONS AND ELECTRONIC EQUIPMENT"

(b) Any minimum performance standard established by the Federal Communications Commission under section 302(a)(2) of the Communications Act of 1934, as added by the amendment made in subsection (a)(1), shall not apply to any home electronic equipment or systems manufactured before the date of the enactment of this Act.

QUALIFICATIONS OF STATION OPERATORS

SEC. 108. Section 303(l)(1) of the Communications Act of 1934 (47 U.S.C. 303(l)(1)) is amended—

(1) by striking out "such citizens" and all that follows through "qualified" and inserting in lieu thereof "persons who are found to be qualified by the Commission and who otherwise are legally eligible for employment in the United States"; and

(2) by striking out "in issuing licenses" and all that follows through the end thereof and inserting in lieu thereof the following: "such requirement relating to eligibility for employment in the United States shall not apply in the case of licenses issued by the Commission to (A) persons holding United States pilot certificates; or (B) persons holding foreign aircraft pilot certificates which are valid in the United States, if the foreign government involved has entered into a reciprocal agreement under which such foreign government does not impose any similar requirement relating to eligibility for employment upon citizens of the United States;".

GROUNDS FOR SUSPENSION OF LICENSES

SEC. 109. Section 303(m)(1)(A) of the Communications Act of 1934 (47 U.S.C. 303(m)(1)(A)) is amended by inserting ", or caused, aided, or abetted the violation of," after "violated".

LICENSING OF CERTAIN AIRCRAFT RADIO STATIONS AND OPERATORS

SEC. 110. (a) Section 303 of the Communications Act of 1934 (47 U.S.C. 303) is amended by adding at the end thereof the following new paragraph:

"(t) Notwithstanding the provisions of section 301(e), have authority, in any case in which an aircraft registered in the United States is operated (pursuant to a lease, charter, or similar arrangement) by an aircraft operator who is subject to regulation by the government of a foreign nation, to enter into an agreement with such government under which the Commission shall recognize and accept any radio station licenses and radio operator licenses issued by such government with respect to such aircraft.".

(b) Section 301(e) of the Communications Act of 1934 (47 U.S.C. 301(e)) is amended by inserting "(except as provided in section 303(t))" after "United States".

REVISION OF LICENSE TERMS

SEC. 111. (a) Section 307 of the Communications Act of 1934 (47 U.S.C. 307) is amended by striking out subsection (c), and by redesignating subsection (d) and subsection (e) as subsection (c) and subsection (d), respectively.

(b) Section 307(c) of the Communications Act of 1934, as so redesignated in subsection (a), is amended—

(1) by striking out "five years" the second place and the last place it appears therein and inserting in lieu thereof "ten years"; and

(2) by inserting after the second sentence thereof the following new sentence: "The term of any license for the operation of any auxiliary broadcast station or equipment which can be used only in conjunction with a primary radio, television, or translator station shall be concurrent with the term of the license for such primary radio, television, or translator station.".

AUTHORITY TO OPERATE CERTAIN RADIO STATIONS WITHOUT INDIVIDUAL LICENSES

SEC. 112. (a) Section 307 of the Communications Act of 1934, as amended in section 11(a), is further amended by adding at the end thereof the following new subsection:

"(e)(1) Notwithstanding any licensing requirement established in this Act, the Commission may by rule authorize the operation of radio stations without individual licenses in the radio control service and the citizens band radio service if the Commission determines that such authorization serves the public interest, convenience, and necessity.

"(2) Any radio station operator who is authorized by the Commission under paragraph (1) to operate without an individual license shall comply with all other provisions of this Act and with rules prescribed by the Commission under this Act.

"(3) For purposes of this subsection, the terms 'radio control service' and 'citizens band radio service' shall have the meanings given them by the Commission by rule.".

(b) Section 303(n) of the Communications Act of 1934 (47 U.S.C. 303(n)) is amended by inserting after "any Act" the first place it appears therein the following: ", or which the Commission by rule has authorized to operate without a license under section 307(e)(1),".

AUTHORIZATION OF TEMPORARY OPERATIONS

SEC. 113. Section 309(f) of the Communications Act of 1934 (47 U.S.C. 309(f)) is amended—

(1) by striking out "emergency" each place it appears therein and inserting in lieu thereof "temporary";

(2) by striking out "one additional period" and inserting in lieu thereof "additional periods"; and

(3) by striking out "ninety days" and inserting in lieu thereof "180 days".

RANDOM SELECTION SYSTEM FOR CERTAIN LICENSES AND PERMITS

SEC. 114. (a) Section 309(i)(1) of the Communications Act of 1934 (47 U.S.C. 309(i)(1)) is amended—

(1) by striking out "applicant" the first place it appears therein and inserting in lieu thereof "application"; and

(2) by striking out "the qualifications of each such applicant under section 308(b)" and inserting in lieu thereof "that each such application is acceptable for filing".

(b) Section 309(i)(2) of the Communications Act of 1934 (47 U.S.C. 309(i)(2)) is amended to read as follows:

"(2) No license or construction permit shall be granted to an applicant selected pursuant to paragraph (1) unless the Commission determines the qualifications of

such applicant pursuant to subsection (a) and section 308(b). When substantial and material questions of fact exist concerning such qualifications, the Commission shall conduct a hearing in order to make such determinations. For the purpose of making such determinations, the Commission may, by rule, and notwithstanding any other provision of law—

"(A) adopt procedures for the submission of all or part of the evidence in written form;

"(B) delegate the function of presiding at the taking of written evidence to Commission employees other than administrative law judges; and

"(C) omit the determination required by subsection (a) with respect to any application other than the one selected pursuant to paragraph (1).".

(c)(1) Section 309(i)(3)(A) of the Communications Act of 1934 (47 U.S.C. 309(i)(3)(A)) is amended by striking out ", groups" the first place it appears therein, and all that follows through the end thereof, and inserting in lieu thereof the following: "used for granting licenses or construction permits for any media of mass communications, significant preferences will be granted to applicants or groups of applicants, the grant to which of the license or permit would increase the diversification of ownership of the media of mass communications. To further diversify the ownership of the media of mass communications, an additional significant preference shall be granted to any applicant controlled by a member or members of a minority group.".

(2) Section 309(i)(3) of the Communications Act of 1934 (47 U.S.C. 309(i)(3)) is amended by adding at the end thereof the following new subparagraph:

"(C) For purposes of this paragraph:

"(i) The term 'media of mass communications' includes television, radio, cable television, multipoint distribution service, direct broadcast satellite service, and other services, the licensed facilities of which may be substantially devoted toward providing programming or other information services within the editorial control of the licensee.

"(ii) The term 'minority group' includes Blacks, Hispanics, American Indians, Alaska Natives, Asians, and Pacific Islanders.".

(d) Section 309(i)(4)(A) of the Communications Act of 1934 (47 U.S.C. 309(i)(4)(A)) is amended by striking out "effective date of this subsection" and inserting in lieu thereof "date of the enactment of the Communications Technical Amendments Act of 1982".

AGREEMENTS RELATING TO WITHDRAWAL OF CERTAIN APPLICATIONS

SEC. 115. (a) Section 311(c)(3) of the Communications Act of 1934 (47 U.S.C. 311(c)(3)) is amended by striking out "the agreement" the second place it appears therein and all that follows through the end thereof and inserting in lieu thereof the following: "(A) the agreement is consistent with the public interest, convenience, or necessity; and (B) no party to the agreement filed its application for the purpose of reaching or carrying out such agreement.".

(b) Section 311(d)(1) of the Communications Act of 1934 (47 U.S.C. 311(d)(1)) is amended by striking out "two or more" and all that follows through "station" and inserting in lieu thereof the following: "an application for the renewal of a license granted for the operation of a broadcasting station and one or more applications for a construction permit relating to such station,".

(c) Section 311(d)(3) of the Communications Act of 1934 (47 U.S.C. 311(d)(3)) is amended by striking out "license".

WILLFUL OR REPEATED VIOLATIONS

SEC. 116. Section 312 of the Communications Act of 1934 (47 U.S.C. 312) is amended by adding at the end thereof the following new subsection:

"(f) For purposes of this section:

"(1) The term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act or by a treaty ratified by the United States.

"(2) The term 'repeated', when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.".

APPLICABILITY OF CONSTRUCTION PERMIT REQUIREMENTS TO CERTAIN STATIONS

SEC. 117. Section 319(a) of the Communications Act of 1934 (47 U.S.C. 319(a)) is amended by striking out "the construction of which is begun or is continued after this Act takes effect,".

AUTHORITY TO ELIMINATE CERTAIN CONSTRUCTION PERMITS

SEC. 118. Section 319(d) of the Communications Act of 1934 (47 U.S.C. 319(d)) is amended to read as follows:

"(d) A permit for construction shall not be required for Government stations, amateur stations, or mobile stations. A permit for construction shall not be required for public coast stations, privately owned fixed microwave stations, or stations licensed to common carriers, unless the Commission determines that the public interest, convenience, and necessity would be served by requiring such permits for any such stations. With respect to any broadcasting station, the Commission shall not have any authority to waive the requirement of a permit for construction. With respect to any other station or class of stations, the Commission shall not waive such requirement unless the Commission determines that the public interest, convenience, and necessity would be served by such a waiver.".

PRIVATE LAND MOBILE SERVICES

SEC. 119. (a) Part I of title III of the Communications Act of 1934 (47 U.S.C. 301 et seq.) is amended by adding at the end thereof the following new section:

"PRIVATE LAND MOBILE SERVICES

"SEC. 331. (a) In taking actions to manage the spectrum to be made available for use by the private land mobile services, the Commission shall consider, consistent with section 1 of this Act, whether such actions will—

"(1) promote the safety of life and property;

"(2) improve the efficiency of spectrum use and reduce the regulatory burden upon spectrum users, based upon sound engineering principles, user operational requirements, and marketplace demands;

"(3) encourage competition and provide services to the largest feasible number of users; or

"(4) increase interservice sharing opportunities between private land mobile services and other services.

"(b)(1) The Commission, in coordinating the assignment of frequencies to stations in the private land mobile services and in the fixed services (as defined by the Commission by rule), shall have authority to utilize assistance furnished by advisory coordinating committees consisting of individuals who are not officers or employees of the Federal Government.

"(2) The authority of the Commission established in this subsection shall not be subject to or affected by the provisions of part III of title 5, United States Code, or section 3679(b) of the Revised Statutes (31 U.S.C. 665(b)).

"(3) Any person who provides assistance to the Commission under this subsection shall not be considered, by reason of having provided such assistance, a Federal employee.

"(4) Any advisory coordinating committee which furnishes assistance to the Commission under this subsection shall not be subject to the provisions of the Federal Advisory Committee Act.

"(c)(1) For purposes of this section, private land mobile service shall include service provided by specialized mobile radio, multiple licensed radio dispatch systems, and all other radio dispatch systems, regardless of whether such service is provided indiscriminately to eligible users on a commercial basis, except that a land station licensed in such service to multiple licensees or otherwise shared by authorized users (other than a nonprofit, cooperative station) shall not be interconnected with a telephone exchange or interexchange service or facility for any purpose, except to the extent that (A) each user obtains such interconnection directly from a duly authorized carrier; or (B) licensees jointly obtain such interconnection directly from a duly authorized carrier.

"(2) A person engaged in private land mobile service shall not, insofar as such person is so engaged, be deemed a common carrier for any purpose under this Act. A common carrier shall not provide any dispatch service on any frequency allocated for common carrier service, except to the extent such dispatch service is provided on stations licensed in the domestic public land mobile radio service before January 1, 1982.

"(3) No State or local government shall have any authority to impose any rate or entry regulation upon any private land mobile service, except that nothing in this subsection may be construed to impair such jurisdiction with respect to common carrier stations in the mobile service.".

(b)(1) Section 3 of the Communications Act of 1934 (47 U.S.C. 153) is amended by adding at the end thereof the following new paragraph:

"(gg) 'Private land mobile service' means a mobile service which provides a regularly interacting group of base, mobile, portable, and associated control and relay stations (whether licensed on an individual, cooperative, or multiple basis) for private one-way or two-way land mobile radio communications by eligible users over designated areas of operation.".

(2) Section 3(n) of the Communications Act of 1934 (47 U.S.C. 153(n)) is amended to read as follows:

"(n) 'Mobile service' means a radio communication service carried on between mobile stations or receivers and land stations, and by mobile stations communicating among themselves, and includes both one-way and two-way radio communication services.".

NOTICES OF APPEAL

SEC. 120. Section 402(d) of the Communications Act of 1934 (47 U.S.C. 402(d)) is amended—

(1) by striking out "Commission" the first place it appears therein and inserting in lieu thereof "appellant";

(2) by striking out "date of service upon it" and inserting in lieu thereof "filing of such notice";

(3) by striking out "and shall thereafter" and all that follows through "Washington"; and

(4) by striking out "Within thirty days after the filing of an appeal, the" and inserting in lieu thereof "The".

COMPUTATION OF CERTAIN FILING DEADLINES

SEC. 121. The last sentence of section 405 of the Communications Act of 1934 (47 U.S.C. 405) is amended by striking out "public notice" and all that follows through the end thereof and inserting in lieu thereof the following: "the Commission gives public notice of the order, decision, report, or action complained of.".

EFFECTIVE DATE OF CERTAIN COMMISSION ORDERS

SEC. 122. Section 408 of the Communications Act of 1934 (47 U.S.C. 408) is amended by striking out "within such reasonable time" and all that follows through the end thereof and inserting in lieu thereof the following: "thirty calendar days from the date upon which public notice of the order is given, unless the Commission designates a different effective date. All such orders shall continue in force for the period of time specified in the order or until the Commission or a court of competent jurisdiction issues a superseding order.".

APPLICATION OF FORFEITURE REQUIREMENTS TO CABLE TELEVISION SYSTEM OPERATORS

SEC. 123. The second sentence of section 503(b)(5) of the Communications Act of 1934 (47 U.S.C. 503(b)(5)) is amended by inserting ", or is a cable television system operator" before the period at the end thereof.

FORFEITURE OF COMMUNICATIONS DEVICES

SEC. 124. Title V of the Communications Act of 1934 (47 U.S.C. 501 et seq.) is amended by adding at the end thereof the following new section:

"FORFEITURE OF COMMUNICATIONS DEVICES

"SEC. 510. (a) Any electronic, electromagnetic, radio frequency, or similar device, or component thereof, used, sent, carried, manufactured, assembled, possessed, offered for sale, sold, or advertised with willful and knowing intent to violate section 301 or 302, or rules prescribed by the Commission under such sections, may be seized and forfeited to the United States.

"(b) Any property subject to forfeiture to the United States under this section may be seized by the Attorney General of the United States upon process issued pursuant to the supplemental rules for certain admiralty and maritime claims by any district court of the United States having jurisdiction over the property, except that seizure without such process may be made if the seizure is incident to a lawful arrest or search.

"(c) All provisions of law relating to—

"(1) the seizure, summary and judicial forfeiture, and condemnation of property for violation of the customs laws;

"(2) the disposition of such property or the proceeds from the sale thereof;

"(3) the remission or mitigation of such forfeitures; and

"(4) the compromise of claims with respect to such forfeitures;

shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this section, insofar as applicable and not inconsistent with the provisions of this section, except that such seizures and forfeitures shall be limited to the communications device, devices, or components thereof.

"(d) Whenever property is forfeited under this section, the Attorney General of the United States may forward it to the Commission or sell any forfeited property which is not harmful to the public. The proceeds from any such sale shall be deposited in the general fund of the Treasury of the United States.".

EXEMPTION APPLICABLE TO AMATEUR RADIO COMMUNICATIONS

SEC. 125. The last sentence of section 605 of the Communications Act of 1934 (47 U.S.C. 605) is amended—

(1) by striking out "broadcast or";

(2) by striking out "amateurs or others" and inserting in lieu thereof "any station";

(3) by striking out "or" the last place it appears therein;

(4) by inserting ", aircraft, vehicles, or persons" after "ships"; and

(5) by inserting before the period at the end thereof the following: ", or which is transmitted by an amateur radio station operator or by a citizens band radio operator".

TECHNICAL AMENDMENTS

SEC. 126. (a) Section 304 of the Communications Act of 1934 (47 U.S.C. 304) is amended by striking out "ether" and inserting in lieu thereof "electromagnetic spectrum".

(b) Section 402(a) of the Communications Act of 1934 (47 U.S.C. 402(a)) is amended by striking out "Public Law" and all that follows through the end thereof and inserting in lieu thereof "chapter 158 of title 28, United States Code.".

(c)(1) Section 405 of the Communications Act of 1934 (47 U.S.C. 405) is amended by striking out "rehearing" each place it appears therein and inserting in lieu thereof "reconsideration".

(2) The heading for section 405 of the Communications Act of 1934 (47 U.S.C. 405) is amended by striking out "REHEARINGS" and inserting in lieu thereof "RECONSIDERATIONS".

AMENDMENT TO OTHER LAW

SEC. 127. Section 1114 of title 18, United States Code, is amended by inserting after "law enforcement functions," the following: "or any officer or employee of the Federal Communications Commission performing investigative, inspection, or law enforcement functions,".

SEC. 128. Section 224 of the Communications Act of 1934 (47 U.S.C. 224) is amended by striking out subsections (d) and (e).

Amend the title so as to read: "An Act to amend the Communications Act of 1934, and for other purposes.".

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

The amendment (UP No. 1250) was agreed to.

The PRESIDING OFFICER. There being no further amendments, the question is on engrossment of the amendment and third reading of the bill.

The bill was ordered to be read a third time, was read the third time, and passed.

Mr. BAKER. Madam President, I move to reconsider the vote by which the bill was passed.

Mr. ROBERT C. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. BAKER. Madam President, that completes the routine matters that are cleared on this side and I am prepared to yield the floor.

Mr. ROBERT C. BYRD. I yield the floor.

RECOGNITION OF SENATOR NUNN

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

HABEAS CORPUS REFORM

Mr. NUNN. Madam President, today marks the beginning of the fourth month during which Senator CHILES and I have been daily speaking on the Senate floor in support of strong anti-crime legislation. Many of our comments have been directed to the urgent need for habeas corpus reform. This morning I am particularly pleased to rise as cosponsor and in strong support of legislation, introduced by Senator THURMOND and placed on the Senate Calendar yesterday morning, addressing that same area of criminal law reform, one which is, by all reports, essential to the continued viability of our judicial system. Both Senator CHILES and I know only too well the extent to which our career criminals have learned to manipulate current habeas corpus procedure to their benefit.

In introducing S. 2543, the Crime Control Act of 1982, on May 19, 1982, Senator CHILES and I took care to include proposals for habeas corpus reform similar to those which Senator THURMOND has now offered. In speaking in support of S. 2543, we have, over the past 3 months, cited numerous specific examples of the dire need for reform of habeas corpus procedures. The cases which we have described in great detail to the Senate clearly establish that the writ of habeas corpus has been, and continues to be, gravely distorted by serious abuse in the hands of our criminal offenders. I am encouraged that the bill which Senator THURMOND has now introduced speaks to precisely the same problems which have caused us such great concern for some time now.

The writ of habeas corpus, as originally conceived in medieval English law, provided a means of reviewing the detention of an individual held under executive, and not judicial, authority. It was never intended to be used to review in any manner, detention as a

result of a judicial decision. It was executive, and not judicial, abuse of power that the Founding Fathers had in mind when they specifically prohibited the "suspension" of the writ of habeas corpus in article 1, section 9 of the Constitution. In fact, State prisoners were not specifically granted any right to Federal habeas corpus relief until the enactment of the Habeas Corpus Act of 1867 by Congress, despite the earlier constitutional provision.

Since 1867, experience has shown that the use of the writ now bears little resemblance to the purpose for which it was originally intended. Rather than act as a bulwark of freedom for out citizens, it has been misused as a seemingly endless "appeal" device by convicted felons. Frequently, prisoners wait many years and, after witnesses have died, file a habeas corpus action seeking to set aside the original judgment and sentence. In such cases, the issue raised was often not raised and answered in the original record, and the Government is simply incapable of refuting the prisoner's testimony.

In other cases, prisoners file a series of seemingly endless petitions, wasting precious judicial resources on the needless relitigation of issues clearly and fairly decided years before. In the absence of clear legislative directives, the Federal courts often rehear and reconsider questions properly answered in the State court systems.

A system which encourages these types of abuse can hardly be said to contribute to public confidence in our criminal laws. Most of us agree with those criminal justice experts who tell us that the greatest single deterrent to crime is swift and sure punishment for the guilty. Yet our system too often fails to deliver.

One reason, as Chief Justice Burger pointed out in his recent speech to the American Bar Association, is our inability to reach—at some point—finality of judgment. Judge Coleman of the Fifth Circuit Court of Appeals has stated:

> The (court) decisions say that the writ may not be used as a second appeal, but from experience the outlaws know better. Instead of being a bulwark of freedom for the citizen, it has been allowed to become a last, and too often a sure, refuge for those who have respected neither the law nor the Constitution.

It is a sad comment, indeed, on our criminal justice system that blatant abuse of the writ of habeas corpus has resulted in two of the most serious shortcomings within that system: Needless delay and a lack of certainty and finality in punishment. We have come to the point where the writ, rather than serving to protect innocent individuals from baseless or unknown charges, is being routinely manipulated to insulate the guilty from their just and deserving punishment.

The proposal which Senator THURMOND has offered makes several important and needed revisions to those statutes governing current habeas corpus procedure. It provides for a 1-year statute of limitations for Federal habeas corpus proceedings filed by State prisoners. This 1-year period would not, however, begin until the final exhaustion of all State remedies by the State prisoner. The 1-year period is clearly a reasonable and fair requirement for the filing of such petitions. This is particularly true when one considers the great length of time which is often consumed within the State process via both direct and collateral proceedings.

Similarly, the bill provides for a 2-year statute of limitations in habeas corpus proceedings brought by Federal prisoners. That period will begin to run from the latest of specifically listed events: First, final conviction; second, removal of some Government obstacle to filing; third, creation of a newly recognized right; or fourth, discovery of necessary facts by reasonable diligence. Such limitations are clearly valid given the Supreme Court's decision unholding similar timeliness requirements for the exercise of rights, including those of constitutional origin, within both our criminal and civil judicial system. These periods of limitations are no more than a needed and reasonable requirement that habeas corpus proceedings, as other proceedings, be brought in a timely manner.

The proposal also speaks to the problem of the needless adjudication and readjudication of facts and issues which have already been fairly decided elsewhere in the legal system. We would require Federal courts to defer to State courts findings on factual and legal matters where those findings were the result of a "full and fair determination" by the State court. The Supreme Court has already made clear that there is no need for the Federal courts to rehash and rehash again issues which have already been fully and fairly determined in a State court.

This provision will prevent the needless overburdening of the Federal courts with facts and legal issues already clearly and justly decided. In doing so, it will continue to protect petitioners from unjust State court determinations, leaving Federal courts free to review issues which do not meet the specific statutory standard. This was explicitly recognized by the Justic Department in their support of this provision before the Senate Judiciary Committee on April 1, 1982:

> In order to be full and fair in the intended sense the state adjudication must reflect a reasonable determination of the facts based on the evidence presented to the state courts, a reasonable view of federal law, and a reasonable application of the law to the facts. It must also be conducted in a manner consistent with the procedural requirements of federal law, including the requirement of due process.

In that context, it is obvious that, under these provisions, Federal courts will still be free to fully employ the writ of habeas corpus in cases where State courts have failed to accord a petitioner a full hearing or where they have failed to act in accord with his Federal rights. It is also clear, however, that Federal courts will no longer be required to burden their already overcrowded dockets with the needless relitigation of issues already clearly, fully and fairly decided by State courts. In these days of scarce judicial resources and mounting criminal caseloads, this type of approach is essential if we are to maintain any semblance of judicial efficiency.

In sum, all of these provisions are designed to restore some measure of credibility to the writ of habeas corpus as it has evolved in our criminal justice system. They speak to those career criminals who routinely file habeas corpus petitions, mostly frivolous and most seeking review of issues already decided time and time again. Those kinds of petitions have, for all practical purposes, transformed our courts into a system of overburdened and overcrowded judicial lotteries.

We must act now if we are to ever generate any sense of certainly and finality within our criminal justice system. I urge the Senate to act responsibly and fairly on habeas corpus reform by the adoption of these proposals. Neither our judicial system nor the American public can afford further congressional delay on this most critical issue.

ROUTINE MORNING BUSINESS

The PRESIDENT pro tempore. There will now be a period for the transaction of routine morning business.

EXTENSION OF TIME FOR ROUTINE MORNING BUSINESS

Mr. BAKER. Mr. President, I ask unanimous consent that the time for the transaction of routine morning business be extended until 11 a.m. and that the time for the Senate to resume consideration of the pending business be extended to 11 a.m. without any change in the status of the parties with respect thereto.

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

IN MEMORY OF CAREY CRONIN

Mr. DODD. Mr. President, recently Connecticut lost one of its foremost columnists and political journalists. His name and reputation is undoubtedly familiar to many of you here: Carey Cronin, who passed away last weekend, had served as the Washing-

ton correspondent for the Bridgeport Post & Telegram for more than 30 years.

Those of us lucky enough to know Carey will remember him with respect and affection. During the past several decades he had become a familiar presence in the Capitol halls, the press galleries, and the National Press Club. Life on Capitol Hill will not be the same without Carey and his ambling gait, his broad grin, his ready story.

In losing Carey Cronin, we have lost more than a talented man committed to journalistic excellence. We have also lost a part of history. How rare it is to find someone whose career has touched upon so many significant events. During his 35 years in Washington, Carey's coverage spanned Watergate and the landing on the moon; McCarthy and Vietnam. He had seen more administrations come and go than any of us. As a result, he helped give those he knew in Washington a historical sense of why we were here—and our role in American politics.

It was Carey's talent at making the history he witnessed come alive that made him much more than reporter. He was a bard, a narrator, a chronicler. His reflections on history and politics have helped shape the perspectives of all of us in the Connecticut delegation. There was nothing he loved more than reflecting upon and sharing his memories: His time spent as a correspondent during World War II, his memories of his school years at Georgetown Prep and at Holy Cross College in Worcester. His political anecdotes were instructive, humorous, and frequent.

I had the rare opportunity of growing up with Carey. He was a part of my childhood, my youth, and my adult life. As a child I can remember his frequent conversations with another Senator Dodd—my father. When I returned to Washington as Congressman, Carey was on hand as an adviser and as a friend. When I became a Senator he was there too—carefully jotting down details in his reporter's notebook. He has been a part of my life, serving as a friend, critic, mentor, adviser and observer.

But Carey's ability to act as friend and story-swapper never stood in the way of his being an outstanding journalist. The Washington press corps will remember his continuing, outstanding, coverage of Connecticut politicians since he opened his news bureau here in 1947. Carey's coverage was hard but fair: he criticized us when we seemed to stray from the State's interests, applauded us when we stayed with them. His strength was his accurate and fast reporting—tempered with a sense of humor. His columns, editorials, and articles have helped shape a generation of Connnecticut readers' visions of Washington politics.

I hope that all of you will join me in mourning the loss of Carey Cronin, and in sharing the grief of his wife and family. I know I will feel his absence deeply. But we should not grieve for too long; Carey would want it otherwise. He would want to become part of that rich fabric of historical anecdotes of which he himself was so proud. He would want me to turn to you and say: "Did I tell you about the time in 1978 when Carey * * *."

THE SITUATION IN LEBANON

Mr. HATFIELD. Mr. President, there is hope today that the long summer of suffering in West Beirut is ending. The parties who chose an international capital for their battleground have reached an agreement in principle that, at long last, may silence the guns. Those Palestine Liberation Organization fighters encircled in West Beirut have agreed to leave Lebanon for an uncertain, fragmented future. The Israeli Government tentatively has approved a PLO exodus, but the PLO must depart in the shadow of Israel's guns and subject to Israel's judgment. Both the Syrian and the Israeli Governments have said their forces will withdraw from Lebanon. Syria's regular and irregular forces, trapped with the PLO in West Beirut, will leave with the PLO, a commitment made without alternative. But neither the Syrian nor the Israeli Government has pledged a date on which they will leave Lebanon to the Lebanese, and the Syrian and Israeli armies remain poised and anxious.

The people of West Beirut have said nothing. No one has asked for their agreement. The PLO did not ask their permission to bring its politics and its weapons into their neighborhoods. The Syrian Government failed to consult them about their need for an Arab deterrent force. The Israeli defense force never stopped bombing and shelling long enough to ask them why they did not flee. Their own Government spoke about them and for them but never really to them. Yet their faces—caught in fear, bewilderment, suffering, death and, sometimes, an inexplicable hopefulness—have spoken eloquently to the world of the tragedy of Lebanon.

Today's Lebanese tragedy grew, most immediately, out of the PLO leadership's refusal to foreswear their traditional paramilitary, terrorist role and out of the Israeli Government's stubborn adherence to a policy of meeting force with overwhelming force. Both sides clearly were willing to sacrifice the civilian population and, possibly, even the sovereignty of Lebanon to their own interests. Both the leaders of the PLO and of Israel were locked into a common selfishness of hate that had bred death and destruction in sharp, staccato bursts for decades, until, on June 6, that hatred unleashed a fiery wave of suffering that swept north from Isreal and converged on Beirut.

In the long weeks since, the peoples of the world have sat, unwilling witnesses to the agony of West Beirut. They have stared into the anguished faces of men and women whose families have disappeared forever beneath the rubble of their homes. They have looked into the bewildered faces of children whose childhood has become the stuff of nightmares. They have peered into the mute, fly-tracked faces of the victims, young and old alike, made armless, legless, mindless, by this little, vicious war. And as they have watched this drama of destruction unfold, the peoples of the world have become outraged. Whatever their original predisposition—pro-Israel, pro-Palestinian, apolitical—they see no logic strong enough on either side to justify what has happened to the people of West Beirut. And so, from throughout the community of nations there have come growing expressions of outrage. I am certain that every one of my colleagues has received numerous letters, telephone calls, and visits, as I have, from people throughout the United States who want the fighting in Beirut stopped. These people who write and who telephone and who even make first trips here to the halls of the Congress are outraged by what is happening in Lebanon—and they are afraid.

They are afraid because the nations supporting both sides in this conflict, including the two superpowers, stood powerless to stop the suffering of the civilians of West Beirut or the virtual destruction of the western city—powerless, for more than 2 months, to stop a conventionally fought conflict without themselves resorting to the so-called military option. True, there were ongoing negotiations which, hopefully, at last may have brought the fighting to an end, but each broken cease-fire seriously hindered those negotiations. Even now, the margin for success is dangerously narrow, and that success, if it comes, will apply only to West Beirut. It will not apply to the 7,000 Palestinians imprisoned by the Israelis since June 6. It will not apply to the 14,000 PLO fighters thought to be in the Bekaa Valley. It will not apply to the approximately 2,000 PLO members guarding a Palestinian refugee camp near Tripoli, Lebanon. It will not apply to the armies of Syria and Israel or to Lebanon's own free lance militias should their leaders' perceived interests dictate that the Bekaa or Tripoli become the next Beirut. And it will not apply to those shadowy individuals who carry the pestilence of violence in the bombs and machineguns already being heard in Paris.

I pray, as we all do, for an end to the fighting in Beirut. But, at the same time, I say that we must look beyond Beirut. We must look beyond Special Envoy Habib's hard won agreement. We must look beyond the evacuation of the PLO from West Beirut. We must look at the realities of this conflict. We must look squarely and without flinching, at the Palestinian issue, at the congenital weaknesses of the Lebanese state, and at the relationship which has evolved between Israel and the United States. We must look at our own Nation and its policy and its interests. And then, Mr. President, we must make the hard decisions that we were elected to make and which we have deferred too long.

Ariel Sharon, in the first bluster and swell of success after Israel invaded Lebanon, said that Israel had handed the United States a unique opportunity in the Middle East, if we would but seize that opportunity. While I disagree vehemently with General Sharon's goals and methods—and I suspect also with the twisted logic that led him to make that statement—I am convinced that what he said is true.

I have said before, and I say again, we stand at a unique moment in history—one precious golden moment in which we can utilize the strength and ideals of our people and the power and prestige of our Nation to lead the world away from war into a peaceful, productive future. But we must act. Neither we, nor the community of nations, can allow America's leaders the continued luxury of reacting to events.

The Palestinian issue will not go away. We cannot continue to sweep it under the rug to be resurrected for the testing of each new generation of American and Soviet weaponry. And we cannot afford to address this complex and potentially catastrophic problem through third parties. The United States must begin a dialog with the Palestinians—and, at least initially, that dialog must be open to all Palestinians, including the PLO.

I am aware that the PLO charter calls for Israel's destruction and I will be very clear in stating that, if at least some of the PLO leadership cannot admit, even now, the necessity for coexistence with a Jewish state and the futility of terrorism in place of negotiation, they can play no role in the dialog I have in mind. At the same time, it seems very clear to me that Israel's tragically misnamed "Peace for Galilee" operation was an equally rigid statement of Israel's intention to destroy the PLO. It remains to be seen what Israel's intentions are toward those Palestinians who have lived as refugees in Lebanon since the creation of the State of Israel in 1948. Whatever those intentions, it is not for Israel's Government to decide the fate of those people. Israel has every right to exercise sovereignty over the people who choose to live within Israel's borders, but those borders do not legitimately include Gaza, the West Bank, or Southern Lebanon.

It is because Gaza and the West Bank have proved so divisive for Israel and its Arab neighbors, and even for some of Israel's own citizens, that it is in Israel's interest and in the interest of all of the states of the region that Syria and Israel withdraw their armies as soon as possible after the end of the siege of West Beirut. The Israeli Government has rightfully pointed out that both the PLO and Syria have long been unwelcome guests in Lebanon. It would be a tragic mistake for Israel to apply a different yardstick to the presence of its own troops. Already the Lebanese of the south are looking at the smooth-running Israeli administrative apparatus in southern Lebanon, at the road signs printed in Hebrew, and at the $4 million Israel received in a single month from exports to Lebanon and those Lebanese see cause to mistrust Israel's avowed willingness to leave. The Lebanese hiding in the cellars of West Beirut see yet another, more tangible cause to suspect the Israelis. The Lebanese know that theirs is a seductive land that has charmed centuries of conquerors into occupation, and they know, also, that their Government is too weak to resist occupation.

Philip Geyelin of the Washington Post has correctly observed that "even with all the outsiders gone, what will remain behind [in Lebanon] is a congenitally unstable society." It is a society whose government is structured along sectarian lines, based on a French census taken in 1932. It is a society which, lacking a functional military or security apparatus, has spawned a deadly array of armed militias and sectarian, blood feuds. It is a society that has ignored some 400,000 Palestinian refugees in its midst. It is a society with little tradition of stability that must be stabilized.

Part of the answer lies in addressing the humanitarian needs of the people in Lebanon who have suffered a bitter civil war and two invasions in less than a decade. The United States, many other nations, international and private relief organizations already have committed money and supplies to this end, although these efforts have been hindered seriously by the continued fighting and by Israel's unwillingness to allow free access to certain areas. The same governments and organizations stand ready to assist with the rebuilding of Lebanon's economy and its infrastructure. But disaster relief, economic assistance and even self-help are insufficient to cure Lebanon's near fatal weakness unless Lebanon's people—all of them—can devise a government that can accept, support and secure the cooperation of the various factions that exist today within Lebanese society. For the United States, Israel or any other outside power to impose a solution on the people of Lebanon would be to encourage future factionalization and foreign adventurism. It would be equally counterproductive for the United States to seek to insure a strong, stable Lebanon by helping to create yet another modern arsenal of U.S. weaponry within the region.

The United States has for too long sought to promote stability in the various regions of the world through arms sales and military loans and credits. I contend, Mr. President, that the overemphasis on military assistance in our foreign aid program has had just the opposite effect. It has promoted instability, encouraged military action at the expense of diplomacy, and won this country more enemies than friends. This is perhaps nowhere more evident than in the so-called special relationship that exists between the United States and Israel.

The State of Israel was created by force of arms in the midst of the openly hostile climate that was Palestine. In those early days perhaps there was no choice but to maintain Israel's fragile existence by continued resort to force of arms. But, Mr. President, since 1948, the United States has given Israel $14.9 billion in military aid—more than we have allowed any other country. The United States consistently has provided Israel with the most modern, and the most lethal, of conventional weapons systems—often equipping the Israeli forces before fully equipping our own troops. We have done so for Israel's defense, with the agreement of consecutive Israeli Governments that the new, modern generation of weaponry will be used only if Israel is attacked.

Mr. President, we have been careless in our relationship with Israel and in our entire Middle East policy. The people of Nabatiyah and Sidon and West Beirut know just how careless we have been. The heads of the moderate Arab States, whose friendship we have sought, know. The nonalined nations know. Indeed, all of the member states of the United Nations have made very plain that they believe the United States has misjudged the needs and the realities of the Middle East as it exists today. The ruin of West Beirut and the suffering of its civilian population beg for a reassessment of the relationship between the United States and Israel.

The military realities are that today the Israeli defense force is indisputably overwhelmingly superior to any other military force in the region. Further, the IDF is so well equipped that it is capable of mounting prolonged military operations, on a single front, without resupply. Finally, all of the prohibitions in the world are ineffec-

tive once a weapons system has passed from a U.S. assembly line into Israel's arsenal. Once delivered, we cannot call back the cluster bombs, the F-16's, and the M-60 tanks, but make no mistake, the people of Lebanon know that the Israeli bombs that rained down on them were made in the United States.

The United States, in the aftermath of the siege of West Beirut, must face some disquieting political realities too. Israel and the United States have certain national interests which conflict. Those areas of conflict are likely to increase as the United States shifts to a more evenhanded policy in the Middle East. Such a shift is, in my view, vital to out Nation's interests and, ultimately, to the interests of the region. Unfortunately, many of Israel's present leaders do not share that view.

The United States and Israel disagree also about the best way to achieve peace in the region. Israel's leaders say that they will accept peace when it is offered but that they will meet force with force. I would point out two problems with this approach. First, Israel's pursuit of an overall settlement based on the Camp David accords has failed to exhibit the same forcefulness evident in Israel's policy of retaliation. Second, Israel's leadership, so far, appears unwilling to make any first moves toward peace. The Israeli people accepted Anwar Sadat's dramatic offer of peace with thanksgiving and welcomed their old enemy to Jerusalem in a spirit of hope for the future. If that hope lies tarnished today, it is because Israel's own leaders have not shown themselves capable of the same vision and courage.

Anwar Sadat's vision of peace is obscured by the smoke hanging over Beirut. It is threatened by Israel's rigid adherence to a policy of security through force of arms and by a U.S. aid program that reenforces that policy. U.S. military aid to Israel for fiscal year 1982 will total $1.4 billion. Economic aid for the same period will total $785 million, much of which will be used by Israel to repay the United States for previous military loans. For fiscal year 1983, the administration is asking that we continue economic aid at $785 million and increase military aid to $1.7 billion.

Mr. President, this simply is not acceptable. It is not acceptable to me, it is not acceptable to the American people, and it should not be acceptable to a single Member of this body. We have seen the proof of Israel's military strength. Can anyone here possibly believe that Israel is in need of $1.7 billion of military assistance? Can anyone possibly tell me that in a time of severe economic hardship here at home, we should consider sending $1.7 billion in weapons and military grants and loans to Israel? Can the administration expect us to look at the destruction our aid dollars have brought to Lebanon and then ask us to authorize only $65 million in disaster relief for Lebanon, while sending Israel $1.7 billion—$1.7 billion to further enhance Israel's arsenal or, perhaps, to fund the occupation of southern Lebanon? I hope not, Mr. President. I hope that President Reagan will reconsider his request for fiscal year 1983. I urge him to do so and pledge him my support in the belief that he will act with courage and with vision and reduce that request. I pray that he will seize this opportunity for leadership. The world is waiting, but only for one precious, golden moment.

INTENTION TO VOTE AGAINST TAX INCREASE

Mr. GOLDWATER. Mr. President, the President of the United States has been traveling across the broad reaches of our West and saying on TV that we need a vast increase in taxes. In Washington, his lieutenants, captains, and generals are pleading, begging, and now, downright threatening, members of the Republican Party that unless they vote for this tax increase, they will no longer receive favors from the President. In fact, one can read into the words that those who oppose the tax increase could even be voted out of the party or considered no longer to be Republicans.

I have been a Republican all of my adult life; much longer, in fact, than the President of the United States has been a Republican. But I do not hold that against him or against anyone who changes from Democrat to Republican or the other way.

I have a set of values that were instilled in me even before I became a Republican and it consists of a conservative approach to most of our problems. I have never believed in unbalanced budgets. I have been speaking out against unbalanced budgets as long as I can remember. I voted for the constitutional amendment to require balanced budgets with the full knowledge that, just because the Senate passed that resolution, it meant nothing. It is now up to the House and the people living in our country, not up to the columnists, economists, and others who feel differently about this, to determine if it becomes part of our Constitution.

I am a Republican who firmly believes that, until the Congress shows the courage to attack the exorbitantly expanded part of our budget, namely, the welfare state, we are never going to balance the budget.

I have just mentioned the welfare state. I think it is high time that this country realize that we are a welfare state. I think we should further realize that no country has ever entered into the welfare state and made it back out of it. Now, this might imply that I am opposed to helping anyone who needs help. That is not true, but I think we have to recognize that this Government is now dedicated, not only to helping those unable to help themselves, but many millions of people who can do without that help. So, let me insert a suggestion here relative to this tax increase and to the job problem.

If we are to enable more people to obtain jobs—and we now have over 100 million working—we have to greatly expand the industrial capacity of our Nation, and this is not going to be done by higher taxes; it is going to be done by lower taxes with incentives to invest this money into the expansion of our economy.

Mr. President, as I say, I live with Republican principles, not instilled into me, but drilled into me, living in me, and one of those principles is fiscal soundness. I do not believe we are ever going to put people back to work, to get the interest rates down, and decrease the deficit until we vastly expand the productive capability and capacity of our country. We cannot do this on borrowed money. We have tried it for 40 years and we have failed dismally. If we continue it for a few more years, only the Lord knows what will happen to this country.

It is time—no, it is past time—that we, as Members of Congress, that the President, as the leader of the country and, more importantly, the people of the country realize that we are going to reduce expenditures in only one way and that is when the Congress, as I have said many times before, demonstrates the courage to vote against expenditures that are not needed. It is my purpose only to remind my colleagues that our main purpose in being here is to protect and defend our Constitution, and our freedom.

I intend to vote against the tax increase proposed by the Finance Committee of the Senate. I intend to vote against it because I have been living under a concept of fiscal stability for a long, long time, and I am not going to change at this late date.

I once had the great honor of running for President of this country on the Republican ticket. Just because I was defeated did not mean that I dumped all of my principles down the drain. My principles remain with me whether defeated or not. So, when I cast my vote against the proposed increase, it is merely to reiterate my longstanding belief in one of the basic principles of the Republican Party: This country cannot maintain or even acquire an economic period of growth with high taxes. That is my position. It is not a new one and it is not a bad one.

TIME LIMITATION AGREEMENT—BUDGET RECONCILIATION CONFERENCE REPORT (H.R. 6955)

(The following proceedings occurred later in the day and are printed at this point by unanimous consent:)

Mr. BAKER. Mr. President, I wish to state a unanimous-consent agreement that I believe has been cleared all around. I will put it now for the consideration of the minority leader and all Senators.

Mr. President, I ask unanimous consent that during the consideration of the budget reconciliation conference report on H.R. 6955, it be considered under the following time agreement: 2 hours on the conference report to be equally divided between the chairman of the Budget Committee and the ranking minority member or their designees.

I further ask unanimous consent that at 3:30 p.m. the Senate temporarily lay aside the pending business and turn to the consideration of the conference report.

I ask unanimous consent, Mr. President, that when the Senate has disposed of the conference report, the Senator that had the floor at the time the Senate turned to the consideration of the conference report be re-recognized.

The PRESIDING OFFICER. Is there objection?

Mr. ROBERT C. BYRD. Mr. President, reserving the right to object, may I ask the distinguished majority leader, does this division of time assure any opponents of the conference report that they may have equal time?

Mr. BAKER. I assume so, Mr. President. Our arrangement was——

Mr. ROBERT C. BYRD. I understand. Senator HOLLINGS is opposed. That satisfies me. I have no objection.

The PRESIDING OFFICER. Is there objection?

The Chair hears none, and it is so ordered.

Mr. BAKER. I thank the minority leader, and I thank all Senators.

(Conclusion of earlier proceedings.)

ORDER TO PRINT CONFERENCE REPORT AS SENATE REPORT—H.R. 4961

Mr. BAKER. Mr. President, I ask unanimous consent that the conference report on H.R. 4961, the Tax Equity and Fiscal Responsibility Act of 1982, be printed as a Senate report.

Mr. LONG. Reserving the right to object, Mr. President, and I shall not object I would appreciate it if the Senator would let me know when he gets ready to make these requests. I have no objection.

Mr. BAKER. I had understood this had been cleared on both sides. I apologize to the Senator.

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

ORDER OF PROCEDURE

Mr. BAKER. Mr. President, in a moment I am going to ask the Chair to state whether or not there is further morning business. That will be followed by a request from me for the Chair to state the pending business. At that point I will yield the floor. The principals are here and on deck, and I will sit down and observe the proceedings with some interest.

Now, Mr. President, I inquire of the Chair if there is further morning business.

The PRESIDENT pro tempore. Before closing morning business, the Chair's attention has been called to page 883 of the Senate Procedure. It reads this way:

Under the traditions and practices of the Senate, the leadership is given preferential recognition when they seek the floor simultaneously with other Senators. Leaders and managers of a bill are given preferential recognition as compared to other Senators generally.

That is simultaneous, of course. Otherwise, if a Senator applies for the floor first, he will be recognized. But if it is simultaneous, then the majority leader has to be recognized or the manager of the bill has to be recognized.

CONCLUSION OF MORNING BUSINESS

The PRESIDENT pro tempore. Is there further morning business?

If not, morning business is closed.

TEMPORARY INCREASE IN THE PUBLIC DEBT LIMIT

Mr. BAKER. Mr. President, will the Chair please state to the Senate the pending business?

The PRESIDENT pro tempore. The clerk will report.

The legislative clerk read as follows:

A joint resolution (H.J. Res. 520) to provide for a temporary increase in the public debt limit.

The Senate resumed the consideration of the joint resolution.

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

Mr. HELMS and Mr. PACKWOOD addressed the Chair.

AMENDMENT NO. 2031

The PRESIDENT pro tempore. The clerk will report the pending amendment.

The legislative clerk read as follows:

Amendment No. 2031, by the Senator from North Carolina (Mr. HELMS).

Mr. HELMS and Mr. PACKWOOD addressed the Chair.

The PRESIDENT pro tempore. The Senator from North Carolina.

AMENDMENT NO. 2031, AS MODIFIED

Mr. HELMS. I send a modification to the desk, and I ask for the yeas and nays.

The PRESIDENT pro tempore. The amendment is so modified.

The modified amendment is as follows:

Strike "October 1, 1982" and insert the following: "October 1, 1982."

SEC. . This section may be cited as the "Voluntary School Prayer Act of 1982" and

Chapter 81 of title 28, United States Code, is amended by adding at the end thereof the following new section:

"§ 1259. Appellate jurisdiction; limitations

"Notwithstanding the provisions of sections 1253, 1254, and 1257 of this chapter, the Supreme Court shall not have jurisdiction to review, by appeal, writ of certiorari, or otherwise, any case arising out of any state statute, ordinance, rule, regulation, or any part thereof, or arising out of any act interpreting, applying, or enforcing a State statute, ordinance, rule, or regulation, which relates to voluntary prayers in public schools and public buildings."; *Provided further,* That the section analysis at the beginning of Chapter 81 of such title 28 is amended by adding at the end thereof the following new item:

"1259. Appellate jurisdiction; limitations."

; Provided further, That Chapter 85 of title 28, United States Code, is amended by adding at the end thereof the following new section:

"§ 1364. Limitations on jurisdiction

"Notwithstanding any other provision of law, the district courts shall not have jurisdiction of any case or question which the Supreme Court does not have jurisdiction to review under section 1259 of this title."; *Provided further,* That the section analysis at the beginning of chapter 85 of such title 28 is amended by adding at the end thereof the following new item:

"1364. Limitations on jurisdiction."

; *And provided further,* That the amendments made by this section shall take effect on the date of the enactment of this Act, except that such amendments shall not apply with respect to any case which, on such date of enactment, was pending in any court of the United States.

Mr. HELMS. Mr. President, I ask for the yeas and nays.

The PRESIDENT pro tempore. Is there a sufficient second? There does not appear to be a sufficient second.

The yeas and nays were not ordered.

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

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

The bill clerk proceeded to call the roll.

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

The PRESIDENT pro tempore. Is there objection?

Mr. WEICKER. I object.

The PRESIDENT pro tempore. Objection is heard.

The bill clerk continued the call of the roll.

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

Mr. WEICKER. I object.

The PRESIDENT pro tempore. Objection is heard.

The bill clerk resumed the call of the roll, and the following Senators entered the Chamber and answered to their names:

[Quorum No. 44 Leg.]

Baker	Gorton	Metzenbaum
Baucus	Hart	Packwood
Boren	Helms	Riegle
Byrd, Robert C.	Humphrey	Thurmond
Chafee	Kassebaum	Tsongas
Denton	Kasten	Weicker
Dodd	Kennedy	Zorinsky

The PRESIDENT pro tempore. A quorum is not present. The clerk will call the names of absent Senators.

Mr. BAKER. Mr. President, I move that the Sergeant at Arms be instructed to require the attendance of absent Senators, and I ask for the yeas and nays.

The PRESIDENT pro tempore. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

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

The legislative clerk called the roll.

Mr. STEVENS. I announce that the Senator from Colorado (Mr. ARMSTRONG), and the Senator from Wyoming (Mr. SIMPSON) are necessarily absent.

Mr. CRANSTON. I announce that the Senator from Illinois (Mr. DIXON), the Senator from Hawaii (Mr. MATSUNAGA), and the Senator from Tennessee (Mr. SASSER) are necessarily absent.

The PRESIDENT pro tempore. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 88, nays 7, as follows:

[Rollcall Vote No. 333 Leg.]

YEAS—88

Abdnor	East	McClure
Andrews	Exon	Melcher
Baker	Ford	Metzenbaum
Baucus	Garn	Mitchell
Bentsen	Glenn	Moynihan
Biden	Gorton	Murkowski
Boren	Grassley	Nickles
Boschwitz	Hart	Nunn
Bradley	Hatch	Packwood
Brady	Hatfield	Pell
Bumpers	Hawkins	Percy
Burdick	Hayakawa	Pressler
Byrd, Harry F., Jr.	Heflin	Pryor
	Heinz	Randolph
Byrd, Robert C.	Helms	Riegle
Cannon	Hollings	Rudman
Chafee	Huddleston	Sarbanes
Chiles	Humphrey	Schmitt
Cochran	Inouye	Specter
Cohen	Jackson	Stafford
Cranston	Jepsen	Stennis
D'Amato	Kassebaum	Stevens
Danforth	Kasten	Symms
DeConcini	Kennedy	Thurmond
Denton	Laxalt	Tower
Dodd	Leahy	Tsongas
Dole	Levin	Wallop
Domenici	Lugar	Warner
Durenberger	Mathias	Zorinsky
Eagleton	Mattingly	

NAYS—7

Goldwater	Proxmire	Weicker
Johnston	Quayle	
Long	Roth	

NOT VOTING—5

Armstrong	Matsunaga	Simpson
Dixon	Sasser	

So the motion was agreed to.

Several Senators addressed the Chair.

Mr. PACKWOOD. Mr. President.

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

The PRESIDENT pro tempore. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. WEICKER. Mr. President.

Mr. PACKWOOD. Mr. President.

Mr. HELMS. Mr. President.

Mr. PACKWOOD. Mr. President.

Mr. HELMS. Mr. President.

Mr. WEICKER. Mr. President.

Mr. HELMS. Mr. President, I sought recognition first.

Mr. PACKWOOD. Mr. President, whom do you recognize?

Mr. WEICKER. Mr. President.

The PRESIDENT pro tempore. The Senator from North Carolina.

UP AMENDMENT NO. 1251

(Purpose: To protect unborn human beings.)

Mr. HELMS. Mr. President, I send to the desk an amendment in the second degree and ask for it to be stated.

The PRESIDENT pro tempore. The clerk will report.

The bill clerk read as follows:

The Senator from North Carolina proposes an unprinted amendment numbered 1251.

Mr. HELMS. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

Mr. CANNON. I object.

The PRESIDENT pro tempore. The clerk will read the amendment.

The bill clerk read as follows:

At the end of the modified Helms amendment strike out the last two words in the last line, to wit: "United States" and insert in lieu thereof the following:

"United States of America".

TITLE II

SEC. 201. The Congress finds that—

(a) the American Convention on Human Rights of the Organization of American States in 1969 affirmed that every person has the right to have his life protected by law from the moment of conception and that no one shall be arbitrarily deprived of life;

(b) the Declaration of the Rights of the Child of the United Nations in 1959 affirmed that every child needs appropriate legal protection before as well as after birth;

(c) at the Nuremburg International Military tribunal for the trial of war criminals the promotion of abortion among minority populations, especially the denial of the protection of the law to the unborn children of Russian and Polish women, was considered a crime against humanity.

(d) the Federal Constitutional Court of the Federal Republic of Germany in 1975 ruled that the life which is developing itself in the womb of the mother is an independent legal value which enjoys the protection of the constitution and the state's duty to protect human life before birth forbids not only direct state attacks, but also requires the state to protect this life from other persons;

(e) the Declaration of Independence affirmed that all human beings are endowed by their Creator with certain unalienable rights among which is the right to life;

(f) as early as 1859 the American medical profession affirmed the independent and actual existence of the child before birth as a living being and condemned the practice of abortion at every period of gestation as the destruction of human life;

(g) before 1973, each of the serveral States had enacted laws to restrict the performance of abortion;

(h) agencies of the United States continue to protect human life before birth from workingplace hazards, the effects of dangerous pharmaceuticals, and other hazardous substances;

(i) it is a fundamental principle of American law to recognize and affirm the intrinsic value of all human life;

(j) scientific evidence demonstrates the life of each human being begins at conception;

(k) the Supreme Court of the United States in the case of *Roe* v. *Wade* erred in not recognizing the humanity of the unborn child and the compelling interest of the several States in protecting the life of each person before birth; and

(l) the Supreme Court of the United States in the case of *Roe* v. *Wade* erred in excluding unborn children from the safeguards afforded by the equal protection and due process provisions of the Constitution of the United States.

SEC. 202. No agency of the United States shall perform abortions, except when the life of the mother would be endangered if the child were carried to term.

SEC. 203. No funds appropriated by Congress shall be used directly or indirectly to perform abortions, to reimburse or pay for abortions, or to refer for abortions, except when the life of the mother would be endangered if the child were carried to term.

SEC. 204. No funds appropriated by Congress shall be used to give training in the techniques for performing abortions, to finance research related to abortion, or to finance experimentation on aborted children.

SEC. 205. The United States shall not enter into any contract for insurance that provides, directly or indirectly, for payment or reimbursement for abortions other than when the life of the mother would be endangered if the child were carried to term.

SEC. 206. No institution that receives Federal financial assistance shall discriminate against any employee, applicant for employment, student, or applicant for admission as a student, on the basis of that person's opposition to abortion or refusal to counsel or assist in the performance of abortions.

SEC. 207. Any party may appeal to the Supreme Court of the United States from an interlocutory or final judgment, decree, or order of any court of the United States regarding the enforcement of this Title, or of any State law or municipal ordinance based on this Title, or any judgment, decree, or order which adjudicates the constitutionality of this Title, or of any such law or ordinance. Any party to such case shall have a right of direct appeal to the Supreme Court of the United States on the same terms as

govern appeals pursuant to section 1252 of title 28, United States Code, notwithstanding the absence of the United States as a party to such case. Notwithstanding any other provision of Federal law, attorneys' fees shall not be allowable in any civil action involving, directly or indirectly, the provisions of this Title.

SEC. 208. If any provision of this Title or the application thereof to any person or circumstance is judicially determined to be invalid, the validity of the reminder of this Title and the application of such provision to other persons and circumstances shall not be affected by such determination.".

Mr. HELMS. Mr. President, the purpose of the amendment I have sent to the desk is to bring some of the Federal Government's legislative power to bear on the abortion problem. We, in Congress, have extensive constitutional authority to provide legal protection for unborn human beings, and this bill takes advantage of part of that authority.

The first section contains findings involving treaties, international bodies, foreign tribunals, American history, Senate hearings, and Supreme Court decisions relating to unborn human beings and the right to life. These findings will put Congress on record as clearly recognizing and affirming the right to life and rejecting the tragedy of abortion on demand.

The next four sections restrict the use of Federal funds for abortion. The traditional Hyde amendment formulation is employed, which last passed the Senate on May 21, 1981, by a vote of 52 to 43. Further funding limitations are included with the objective of getting the Federal Government totally out of the business of supporting abortion with tax money.

The sixth section is a freedom-of-conscience provision for medical personnel who work in institutions receiving Federal financial assistance and who object to taking part in providing abortions. Discrimination against such medical personnel on account of their prolife convictions is prohibited.

The seventh section provides for expedited Supreme Court review of cases arising out of State antiabortion statutes. This provision will insure that the Supreme Court gets an early opportunity to review its decision in Roe versus Wade. In addition, award of attorneys' fees is specifically prohibited in cases involving this bill in order to carry out the purpose of the bill in ending Federal financial support for abortion. The last section is a severability clause.

TRADITION AGAINST ABORTION

Mr. President, there has been a long-standing tradition in Anglo-American jurisprudence and in Western civilization generally that the protection of innocent human life is a preeminent value. On January 22, 1973, the Supreme Court made a radical break with that tradition. It decided the case of *Roe* v. *Wade,* 410 U.S. 113 (1973), and in the process, announced a newly discovered rule that the Constitution sanctions abortion on demand. The effects of Roe converted abortion from a felony into a constitutional right—overnight.

Swift was the change in centuries of law, and swift were the results in American culture. Since January 22, 1973, there have been more than 10 million abortions. A handful of babies survived the procedures and are alive today. The rest perished. Whatever the fate of the dead in the economy of God's merciful providence, we, on Earth, are without 10 million American children. Let us pause for a moment and think about that fact.

TRUE NATURE OF ABORTION

Mr. President, the United States has been given many great gifts. We have land rich in beauty and natural resources. We have a climate conducive to the most productive agriculture in the world. We have a heritage which includes the best of European and other cultures. We have a tradition of political freedom and economic opportunity which draws immigrants year after year. We have religious liberty and strong families. We have all this and much more.

But beyond these many things, I believe that we all would admit that our most precious gift in America is something else. We see it all around us, especially in the Capitol at this time of year. This gift carries us away from the daily grind into a world of hope and wonder. It is the gift—and mystery—of children. Can we ever overestimate the immense value of American children?

I say no, Mr. President, and everything in our heritage and culture says no, as well. The English poet, John Masefield, has stated the great truth about children in these lines:

And he who gives a child a treat
Makes joy-bells ring in Heaven's street,
And he who gives a child a home
Builds palaces in Kingdom come,
And she who gives a baby brith
Brings Saviour Christ again to Earth.
—The Everlasting Mercy.

Abortion is, tragically, not really about freedom of choice or reproductive rights. I wish it were. It is, instead, about children. It is about which children will live and which will not.

TRAGEDY OF LEGALIZED ABORTION

Mr. President, the fact of 10 million abortions since 1973 has created an unmistakable void in our land. We are missing our own children. Where there would have been laughter, there is silence. Where there would have been tears, there are no eyes to cry. Where there would have been love for the now living, there is nothing.

The plague of legalized abortion has inflicted, I am afraid, a mortal wound to the American ceremony of innocence. The most common surgical operation in the United States used to be tonsilectomy. A sort of all-American rite of youth, it ended with the patient's enjoying mounds of ice cream as therapy. Today, the most common operation is abortion. It ends with a dead baby, a childless mother, and a legacy of guilt.

Abortion, whether we, in Congress, like it or not, has become a national nightmare. Nearly one out of every three pregnancies is now deliberately ended through abortion. In some of our leading cities, there are more abortions than births. A huge amount of medical resources is devoted, not to preserving human life, but to destroying it at its earliest stages. No one can persuasively argue to me that these facts are evidence of health in a society enjoying "freedom of choice." On the contrary, they reflect a society whose very foundation is being torn up.

The destructiveness of legalized abortion is evident in the serious damage which it has inflicted on the American family. Fathers are now rendered powerless to protect the lives of their own offspring. Mothers are lured into abortion by a seductive doublespeak that ignores the reality of the unborn child and proclaims a false liberation. Siblings are denied the advantage of brothers and sisters. Teenagers are counseled, often by Government proxies, to have abortions without the knowledge of their parents. As a result of these and other factors, the family has been atomized, and the bulwark of a well-ordered society has thus been undermined.

NATURAL REVULSION TO ABORTION

Those who advance the cause of legalized abortion often say, "I am personally opposed to abortion, and I would never have one myself." Then they go on to make certain arguments in favor of abortion. I think it is profitable to consider the first part of their argument in which they say they have a personal feeling against abortion. If abortion is some sort of legitimate "reproductive right," why should there be, even among proponents, a repugnance toward the act of abortion itself? Why do the proponents abhor it "personally" and yet encourage others to have abortions?

The answer to this contradiction lies, I think, in the human heart. None of us—not even the proabortionists—can understand the facts of prenatal development, understand motherhood and the value of children, understand abortion techniques, and understand our own humanity and say, at the same time, that abortion is a good thing. Abortion makes us all a little weak-kneed. Even when it is called "termination of pregnancy," we naturally recoil from the thought of a mother and an abortionist destroying an unborn child.

In her book, "In Necessity and Sorrow" (Basic Books 1976), Magna Denes described the staff at an abortion hospital as "dedicated and full of doubt, committed but uneasy." (p. 17.) Where does this doubt come from? What makes health professionals uneasy about their work? It is, I am convinced, the inescapable truth engraved on every heart that human life is a special gift deserving our utmost respect. Beyond all the arguments on both sides of the abortion issue, it is ultimately true, as Pascal put it, that "the heart has its reasons which reason does not know." The human heart simply cannot conform to abortion.

BELIEVERS AND NONBELIEVERS IN AGREEMENT

Believers know this rule of the heart as God's law. They have it confirmed by revealed truth, reason, and tradition and articulated by the ancient command, "Thou shalt not kill." Nonbelievers reach the same conclusion by studying closely the facts of prenatal development and conceding that abortion is simply wrong.

Dr. Bernard N. Nathanson is a former abortionist who now argues against legalized abortion. He is a self-professed nonbeliever. In his book, "Aborting America," Dr. Nathanson discusses the Golden Rule in connection with abortion. He asserts that even apart from religion, the Golden Rule is "simply a statement of innate human wisdom." He says,

> Unless this principle is cherished by a society and widely honored by its individual members, the end result is anarchy and the violent dissolution of the society. This is why life is always an overriding value in the great ethical systems of world history. If we do not protect innocent, nonaggressive elements in the human community, the alternative is too horrible to contemplate. Looked at this way, the sanctity of life is not a theological but a secular concept, which should be perfectly acceptable to my fellow atheists." (p. 227.)

As a Christian, I have a different approach from Dr. Nathanson, although on the abortion issue, we reach a similar result. To my mind, every single abortion is an incalculable blow to the moral order ordained by Almighty God. It is God who creates individual human beings in His image and likeness, and we humans take part only as procreators. For this reason, human life, in the deepest sense, belongs to God.

GOD'S AUTHORITY AS BASIS FOR LAW VERSUS LEGAL POSITIVISM

Although many in public life may shrink from mentioning God, I do not fear to invoke His name and His authority as the ultimate basis for human law. As a body, we, in the Senate, invoke God's authority before beginning each session. This practice of an opening prayer goes back to the early days of the Republic and has its genesis in the traditional notion that man's law is subject to God's. We thus daily affirm in our institutional practice here in the Senate that our work as lawmakers is under the authority of a higher law.

The traditional invocation of God as a substantive basis for legislation does not, however, go down easily with most contemporary legal scholars. They have become caught up in the spirit of an intellectual age whose first article of faith is that man, not God, is the measure of all things. The wisdom of the "Laws of Nature and of Nature's God," as Thomas Jefferson put it, is lost on these legal scholars and their disciples in government. In the world of jurisprudence, this modern theory of law is generally known as legal positivism. Much to the detriment of our country, it has become ascendant in Congress, the executive departments, and most clearly in the Supreme Court. Legal positivism holds that the validity of a law derives from its being promulgated through regular procedures and rules, irrespective of its substantive content. In other words, no matter what the law says, it is valid as long as it complies with ordinary lawmaking procedures. Legal positivism admits of no higher law or check on manmade law. Hence, the concept of justice has no place in the positivist legal system.

According to Hans Kelsen, a leading positivist of the 20th century, law cannot be criticized as unjust. For Kelsen, justice "is not ascertainable of rational knowledge at all." He says, "Rather, from the standpoint of rational knowledge there are only interests and conflicts of interests . . . Justice is an irrational ideal." Hans Kelsen, "The Pure Theory of Law," 50 Law Quart. Rev. 474 (1934). At bottom, legal positivism denies outright traditional notions of a higher law given by God. The ideal of justice based on immutable principles of right and wrong is dispensed with.

Consistant with legal positivism, the idea has become accepted in certain circles in the United States that God has nothing to do with law and public policy. In debating issues in Congress, we, in 1982, are not, supposedly, to mention God or have recourse to religious authority. God is something exclusively for private life and is irrelevant to human law.

Mr. President, I stand here today to reject legal positivism root and branch. Justice is the legitimate object of all law, and God's guidance in attaining that end is indispensable. In failing to recognize these ancient understandings, human societies subject themselves to the destructive ways of men unimpeded by God's law. Men thus cut off from God have only themselves for authority, a fearful prospect which has always produced fearful consequences.

A CROSSROAD FOR AMERICA AND THE WEST

Legal positivism and its rejection of God's authority are alien to traditional Anglo-American jurisprudence, and they are destructive of American society. I say that it is time to return to our heritage and return to God and His law as the basis for our own.

According to Malcolm Muggeridge, the well-known British journalist, Western civilization is at a critical point, and the abortion controversy, he asserts, is syptomatic of the decision that confronts us. He says:

> Our Western way of life has come to a parting of the ways; time's takeover bid for eternity has reached the point at which irrevocable decisions have to be taken. Either we go on with the process of shaping our own destiny without reference to any higher being than Man, deciding ourselves how many children shall be born, when and in what varieties, which lives are worth continuing and which should be put out, from whom spare-parts—kidneys, hearts, genitals, brainboxes even—shall be taken and to whom allotted.
>
> Or we draw back, seeking to understand and fall within our Creator's purpose for us rather than to pursue our own; in true humility praying, as the founder of our religion and our civilization taught us: Thy will be done.—Muggeridge, "What the Abortion Argument is About," 1 Human Life Review 4, 5 (1975).

NATURAL LAW BASIS OF THE CONSTITUTION

Let me hasten to add at this point, Mr. President, before the positivists denounce me as destroying the Constitution, that what I am advocating today, although rarely heard in recent times, is solidly based in American tradition and does no violence whatsoever to the Constitution. In fact, the establishment of the United States grew out of the colonists' rejection of a British parliamentary positivism which claimed absolute prerogatives over colonial life. Let us not forget those powerful words of the Declaration of Independence, "We hold these Truths to be self-evident, that all Men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the Pursuit of Happiness." The founding document of our country acknowledges God as the source of legal rights and as the authority for human law.

Some critics undoubtedly will argue that resort to God's authority as a guide to legislation violates the establishment clause of the first amendment. The purpose of the establishment clause was not, however, to outlaw religious principles as a basis for law, but it was to prohibit congressional establishment of a national church. It is no violation of the first amendment to base our laws on religious principles. To do otherwise—to ignore God's revelation in human history—would be to reject the only sure foundation we have on Earth.

Writing in the March 19, 1982 issue of Christianity Today, Richard John Neuhaus, editor of Lutheran Forum, said, quite accurately,

> Today, talk of a "Christian America" is portrayed as rightwing extremism. But that America was as Christian as it was a republic was self-evident throughout most of our history. If we wonder why some people react so aggressively to the course of American society, we need to be reminded that some of the fundamental changes in our national life are very recent. . . [T]alk about our being a secular society and state began to gain currency only in the 1940's. From the Mayflower Compact in the 17th century through the social-gospel movement that ended in this century, it was assumed that in some significant sense this is a Christian nation. Opponents of that notion have failed in recent decades to eradicate that belief from American life.

American history is full of examples substantiating what Mr. Neuhaus says. In the context of the debate over court-imposed abortion on demand, it will suffice to note two assertions by the Supreme Court itself. In 1892, the Court agreed, "[W]e are a Christian people, and the morality of the country is deeply ingrafted upon Christianity . . . "*Church of the Holy Trinity* v. *United States*, 143 U.S. 457, 471 (1892). In 1931, the Court said, "We are a Christian people, according to one another the equal right of religious freedom, and acknowledging with reverence the duty of obedience to the will of God." *United States* v. *MacIntosh*, 283 U.S. 605, 625 (1931).

To protect innocent human life is the first purpose of any government which claims to be just. In this regard, we, in the United States, have failed over the past 9 years. The travesty of 10 million deaths from abortion is abundant evidence that Congress needs to act for the protection of unborn human beings.

THE CANCER OF ROE VERSUS WADE

In *Roe* v. *Wade*, 410 U.S. 113 (1973), the Supreme Court purported to interpret the Constitution to strip the States of virtually any power to protect unborn human beings. Beyond the fact that such a construction of the Constitution was clearly erroneous, having support in neither text nor history, the Supreme Court rendered its decision in a moral vacuum. In keeping with the theory and practice of legal positivism, the Court tried to develop the Constitution as something sui generis. The Court was without vision—the moral vision—that the Constitution can only be properly construed as informed by the subtle but unmistakable light of natural law.

Such natural law has as a fundamental tenet that human beings are created by God and that accordingly they all have the right to life. They have the right to be free from the aggression of others. To the extent that any manmade rule violates this principle, it cannot properly be called law but is instead a corruption of law. Although clothed with the power of law by virtue of the position of seven of the nine men on the Supreme Court in January 1973, Roe against Wade is nonetheless not law in an ultimate sense. It is a corruption of law, a corruption of the Constitution, and a corruption of American society.

Let us turn away from the corruption of Roe against Wade, but let us do so in a spirit of forgiveness and reconciliation. The abortion matter in the United States has caused much acrimony and hard feelings over these last 9 years. It is indeed an emotional subject. Many fine people with the best of intentions have been deceived by the rhetoric of "freedom of choice." But let us all, both as individuals and as Americans, make a resolute commitment to forgive each other for the errors which have been made. "To err is human, to forgive divine," according to the familiar counsel of Alexander Pope. The Divine in this case will lead us out of the abortion tragedy, and He will surely provide the means for national healing as well.

A CONGRESSIONAL REMEDY

Mr. President, Congress has the moral duty and the constitutional authority to ameliorate the continuing effects of Roe. The bill I am sponsoring today goes part of the way toward providing the appropriate legislative remedy. In essence, it does three things:

First, employing the unquestioned congressional power of the purse, the bill seeks to stop all Federal financial support for abortion. Even the Supreme Court did not venture so far from American tradition and the Constitution as to deny Congress its appropriation power. Although a determined positivist minority dissented, the majority of the Court held that the Hyde amendment, cutting off abortion funding, was constitutional in *Harris* v. *McRae*, 448 U.S. 297 (1980). The current bill seeks a permanent defunding of abortion insofar as that can be done by any one Congress.

Second, the bill contains a freedom-of-conscience provision for medical personnel who object to participation in performing abortion. This provision prohibits discrimination against prolife medical personnel in any institution receiving Federal financial assistance.

Third, the bill establishes an expedited Supreme Court review for cases arising from enforcement of traditional State antiabortion laws which may occur in light of the bill's findings on the beginning of human life and the errors of Roe against Wade. These findings constitute, at a minimum, a congressional repudiation of the construction of the Constitution put forth by the majority in Roe against Wade. After the loss of 10 million unborn American children through legalized abortion, the time is overdue for such a repudiation.

SEPARATION OF POWERS

Some have engaged in the sophistry that Congress may not overturn a Supreme Court decision by enactment of a statute. In a strict sense, this statement is true: Congress may not reverse the binding decision between litigants of the highest Federal appellate court. But Congress may indeed interpret the Constitution differently from the Supreme Court and exercise its powers consistent with such interpretation. In so doing, Congress does not overturn a case. The order entered by the Court affecting the litigants in Roe stands. The litigants are bound. What does not stand—what cannot stand under the moral law and the Constitution itself—is a general political rule that the American Constitution renders unborn human beings mere things to be disposed of at will and that Congress is powerless to act.

In this connection, it should be recalled that the primary function of courts in our system of government is to decide cases at law and suits in equity. For appellate courts, including the Supreme Court, their job is to correct errors of law made in the courts below. In doing this, they must sometimes interpret the Constitution and declare a statute invalid. Their interpretation of the Constitution, however, is for the purpose of deciding the particular case before them. It is not for the purpose, nor have the courts been given the power, of acting as the exclusive arbiter of the meaning of the Constitution. Within Congress jurisdiction—that is, legislative power granted under the Constitution—Congress itself must interpret the Constitution pursuant to the oath of office of its Members.

This analysis of constitutional separation of powers is not new. It is supported by many precedents in American history. See, for example, Thomas Jefferson, Letter to Abigail Adams, September 11, 1804 (VIII The Writings of Thomas Jefferson 310 (Ford ed. 1897)); Thomas Jefferson, Letter to William C. Jarvis, September 28, 1820 (X The Writings of Thomas Jefferson 160 (Ford ed. 1899)); Andrew Jackson, Veto Message on Bill to Recharter the Bank of the United States, July 10, 1832 (II Messages and Papers of the President 576, 581-83 (Richardson ed. 1896)); and Abraham Lincoln, Speeches during the Lincoln-Douglas Senatorial Campaign, July, October 1858 (II The Collected Works of Abraham Lincoln 494, 516 (Basler ed. 1953); III id, 255). What would be new is to accept the argument that the Supreme Court is not only the supreme judicial organ but occupies a position of political supremacy over the whole Federal Government.

Let us briefly review statements of three Presidents on this point. First, Thomas Jefferson wrote:

[T]he opinion which gives to the judges the right to decide what laws are constitutional, and what not, not only for themselves in their own sphere of action, *but for the Legislature and Executive also, in their spheres, would make the judiciary a despotic branch.*" Letter to Abagail Adams, supra (emphasis added).

Second, President Andrew Jackson said, in his message of 1832 vetoing the act to recharter the Bank of the United States:

The authority of the Supreme Court must not, therefore, be permitted to control the Congress or the Executive when acting in their legislative capacities, but to have only such influence as the force of their reasoning may deserve." II Messages and Papers of the Presidents, supra.

A third notable antecedent in American history, relevant to separation of powers in abortion and Roe against Wade, involves slavery and the Dred Scott decision. President Lincoln, in his first inaugural address, March 4, 1861, articulated the proper role of the Supreme court:

I do not forget the position assumed by some, that constitutional questions are to be decided by the Supreme Court; nor do I deny that such decisions must be binding, in any case, upon the parties to a suit, as to the object of that suit, while they are also entitled to a very high respect and consideration in all parallel cases by all other departments of the government. And, while it is obviously possible that such decision may be erroneous in any given case, still the evil effect following it, being limited to that particular case, with the chance that it may be overruled and never become a precedent for other cases, can better be borne than could the evils of a different practice. At the same time, the candid citizen must confess that if the policy of the government, upon vital questions affecting the whole people, is to be irrevocably fixed by decisions of the Supreme Court, the instant they are made, in ordinary litigation between parties in personal actions, the people will have ceased to be their own rulers, having to that extent practically resigned the government into the hands of that eminent tribunal. *The Writings of Abraham Lincoln* 262 (A. Lapsley ed. 1906).

President Lincoln's statement is as appropriate today as it was in 1861 and should be recalled whenever the argument is made that the Supreme Court is somehow the supreme branch of the entire Federal Government.

The doctrine of separation of powers under our Constitution is not always simple in its application, and I do not intend to lay down today a single rule of thumb that applies under all circumstances. In the abortion matter, however, it is clear that the Supreme Court misconstrued the Constitution and that Congress has certain power to ameliorate the continuing effects of that error. Let us proceed with dispatch to recognize the right to life under American law.

Mr. HELMS. Mr. President, I ask for the yeas and nays.

The PRESIDENT pro tempore. Is there a sufficient second?

Mr. BUMPERS. Parliamentary inquiry, Mr. President.

The PRESIDENT pro tempore. A parliamentary inquiry is not in order after the request for the yeas and nays until there is a determination of whether there is a sufficient number. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. BUMPERS. Parliamentary inquiry, Mr. President.

The PRESIDENT pro tempore. The Senator from Arkansas will state it.

Mr. BUMPERS. Is the amendment of the Senator from North Carolina divisible?

The PRESIDENT pro tempore. The amendment of the Senator from North Carolina is an amendment to strike and insert and, under the rules, an amendment to strike and insert is not divisible.

Mr. WEICKER addressed the Chair.

The PRESIDENT pro tempore. The Senator from Connecticut.

UP AMENDMENT NO. 1252

Mr. WEICKER. Mr. President, I send to the desk a perfecting amendment of the bill proposed to be stricken out and ask it be read.

The PRESIDENT pro tempore. The clerk will report.

The legislative clerk read as follows:

The Senator from Connecticut (Mr. WEICKER) proposes an unprinted amendment numbered 1252 as a perfecting amendment to unprinted amendment No. 1251.

Mr. WEICKER. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

Mr. HELMS. I think it should be read.

The PRESIDENT pro tempore. Is there objection?

Mr. HELMS. I object.

The PRESIDENT pro tempore. Objection is heard.

The legislative clerk read as follows:

At the end of the language proposed to be stricken by the committee substitute add the following:

SEC. . Nothing in this act shall be interpreted to limit in any manner the Department of Justice in enforcing the Constitution of the United States nor shall anything in this act be interpreted to modify or diminish the authority of the courts of the United States to enforce fully the Constitution of the United States.

Mr. WEICKER. Mr. President, I ask for the yeas and nays.

The PRESIDENT pro tempore. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

SEVERAL SENATORS addressed the Chair.

The PRESIDENT pro tempore. The Senator from Montana.

UP AMENDMENT NO. 1253

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

The PRESIDENT pro tempore. The clerk will report.

The bill clerk read as follows:

The Senator from Montana (Mr. BAUCUS) proposes an unprinted amendment numbered 1253.

At the end of the pending amendment, add the following: It is the sense of the Congress that the federal courts must remain open to litigants whose claims arise out of the federal Constitution. Furthermore, it is emphatically the province and duty of the judicial department to say what the law is and Article 5 of the Constitution specifically provides a mechanism to respond to the Constitutional decisions of the Supreme Court.

Mr. BAUCUS. Mr. President, I ask for the yeas and nays.

The PRESIDENT pro tempore. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. HELMS addressed the Chair.

The PRESIDENT pro tempore. The Senator from North Carolina.

Mr. HELMS. Mr. President, I move to table the underlying amendment and I ask for the yeas and nays.

The PRESIDENT pro tempore. Which amendment is the Senator moving to table?

Mr. HELMS. The Weicker amendment in the first degree, the underlying amendment.

The PRESIDENT pro tempore. The yeas and nays have been called for. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDENT pro tempore. The question is on agreeing to the motion of the Senator from North Carolina (Mr. HELMS) to table the amendment of the Senator from Connecticut (Mr. WEICKER).

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 Wyoming (Mr. SIMPSON) is necessarily absent.

Mr. CRANSTON. I announce that the Senator from Hawaii (Mr. MATSUNAGA) and the Senator from Tennessee (Mr. SASSER) are necessarily absent.

The PRESIDENT pro tempore. Are there any other Senators in the Chamber wishing to vote?

The result was announced—yeas 38, nays 59, as follows:

[Rollcall Vote No. 334 Leg.]

YEAS—38

Abdnor	Grassley	Murkowski
Armstrong	Hatch	Nickles
Byrd, Harry F., Jr.	Hawkins	Percy
D'Amato	Helms	Pressler
DeConcini	Humphrey	Proxmire
Denton	Jepsen	Quayle
Dole	Johnston	Randolph
Domenici	Kasten	Roth
East	Laxalt	Stennis
Exon	Long	Symms
Ford	Lugar	Thurmond
Garn	Mattingly	Warner
	McClure	Zorinsky

NAYS—59

Andrews	Dodd	Melcher
Baker	Durenberger	Metzenbaum
Baucus	Eagleton	Mitchell
Bentsen	Glenn	Moynihan
Biden	Goldwater	Nunn
Boren	Gorton	Packwood
Boschwitz	Hart	Pell
Bradley	Hatfield	Pryor
Brady	Hayakawa	Riegle
Bumpers	Heflin	Rudman
Burdick	Heinz	Sarbanes
Byrd, Robert C.	Hollings	Schmitt
Cannon	Huddleston	Specter
Chafee	Inouye	Stafford
Chiles	Jackson	Stevens
Cochran	Kassebaum	Tower
Cohen	Kennedy	Tsongas
Cranston	Leahy	Wallop
Danforth	Levin	Weicker
Dixon	Mathias	

NOT VOTING—3

Matsunaga	Sasser	Simpson

So the motion to lay on the table Mr. Weicker's amendment (UP No. 1252) was rejected.

Mr. WEICKER. Mr. President, I move to reconsider the vote by which the motion was agreed to.

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

The motion to lay on the table was agreed to.

Mr. WEICKER addressed the Chair.

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

Mr. WEICKER. Mr. President, I first want to thank my colleagues for the courtesy that they have extended to me to speak on matters before this Chamber. I thought that the tabling motion, although in order, was a little premature, considering that I had not had an opportunity to address myself to the subject matter which has occupied the Chamber for the last several days, or the new matter introduced by the distinguished Senator from North Carolina, or the amendment of the Senator from Connecticut, or the amendment of the Senator from Montana.

Now, Mr. President, in essence, what we have before us is another court-stripping amendment by the distinguished Senator from North Carolina. Maybe the distinguished Senator from North Carolina would be pleased to present a constitutional amendment that eliminated the third separate-but-equal branch of Government and just have the President and Congress. Then we would not have to go through this great series of events whereupon every time we disagree with something in this country we make certain that there shall be no judicial review.

I find it ironic that anyone claiming to be of a conservative bent would try to decimate the Constitution of the United States and, de facto, eliminate the protection which all of us as Americans are provided through the judicial system.

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

Mr. WEICKER. I wonder if my good friend from North Carolina, who tried to foreclose me from saying anything, would now allow me to say a few words.

Mr. HELMS. Delighted. I just wanted to ask one question of the Senator.

Mr. WEICKER. On that subject I reiterate that no one is confronting here the substance of prayer in school—that will be discussed—or the substance of abortion. Rather, we are confronted very baldly with the issue of whether or not the Congress of the United States by statute can overrule the courts of this Nation—the issue of court stripping. I pointed out to my colleagues, when we were on the subject of busing, that the problem there happened to be a problem that related to the opportunities of black schoolchildren. I said then that if you pursue this principle then nothing is safe, none of us; the next thing you know it will be Senators of the United States who are not afforded the protection of the Constitution, and then maybe businessmen and right on down the list. And now we are seeing this come to pass. I think the time has come to say no, to vigorously pursue that which is entrusted to our branch of the Government, to try to devise positive solutions to problems that do exist in this Nation, but not to try to eliminate one of the other separate-but-equal branches of Government.

That certainly is not a conservative's approach toward our Constitution; rather, it is the most radical approach that anyone could think of.

I have in my hand a letter of August 5, 1982, from the American Bar Association. I should like to read it to my colleagues because I think that it very well articulates the problem that confronts us here this afternoon. It is from the American Bar Association, office of the president, David Brink:

AMERICAN BAR ASSOCIATION,
Chicago, Ill., August 4, 1982.

DEAR SENATOR: On behalf of the American Bar Association, I am writing in opposition to S. 1742, the Voluntary School Prayer Act, S. 158 and S. 1741, the Human Life bills, and S. 2148, to protect unborn human beings. Senator Jesse Helms, the chief sponsor of these measures, has obtained a commitment from the Majority Leader to bring these issues up for Senate consideration either as free standing issues, or as amendments to some other piece of legislation, perhaps the debt ceiling bill. The ABA strongly urges that these proposals be rejected by the Senate.

The ABA takes no position on the issues of school prayer and abortion addressed by these bills. We are emphatically opposed to these bills, not because of their subject matter, but because of the means by which they seek to change constitutional law. If enacted, any one of these measures would constitute an unprecedented attack on the constitutional function of the federal courts and establish unwise policy.

Although different in subject matter and approach, all four measures share a common impermissible goal. They all pose a dangerous threat to the independence of the federal judiciary and undermine the fundamental principle of judicial review. S. 1742 would remove the jurisdiction over all school prayer cases from the Supreme Court as well as the lower federal courts. S. 158 and S. 1741 would withdraw the jurisdiction to hear abortion cases from the lower federal courts. And S. 2148 redefines the constitutional term "person" in Section 5 of the Fourteenth Amendment.

I appreciate the fact that Senator Helms has very strongly-held views on abortion and prayer in schools. I respect his right to hold those views and do not question the sincerity which prompts his actions. However, we of the ABA believe that his proposals go far beyond the sensitive moral and social issues which are the subject matter of these bills. As a matter of both law and policy, our Association believes that efforts to change constitutional law by means other than the amendment of the Constitution should not be attempted. In this we share the views of the preponderance of legal scholars, former Attorneys General, Solicitors General, jurists, and leaders of other national legal organizations. All of us believe that these proposals to limit the jurisdiction of federal courts to hear or grant remedies represent dangerous policy and are unconstitutional. We are deeply concerned that the basic tripartite structure of our government, with its delicate system of checks and balances, be preserved.

The constitutional issues raised by these proposals are complex and require thorough consideration. The fact is that the Senate Judiciary Committee has been actively reviewing these issues throughout this session, and has yet to complete action on them. This clearly demonstrates that there are no simple answers to the substantial constitutional and policy questions they raise. These bills are currently at various stages in the legislative process: S. 158 was reported to the full Judiciary Committee on July 9, 1981 and as amended is now identical to S. 1741; and although S. 1742 was not referred to the Committee, it is identical to S. 481 which has been pending in the Separation of Powers Subcommittee since February 27, 1981. The issue of prayer in public schools is currently the subject of full Judiciary Committee hearings on S.J. Res. 199, a proposed constitutional amendment providing for voluntary prayer in public schools. These hearings will no doubt deal with many of the procedural, constitutional and policy questions raised by S. 1742.

I would also point out that the current Attorney General's letter opinion of May 6 on S. 1742 raises fundamental and difficult questions concerning congressional power over Supreme Court jurisdiction. He cautions Congress to consider S. 1742 in light of the principles articulated in his letter and to avoid testing the limits of its authority. Both as a matter of constitutional law and as a matter of national policy, his analysis clearly leads to the conclusion that the withdrawal of jurisdiction from the Supreme Court proposed in S. 1742 is unconstitutional, despite his final statement that he will be willing to argue for its constitutionality. In our view, a correct analysis of basic constitutional principles would make any bill which similarly removes jurisdiction in constitutional cases unconstitutional as applied to any and all levels of the federal judiciary.

S. 2148, like S. 158, S. 1741, and S. 1742, is constitutionally objectionable because it also attempts to change settled constitutional law by ordinary legislation. This bill de-

serves a great deal more scrutiny than it has been given. It was immediately placed on the Senate calendar after introduction, and no comparable legislation has ever been referred to Committee. Very serious constitutional questions have been raised about its approach, questions which in all fairness are too complex to be considered on first impression during the heat of what is likely to be another highly emotionally-charged debate on abortion. We therefore respectfully urge that S. 2148, or any similar proposal, not be acted upon by the Senate at this time.

The Association believes that the effort to add any of these measures as amendments to essential legislation, or to circumvent the ongoing committee consideration of the constitutional and policy issues involved, would be wholly inappropriate and should be strenuously resisted. We urge that the legislative process be permitted to work as intended.

Sincerely,

DAVID R. BRINK.

He has an enclosure, a very brief statement, signed by the following: Benjamin R. Civiletti, Attorney General 1979-81; Elliot L. Richardson, Attorney General 1973; Ramsey Clark, Attorney General 1967-69; Nicholas Katzenbach, Attorney General 1965-66; Wade McCree, Solicitor General 1977-81; Erwin N. Griswold, Solicitor General 1967-73; Archibald Cox, Solicitor General 1961-64; J. Lee Rankin, Solicitor General 1956-61; David R. Brink, president, American Bar Association; Arnette R. Hubbard, president, National Bar Association; W. Edwin Youngblood, president, Federal Bar Association; E. N. Carpenter, president, American Judicature Society; Alston Jennings, president, American College of Trial Lawyers; Justice Arthur J. Goldberg; Judge Shirley Hufstedler.

The statement, which is the enclosure, reads as follows:

MESSAGE TO CONGRESS

JUDICIAL INDEPENDENCE AND COURT STRIPPING LEGISLATION

We are opposed to the pending legislative restrictions on the jurisdiction of federal courts to hear or grant remedies in constitutional cases involving such controversial issues as school desegregation and busing, prayers in public schools and abortion. We urge that Congress, in resolving these issues, not respond to dissatisfaction with particular court decisions by attempting statutorily to rewrite constitutional law. Although the pending bills deal with different subject matters, and present varying constitutional and policy questions, they share a common impermissible purpose. All are attempts by Congress to do legislatively what should be done by constitutional amendment. We believe that such efforts pose a dangerous threat to the integrity and independence of the federal judiciary in our constitutional system of government.

As individuals, we hold varying views on the substantive policy issues which are the subjects of these proposals, and as a group we take no position on them. But we are united in the belief that these proposals threaten our fundamental constitutional principles: the independence and supremacy in constitutional questions of the federal judiciary, the separation of powers, and the system of checks and balances. The enactment of any one of these proposals curbing the authority of the courts to hear cases or grant remedies for constitutional violations would establish an unworthy precedent.

Because the policy considerations are so substantial, and because the constitutional propriety of these bills is open to serious reservations, we urge the Congress to reject all efforts to remove federal court jurisdiction over constitutional rights and remedies, in whatever form they are presented.

Mr. President, that is exactly what we have before this Chamber at the present time.

I know that most of my colleagues probably feel a certain uneasiness about my good friend, the Senator from North Carolina, and I sharing the floor, that maybe matters might slow down a bit. Such is going to be the case. But I also point out that it was just recently that the Senate of the United States passed upon a constitutional amendment, and I believe this Senator spoke for, at most, 5 to 7 minutes on that matter.

That was the way to handle it. I was very much against the balance-the-budget amendment to the Constitution, and I so stated, and I so voted. But that was the way to do it. That is the proper procedure.

If we follow the procedures—never mind the substance—advocated by the distinguished Senator from North Carolina, then, believe me, the Constitution becomes a worthless document.

This generation has used up the capital that has been acquired by generations throughout hundreds of years. The last thing that is left out there untouched, at least in terms of what it stands for, is the Constitution of the United States.

Are we going to turn that into a scrap of paper, also, so as to give vent to our particular feelings at this moment in history, or are we going to at least leave that unsullied and untouched, both as to substance and procedure, for our children?

Mr. President, I do not intend to talk at length at this particular moment, because I think other Senators wish to make comments on this matter. Indeed, I am quite prepared to respond to any question, and I am prepared to get into a lengthy discussion on school prayer before we are through.

I think the majority leader was quite correct in giving a period of time for an airing of these matters, but I assure Senators that so long as they take the form they are presently in, which is to circumvent the amendment process of the Constitution of the United States, we are going to do very little business on the floor of the U.S. Senate insofar as this week is concerned, or whatever weeks we are required to be here.

I am willing to take my licks and accept my defeats—and I did on the balanced budget amendment—when they are done according to the constitutional procedures of this country. But when in passion, however well meaning that passion, we try to circumvent those constitutional procedures, then I assure my good friend from North Carolina that recesses and holidays and all the rest of it will mean very little. I am prepared to stay here just as long as he would like to stay here. Maybe we should grant a vacation to all our colleagues and the two of us could hold the floor together and enjoy each other's company in the next couple of weeks.

In any event, it is for that reason, principally, without getting into the substance of these other matters, which I am sure will come later, that I present myself as I do in terms of this amendment.

(Mr. GOLDWATER assumed the Chair.)

Mr. HELMS. Mr. President, will the Senator yield, without losing his right to the floor?

Mr. WEICKER. I yield. I do not intend to hold the floor.

Mr. HELMS. I say to my friend, as I have said on many occasions, that we happen to differ on this issue and we differ on the approach.

I suppose there may be as many as 10 Senators who understood the significance of the last vote. If they had, many more no doubt would have voted the other way. But that is beside the point.

Let me ask the Senator this: Did he vote for the voting rights extension?

Mr. WEICKER. Yes; indeed, I did.

Mr. HELMS. Did the voting rights extension limit the jurisdiction of the court?

Mr. WEICKER. I say again that there they carefully crafted a way to give additional rights—additional rights. What we cannot do is to restrict the rights guaranteed by the Constitution. We always try to expand rights legislatively. But to eliminate one of the branches of Government, I say that moves into the realm—if it is going to be done—of a constitutional amendment.

We cannot legislatively reduce the rights of our fellow Americans. That, in essence, is what the Senator from North Carolina is trying to do.

Mr. HELMS. That, in essence, is what the Senator did when he voted for the voting rights extension. You cannot have one set of standards on one occasion and a different set of standards on another.

Also, there is article III of the Constitution, which pretty clearly defines the right—and I think the duty—of Congress to limit the jurisdiction of the Court when Congress decides that the Court is intruding into matters too far, in which they should not be involved.

I thank the Senator.

Mr. BAUCUS. Mr. President, will the Senator from Connecticut yield for a question?

Mr. WEICKER. I yield the floor.

Mr. BAUCUS. Mr. President, I applaud the Senator from Connecticut and others here who are correctly pointing out to the Senate and to the country that the issue before us is not a school prayer bill. It is not an abortion bill. Rather, the issue before us is whether or not this Congress is going to limit the jurisdiction of the U.S. Supreme Court.

These are court-stripping bills. It is not a school prayer bill. It is not an abortion bill.

When the school prayer issue came before this body not too long ago, I daresay that at that time most Members—indeed, 80 or 90 percent of the Members—of this body saw that issue as a school prayer issue and not a court-stripping issue because of the way that issue was framed.

I think it is very important and it is critical that we today, before deciding how to vote on the underlying amendment of the Senator from North Carolina, that is, the school prayer amendment, and the second-degree amendment offered by the Senator from North Carolina as an abortion amendment, realize what we are doing if we vote for those amendments.

There are various ways to accomplish goals. We all know that when we disagree with the decision of the U.S. Supreme Court the way our Founding Fathers set out for us to change those decisions we disagree with is to offer and pass amendments to the Constitution. That in the wisdom of our Founding Fathers is the course that they saw as the primary way to overturn decisions of the U.S. Supreme Court.

In these days sometimes we are a little impatient. Sometimes we disagree with the decisions of the Supreme Court. In my judgment it is that impatience which has led to the efforts here today by statute to either overturn the Supreme Court decision or limit the jurisdiction of the Supreme Court, that is, preclude the Supreme Court from hearing any cases, any litigation on that particular issue.

I suggest that it is a double-edge sword that those who today do not like certain "liberal" decisions of the U.S. Supreme Court and who by statute are trying to either overturn those decisions or by limiting jurisdiction of the Supreme Court trying to preclude the Supreme Court from making those decisions, are going to not too many days from today, maybe a few days, maybe a few weeks, a few months, a few years, find that that very same vehicle is going to come back and haunt them; that is, a more liberal Congress might limit the Supreme Court review over right to bear arms or other provisions of the Constitution which are so near and dear to the hearts of some more conservative elements of American society.

We do have a pluralistic society. There is a divergence, a variety in American society we have to maintain and respect, and we should not so easily try to amend or overturn the Supreme Court decisions by statute by simple majority. That is a whimsical way to approach fundamental questions.

Rather I think we should respect the more thoughtful way to overturn decisions of the Court and that is by constitutional amendment.

Mr. President, I also do not intend to unnecessarily prolong this discussion. I think it important for this body to vote on these amendments. But I also think it is absolutely critical and essential for us, this body, and the country to realize what is happening here with these amendments; that is, they are court-stripping amendments.

Certainly the school prayer amendment is a court-stripping amendment. The abortion amendment is not really a court-stripping amendment. It is in the nature of an effort by statute to overturn the court's decision. So it is in the same kind of problem.

It is important, I think, to realize that is what is happening here today and realize that if we want to overturn the U.S. Supreme Court we should overturn it by constitutional amendment, get new Justices on the court, whatever the standard traditional institutional way that our Founding Fathers had in mind.

Mr. President, I wish now in slightly more detail explain to the Senate again why I very much believe that it is important to get this view up before this body.

PROCEDURAL CONCERNS

In the 96th Congress, as I stated earlier, the Senate voted favorably on an amendment offered by the Senator from North Carolina as an amendment to S. 450, a bill affecting the mandatory jurisdiction of the Supreme Court.

It is important to note that when the full Senate voted on the Helms amendment in April 1979, the vote was perceived as a vote for school prayer. There was little awareness of the implications of the removal of Supreme Court jurisdiction over a constitutional issue that was in that bill. The votes on the issue took place without serious discussion and consideration of the role of the Federal courts in the American system of government. The offering of the amendment came as a surprise to most Members of the Senate and took place without committee hearings, without any committee consideration, and without any input from constitutional scholars, the legal community, or interested organizations.

The amendment being offered by Senator HELMS today is identical to the language of the Helms amendment and is similar to S. 481, which was introduced at the beginning of this Congress by Senator HELMS. That bill is currently pending before the Separation of Powers Subcommittee, of which I am the ranking minority member.

Hearings on the bill were scheduled for last September and October but were canceled. They have never been rescheduled.

There have never been Senate hearings on the Helms proposal, and no subcommittee or committee of the Senate has ever considered the underlying legislation.

I think it is important for the record to show that the Helms legislation is being brought directly to the Senate floor as an amendment to the debt limit bill—without committee consideration. What is more, it is the proponents of the proposal who have failed to schedule hearings or request committee consideration.

THE REAL SUBSTANTIVE ISSUE

Apart form these procedural concerns, there are serious constitutional and public policy questions raised by the Helms amendment.

In the final analysis, the issue presented by his amendment is not the controversy surrounding the Supreme Court's school prayer decisions, Engel against Vitale or Abbington against Schempp. Rather, the issue is how should American citizens and Congress respond to controversial decisions of the Supreme Court.

Until recently, the constituencies opposed to socially controversial Supreme Court decisions have sought the adoption of constitutional amendments to overturn them. This alternative set out in article V of the Constitution requires a resolution adopted by a two-thirds majority of Congress or a simple majority of two-thirds of the State legislatures followed in either case by ratification of three-fourths of the States.

In the face of these rigorous requirements, these constituencies have failed to mobilize sufficient support for enacting constitutional amendments. Therefore, their focus has shifted to a set of bills which, although requiring only a majority of Congress and a Presidential signature, may conceivably accomplish the same end as a constitutional amendment.

Specifically, they seek the enactment of legislation which would remove Federal court jurisdiction over particular controversial issues. If these bills are enacted, the Federal courts will no longer be able to hear cases or enforce previous decisions in subject areas where a majority of Congress believed the courts should be precluded from functioning.

The Helms amendment before us today is one of these attempts. It

would strip the Supreme Court and the lower Federal courts of their authority to hear school prayer cases.

Before we cast our votes on his amendment, I believe we should focus our attention on how his amendment would really impact on the Constitution, the courts, and on Congress itself.

Mr. President, I have, frankly, a bit more to say on this subject. I see the Senator from Colorado is on the floor and he wishes to address this issue as well.

Before yielding to the Senator from Colorado, I wish to make it crystal clear that I have my own views on school prayer. I have some questions about the Supreme Court decision, but my point in speaking here today has nothing to do with the merits of that decision. Rather it is the process by which we attempt to change the Supreme Court decisions. I think that process is so fundamentally important that it does not make much difference to me what the merits of the Supreme Court decisions are so long as we do not try to overturn those decisions by statute, and so long as we do not try to limit and preclude Supreme Court jurisdiction by statute because I think that is fundamentally a wrong and improper way of going about changing our Government.

Mr. HART. Mr. President, I wonder if the Senator from Montana will yield?

Mr. BAUCUS. I yield to the Senator from Colorado without losing my right to the floor.

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

Mr. HART. Mr. President, I thank the Senator from Montana. I wish to very much support the thrust of and the direction of his remarks because he and I and, the Senator from Connecticut and others, share absolutely the fundamental premise of this argument before the Senate today, and that is that this latest attempt to divest the Supreme Court and inferior Federal courts of their jurisdiction to hear cases arising out of the school prayer laws should be seen for what it is, a brazen attempt to overturn the court decisions in those school prayer areas by damaging the integrity of the Federal courts as well as the historic independence of the judicial branch of our Government.

The amendment, particularly the school prayer amendment before the Senate today, is not only ill-considered and unwise, it is unconstitutional according to some of the most preeminent constitutional scholars in our country. If it and similar pieces of legislation are passed, our system of constitutional government will be shaken to its very foundation.

We all hold different views on these extremely controversial matters. Our differences on the right of abortion or the best way to achieve high-quality education should not blind us from clearly discerning that this amendment represents an unconstitutional infringement on the authority of the judicial branch and, as such, could well impair the ability of the Federal courts to protect the rights of all Americans.

Concern about passage of the so-called court-stripping bills is found among both Democrats and Republicans, Liberals, and Conservatives, and it is not a partisan issue nor is it an ideological issue. It is at its very essence and at its foundation a constitutional issue. For the Constitution—our national charter—is at stake, and the Constitution belongs to all of us.

From the earliest of days of the Republic, numerous efforts have been undertaken to curb the integrity and independence of the courts. In the early years of this century, at a time when the courts were striking down social welfare legislation, legislation was introduced to strip the Supreme Court of its power to judge the constitutionality of statutes. In 1937, President Roosevelt, stymied by the actions of what he viewed as a reactionary Court, tried to create a majority on the Court by packing its membership. And again in the 1950's—efforts were made to deprive Federal courts of their jurisdiction over cases arising from antisubversive laws. These measures failed, and with good reason. Attempts to obstruct the independence and integrity of the judicial branch were not wise then, and, they are not wise today. The Attorney General, William French Smith, has written: "History counsels against depriving the Court of its general appellate jurisdiction over Federal questions."

Proponents of the court-stripping measure we are considering today argue that constitutional authorization for such action exists in the exceptions clause of article III of our Constitution. But neither a close examination of the events at the Constitutional Convention nor a serious study of the theories of government which undergird our system provide support for such an expansive interpretation of the exceptions clause. In fact, earlier this year Attorney General Smith wrote Chairman THURMOND regarding the meaning of the exceptions clause:

> (The) constitution of the exceptions clause that is most consistent both with the plain language of the clause and with other evidence of its meaning is that Congress can limit the Court's appellate jurisdiction only up to the point where it impairs the Court's core functions in our constitutional scheme.

It should not take a legal scholar to see that, by impairing the ability of our courts to rule on school prayer cases arising under the religious freedom standards of the first amendment, it affects the Court's core function.

This amendment is unconstitutional because it fundamentally obstructs the principles at the heart of our constitutional scheme.

The framers of our Constitution, deeply steeped in the shortcomings of human nature and endowed with a superb knowledge of politics and government, designed a governmental structure based on separation of powers. The three branches of Government—executive, legislative, and judicial—would be largely independent of each other, and this separation would be enforced through the mechanism of checks and balances. If no one branch could dominate the other, they reasoned, this would lessen the opportunity for one group or individual to dominate the Government. As any school child knows, the system was designed to check tyranny.

Not only were the framers concerned about a general concentration of power, but they were especially on guard against domination of the other branches by the legislation. Popular majorities, working through their elected representatives in the legislature, could pass laws harmful to individual rights and liberties. In the Notes on Virginia, Jefferson writes:

> An elective despotism was not the government we fought for, but one which should not only be founded on free principles, but in which the powers of government should be so divided and balanced among several bodies of a majesty, as that no one could transcend the legal limits without being effectively checked and restrained by the others.

Echoing Jefferson, Madison wrote in the Federalist:

> The accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of a one, a few, or a many, and whether hereditary, self-appointed, or elected, may justly be pronounced the very definition of tyranny.

In Federalist No. 78, Alexander Hamilton stated that it is the duty of the courts "to declare all acts contrary to the manifest tenor of the Constitution void." Without this, he said, "all reservations of particular rights or privileges would amount to nothing." This idea received classic articulation in 1803 in the preeminent case of Marbury against Madison when Chief Justice Marshall declared that "it is the province and the duty of the judicial department to say what the law is." Since that time, the role of the Supreme Court as constitutional arbiter has not been seriously questioned.

Since the Judiciary was given the power of neither the pen nor the sword, it was immediately viewed by the framers as the weakest of the three branches. The power of judicial review by an independent judiciary, not beholden to the people or their elected representatives for either con-

tinued maintenance in office or compensation, was viewed as the secret to preventing the executive or legislative branches from invading fundamental rights and liberties. That justification is still relevant. In recent years, it has been Federal judges who have been most active in protecting individual rights and filling in basic constitutional guarantees. And yet this Chamber is seriously considering taking away their powers to do just that.

If this amendment is passed by the Congress, the legislature would be free to amend the agenda of the Court at will. If Congress has the power to determine what rights may be reviewed, it can determine what rights exist. This amendment would delete a crucial aspect of our constitutional scheme of checks and balances—for the Judiciary would act at the whim of Congress. The Federal courts would be free to enforce constitutional guarantees only if 51 percent of both houses of Congress agreed with their interpretation. That is not the way our Constitution is supposed to work. Moreover, passage of this amendment will create a dangerous precedent. The pressure to respond in a similar manner will increase in the years ahead. Future areas of controversy could be removed from the jurisdiction of the Court. Today, we are considering school prayer. In the future it could be due process or trial by jury or freedom of the press.

This amendment is unconstitutional because it represents a wholesale assault on the historic role of the Judiciary in our constitutional framework. Congress does not possess unlimited power over the jurisdiction of the Federal courts. As Attorney General Smith has said:

> Congress may not, however, consistent with the Constitution, make exceptions to the Supreme Court's jurisdiction which would intrude upon the core functions of the Supreme Court as an independent and equal branch in our system of separation of powers.

A free society—to remain free—must depend on a judiciary strong enough to protect the rights of all of its people.

Not only is this amendment unconstitutional, it is also unwise, ill-considered, and will lead to more problems in the years ahead than it could possibly solve.

Passage of court-stripping legislation could shift the battle ground on constitutional issues from Federal to State courts. This would introduce a hazardous experiment with the vulnerable fabric of our judicial system. The integrity of our Federal Judicial system requires a court of last resort having the last word on controversial cases. But without a Supreme Court to resolve the differences, what would prevent the different State courts from arriving at a multitude of desperate conclusions on controversial issues? Equal protection might mean one thing in Colorado and another in New York or North Carolina. Federal law would vary in its impact among the inferior courts. In addition, no guarantee is provided by the sponsors of court-stripping legislation that the State courts would continue to observe the supremacy of Federal law should it conflict with State statutes.

The danger inherent in all this was well expressed by Alexander Hamilton when he said:

> Thirteen independent courts of final jurisdiction over the same causes arising upon the same laws is a Hydra in government, from which nothing but contradiction and confusion can proceed.

The essence of the Constitution as a national document—uniting all Americans in a national charter of equal rights and responsibilities—would be undone.

Of course, it is also possible, contrary to the expectations of the sponsors of the amendment, that State courts would give full force and effect to the controlling precedents in constitutional law; the very precedents which have given rise to today's debate. In fact, in a resolution passed by the Conference of State Court Chief Justices at their annual conference earlier this year, the State jurists argued that it is condescending to imagine that they would not follow the precedents in these controversial areas. Thus, the sponsors of this amendment have left us a cruel choice: If this court-stripping works as intended we will be risking the gravest constitutional crisis in our history; if not—we will have sacrificed and risked a great deal for very little.

This amendment is also unwise because it bypasses the timetested method for amending the Constitution. A procedure already exists in our Constitution for, overturning unpopular Supreme Court decisions—that is, the amendment process. The framers precisely made the amendment process difficult in order that only the most carefully considered proposals, with the broadest public support, would become part of the law of the land. The amendment process is designed to insure that transient majorities can not easily change the Constitution. The amendment we are debating would circumvent that detailed procedure by allowing a simple majority of Congress to change our national charter. This is a radical notion.

Mr. President, throughout this debate it should become very clear to the people of this country that without access to the Federal courts, citizens will be without the protections necessary to secure and insure their freedoms. This is certainly true of the freedoms mandated by the first amendment. The subject of school prayer—at issue today—illustrates the importance of a Supreme Court, and inferior Federal courts, constitutionally powerful enough to protect liberty. And as the Supreme Court held in its school prayer cases in the early 1960's—organized school prayer undermines the religious liberty of all Americans.

For nearly 200 years, our Nation's heritage of diversity in religion has grown under a constitutional scheme which recognizes that religion is essentially a private matter, not a public matter. The founders of our Nation recognized that the right of all people to believe as they wish is best protected when the Government avoids interference in religion.

Almost 20 years ago, the Supreme Court stated that a "union of government and religion tends to destroy government and degrade religion." Any organized prayer in school demeans prayer by foisting upon it the mantle of governmental interference. Officially sanctioned prayer sessions, officiated at by school authorities, mock that voluntary initiative which is the essence of religion.

Having a teacher choose a prayer from among the many beliefs and denominations represented in the public schools destroys the neutrality between government and religion. This practice would undercut our tradition of religious freedom and diversity. It is highly ironic that those who frequently argue that government is incapable of touching something without ruining it should want government to play such a big part in the most private and personal of human activity.

One wonders how we would go about selecting the government officials to write the prayer. One wonders what government officials elected or appointed are more holy than others, or what would qualify some government officials, at whatever level, to design a prayer appropriate to all schoolchildern, let alone all Americans.

What criteria would we use to select the public officials to write our official prayers to be used in public schools? What standards would we use for selecting the most holy public officials to designate the prayers which our schoolchildren should recite? What committee would set itself up to select the official to write the prayer, or what committee itself would go about writing prayers?

Is that the appropriate function of school officials or public officials or county boards of supervisors or school boards or school superintendents or teachers or sheriffs or any other public official? Who decides who will write the prayer? And then, once decided upon, what standards will that public official use for deciding what prayer is best for our schoolchildren?

One has only to ask and pose these questions to understand the implica-

tions of what this amendment would do.

No prayer conducted in the classroom can be said to be truly voluntary. There is nothing voluntary about a 7-year-old deciding to recite a prayer with his teacher standing over him. Students who opt out will be subjected to peer pressure, stigma, and scorn. Whenever the Government supports a particular religious belief, to use justice Black's words: "the indirect coercive pressure upon religious minorities to conform to the prevailing officially approved religion is plain." It is precisely to prevent a minority from being coerced into a belief that the first amendment is a fundamental part of our Constitution.

Allowing official prayer in the public schools would undermine the role of the parents and family in religious education. It is fundamental in our tradition that every family has the right to reach each new generation its own distinctive traditions and beliefs free from Government interference. Official school prayer, by forcing students to be inculcated with the religion of their peers, or some abitrary beliefs of some yet unidentified set of public officials or individual public official, could well interfere with the right of parents to affect the religious education of their children. Why should the Government promote familial tension in this regard?

Finally, official school prayer would undercut the special place of our public schools in American life. From the earliest days of our Republic, public schools have taught children the importance of religious tolerance and the need to respect people with different backgrounds. As Justice Brennan has written, the public schools serve a uniquely public function: "The training of American citizens in an atmosphere free of parochial, divisive, or separatist influences of any sort—an atmosphere in which children may assimilate a heritage common to all American groups and religions."

Official school prayer would interfere with the teaching of tolerance by expressing the Government's commitment to particular religious tradition and one that might be arbitrary or even whimsically arrived at by an individual or collective set of unknown public officials.

I therefore strongly oppose both this amendment—divesting the Supreme Court, and the lower Federal courts, of their jurisdiction to hear school prayer cases—and the rationale behind it—the reintroduction of organized school prayer—as serious threats to not only our tradition of religions diversity and pluralism, but also our entire constitutional scheme based on separation of powers, checks and balances, and the independence of the judicial branch sufficient to protect individual rights. The Founders' concerns about tyranny are no less relevant in 1982 than they were in 1787. I strongly urge my colleagues to refrain from damaging the Constitution—"the most wonderful work ever struck off at a given time by the brain and purpose of man."

Mr. President, I think the testimony before various committees of Congress is particularly important for us to consider, given the qualifications, the backgrounds, the experience, and expertise of those who have testified on this issue. I cite, for example, particularly, the statements of Prof. Telford Taylor on behalf of the American Civil Liberties Union before the Subcommittee on the Constitution of the Judiciary Committee of the U.S. Senate on S. 158. That testimony was delivered a year ago, on May 20, 1981, but it is no less relevant today.

In considering that testimony, we should take into consideration the background of the individual who delivered it.

Professor Taylor is a lawyer admitted to practice in the District of Columbia and before the New York State Bar and various Federal courts, including the Supreme Court. He has been a practitioner at the bar of this country for 47 years, first as a Federal Government attorney and since 1952 as a private practitioner. He has been principally occupied with law school instruction and has conducted classes and seminars at Yale, Columbia, Harvard, the University of Colorado, and the Benjamin Cardozo Law School. He is presently Nash professor emeritus at Columbia Law School and Kaiser professor of constitutional law at the Cardozo Law School.

Throughout the years of his expertise in teaching and practice he has been primarily concerned with Federal law including Federal constitutional law, and he has conducted classes in constitutional law at all of the above named institutions, and in every year since 1963.

That record includes, I am proud to say, having taught a course which it was my privilege to take in 1964 at the Yale Law School.

Professor Taylor testifies, and I think cogently so, in the following manner:

My opposition to the jurisdictional provisions of "the court stripping proposal" is not based upon a narrow view of congressioanl power in this field. The Supreme Court has explicitly recognized that Congress has plenary control over the jurisdiction of the Federal courts.

Mr. President, I would like to include the testimony of Professor Taylor at this point in its entirety in the RECORD because I think it is an excellent statement of the constitutional law underlying the principle at issue in this amendment. I ask unanimous consent to do so.

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

STATEMENT OF TELFORD TAYLOR ON BEHALF OF THE AMERICAN CIVIL LIBERTIES UNION

My name is Telford Taylor. I am a lawyer, admitted to practice in the District of Columbia, New York State, and various federal courts including the Supreme Court of the United States. I have been at the bar for 47 years, first as a federal government attorney (1933-42), and since 1952 as a private practitioner. In recent years I have been principally occupied with law school instruction, and have conducted classes and seminars at the Yale, Columbia, Harvard, University of Colorado, and Benjamin Cardozo Law Schools. I am presently Nash Professor Emeritus at the Columbia Law School and Kaiser Professor of Constitutional Law at the Cardozo Law School.

Throughout these years I have been primarily concerned with federal, including federal constitutional, law, and I have conducted classes in constitutional law at all of the above-named institutions, and in every year since 1963.

I am appearing here on behalf of the American Civil Liberties Union, in order to discuss the extent of congressional power over federal court jurisdiction. I am aware that there are a number of pending bills which withdraw court jurisdiction in a variety of ways. But I believe it would be most helpful if I focus my testimony on one of the most narrowly drawn bills, since what I have to say about it will apply a fortiori to bills which will withdraw even more jurisdiction. So I will direct my remarks to S. 158, introduced by Senator Helms, which undertakes to withdraw from the lower federal courts jurisdiction to issue injunctions and declaratory judgments in cases involving state laws which prohibit or limit the performance of abortions. I share with the ACLU the view that this provision, if enacted into law, would be unconstitutional. But I am not a member of or bound by the views of the ACLU, and the particular contents of this statement do not necessarily reflect their opinions.

1. Congress and the Inferior Federal Courts:

My opposition to the jurisdictional provisions of S. 158 is not based upon a narrow view of Congressional power in this field. The Supreme Court has explicitly recognized that Congress has "plenary control over the jurisdiction of the federal courts." *Bro. of R. Trainmen* v. *Toledo, P. & W. R. Co.*, 321 U.S. 50, 63-64 (1944). This is in accord with the history and language of Article III of the Constitution, Section 1 of which vests the judicial power in the Supreme Court "and in such inferior Courts as the Congress may from time to time ordain and establish." It is generally understood that this wording embodied a compromise between those among the framers who favored and those who opposed establishment of a federal court system. Thus the decision between the two alternatives was not mandated by the Constitution itself, and it was left up to Congress to handle by statute.

It thus appears that it would have been entirely constitutional for Congress to establish no "inferior" federal courts at all. And although the First Congress did in fact establish the district and circuit courts, the First Judiciary Act gave them a range of jurisdiction which, by today's standards, was very narrow.

Accordingly, if we were to look to the intentions of the framers, Congress could constitutionally conclude and legislate extensive curtailment, or even abolition, of inferior federal court jurisdiction. Of course, from a practical standpoint, a decision not to make inferior federal courts in 1791 would have been quite different from a decision to abolish them in 1981, after we have had federal courts for nearly two centuries, and after more than a century during which they have become a major part of the nation's judicial machinery. These practical consideration have led one commentator to conclude that: "Abolition of the lower federal courts is no longer constitutionally permissible . . . the jurisdiction of these courts is not a matter solely within the discretion of Congress." Eisenberg, *Congressional Authority to Restrict Lower Federal Court Jurisdiction*, 83 Yale L.J. 498 (1974).

While I think all would agree that today the abolition of the lower federal courts, or deep inroads into their jurisdiction, would be extremely unwise, and indeed destructively revolutionary, of course S. 158 is, quantitatively, a very limited withdrawal. My opposition to it, and my conclusion that it is unconstitutional, does not rest upon the proposition that there are quantitative constitutional limits on Congressional power over inferior federal court jurisdiction. That power is, as stated by the Supreme Court, "plenary," like, for example, Congressional power to regulate interstate commerce.

2. Constitutional Limitations on Congressional Power:

But to say that Congressional power over lower federal court jurisdiction is "plenary" does not mean that it is immune from the general limitations on Congressional power found elsewhere in the Constitution, including the several amendments. Congress specifies the jurisdiction by enacting statutes, and those statutes are no more immune from constitutional scrutiny than any others.

The Congressional power over interstate commerce is so ample that, despite the enormous proliferation of federal legislation, not since 1936 has a federal regulation of commerce been held unconstitutional. Yet nothing is better settled than that this power is subject to constitutional limitations such as the First Amendment and the due process clause of the Fifth Amendment. Were Congress to enact statutes forbidding interstate carriers to transport literature reflectig a particular political persuasion, or goods owned by members of a particular race or adherents of a religion, these statutes would undeniably be regulations of interstate commerce, but they would be constitutionally invalid under the First or Fifth Amendments.

The same principle applies to the exercise of Congressional power under Article III. A statute withdrawing from the federal courts jurisdiction to issue injunctions at the suit of individuals identified with particular political, racial, or religious groups would be manifestly unconstitutional under those same amendments.

These conclusions, I believe, follow inevitably from the language and structure of the Constitution. See *Louisville Joint Stock Land Bank* v. *Radford*, 295 U.S. 555, 589 (1935): "the bankruptcy power, like the other great substantive powers, is subject to the Fifth Amendment." That there are few precedents in the jurisdictional field is, therefore, hardly surprising. But sufficient precedent is not lacking, for the foregoing conclusions are amply and explicitly supported by the decision and opinion in *United States* v. *Klein*, 13 Wall. 128 (1872). In that case, the Court of Claims has been given jurisdiction to determine, subject to Supreme Court review, claims to recover property taken by military action during the War Between the States. Some such claimants had been adherents of the Confederacy, but had subsequently taken amnesty oaths pursuant to President Lincoln's pardon proclamation. With the purpose of barring such claimants from recovery, Congress in 1870 passed a statute which provided that, if in any such case the claimant relied upon a presidential pardon as proof of eligibility, the Court of Claims or the Supreme Court (as the case might be) should have no further jurisdiction, and should dismiss the claim for want of jurisdiction.

In the *Klein* case, involving such a claim, the Supreme Court held the 1870 statute unconstitutional, saying that it was not "an exercise of the acknowledged power of Congress" over the Supreme Court's appellate jurisdiction. Two reasons were given of which one, directly relevant here, was that the statute impaired the effect of a pardon, and thus infringed the President's constitutional power under Article II, Section 2 to "grant Reprieves and Pardons for Offenses against the United States." The fact that the 1870 statute was phrased in jurisdictional terms made no difference, since its effect was beyond the power of Congress and violated Section 2 of Article II.

Accordingly, the requirement that statutes enacted by Congress under its Article III powers conform to general constitutional limitations is clearly established, both under the language and structure of the Constitution, and as a matter of decisional precedent. The immediate question is whether Section 2 of S. 158 can survive constitutional scrutiny under those principles. For the reasons given hereinafter, I believe that question must be answered in the negative.

3. The purpose of Section 2 of S. 158 is constitutionally impermissible:

Section 2 of S. 158, like the statute of 1870 involved in the *Klein* case, is a limitation on federal court jurisdiction. But just as the purpose and effect of the 1870 statute was substantive—i.e., to nullify the effect of a presidential pardon on war property claims—so the purpose and effect of Section 2 of S. 158 is substantive—i.e., to make it more difficult than theretofore for individuals to secure their constitutional rights recognized in *Roe* v. *Wade*. In neither case is the purpose constitutionally permissible.

Now, of course, I am aware of the many cases in which the Supreme Court has declared and applied the rule that the constitutionality of a statute must be determined on its face, and without inquiry into motives or purposes that underlie the enactment. See, e.g., *McCray* v. *United States*, 195 U.S. 27, 56 (1904); *Arizona* v. *California*, 283 U.S. 423, 455 (1931); *United States* v. *Darby*, 312 U.S. 100, 113–14 (1941); *Flemming* v. *Nestor*, 363 U.S. 603, 617 (1960); *United States* v. *O'Brien*, 391 U.S. 362, 382–86 (1968). For example, a law prohibiting anyone other than a lawyer from engaging in debt-adjusting will be upheld if a rational and legitimate purpose can be conceived, without going behind the face of the statute to determine whether or not the actual legislative motive was to confer financial benefits on lawyers—a motive by which legislators, many of whom are lawyers, might be governed. *Ferguson* v. *Skrupa*, 372 U.S. 726 (1963).

But there are well-recognized exceptions to that principle. *United States* v. *O'Brien*, *supra* at 383 note 30; Ely, *Legislative and Administrative Motivation in Constitutional Law*, 79 Yale L.J. 1205 (1970). Perhaps the most important one involves the equal protection clause of the Fourteenth Amendment. For many years the Supreme Court has declared the rule that the unequal impact of a statute is not enough to establish a violation of the equal protection clause; there must be a governmental purpose to discriminate. *Snowden* v. *Hughes*, 321 U.S. 1 (1944); *Keyes* v. *School District*, 413 U.S. 189 (1973); *Washington* v. *Davis*, 426 U.S. 229 (1976); *Arlington Heights* v. *Metropolitan Housing Corp.*, 429 U.S. 252 (1977); *Mobile* v. *Bolden*, 446 U.S. 55 (1980). And it is equally well settled that, in equal protection cases, the courts are not limited to an examination of the statute on its face. *Loving* v. *Virginia*, 388 U.S. 1 (1967); *Green* v. *County School Board*, 398 U.S. 430 (1968); *Columbus Board of Education* v. *Penick*, 443 U.S. 229 (1979). Indeed, the inequality of impact may be so great that a purpose to discriminate may be inferred from that circumstance alone. *Yick Wo* v. *Hopkins*, 118 U.S. 356 (1886); *Washington* v. *Davis*, *supra* at 253–54 (Justice Stevens, concurring).

Finally, and perhaps most important for present purposes, the Court has held that a statute which does not on its face articulate an unlawful purpose, may, because of its language and the context in which it is enacted, disclose on its face an unlawful purpose and an inevitable unlawful effect. *Grosjean* v. *American Press Co.*, 297 U.S. 233 (1936); *Gomillion* v. *Lightfoot*, 364 U.S. 339 (1960).

The *Gomillion* case involved an Alabama statute enacted in 1957 which changed the boundaries of the City of Tuskegee from a square to what the Supreme Court described as "a strangely irregular twenty-eight-sided figure" (364 U.S. at 341). The complainants, black citizens resident within the square boundaries, sought in the federal courts a declaratory judgment that the statute was unconstitutional, alleging that its "essential inevitable effect" would be "to remove from the city all save only four or five of its 400 Negro voters while not removing a single white voter or resident."

The lower federal courts dismissed the action on the ground that they had no power to review the Alabama legislature's action. The Supreme Court unanimously reversed the judgment below, holding that, upon the facts alleged, the statute violated the Fifteenth Amendment, since upon those facts ". . . the conclusion would be irresistible, tantamount for all practical purposes to a mathematical demonstration, that the legislation is soley concerned with segregating white and colored voters by fencing Negro citizens out of town so as to deprive them of their pre-existing municipal vote."

I believe that the relevance of the *Gomillion* case to the issue at hand here is obvious. The power of the Alabama legislature over municipal districting was recognized by the Supreme Court as having "breadth and importance" (364 U.S. at 342), just as Congressional power under Section 1 of Article III should be so recognized. The Alabama statute did not explicitly disfavor black residents of Tuskegee, but the boundaries drawn made clear its unconstitutional purpose and effect. Section 2 of S. 158 does not explicitly avow an unconstitutional purpose, but such a purpose is nonetheless manifest, from both its text and its context.

To be sure, the constitutional rights involved are not the same. The *Gomillion* case involved the voting rights protected by

the Fifteenth Amendment or, as Justice Whittaker thought (356 U.S. at 349), the equal protection clause of the Fourteenth Amendment. That clause is not irrelevant to the scrutiny of S. 158, but the constitutional rights recognized in *Roe* v. *Wade* are, under the Court's opinion, based on the concept of personal liberty embodied in the due process clause. These rights, the Court declared to be "fundamental," and "broad enough to encompass a woman's decision whether or not to terminate her pregnancy" (410 U.S. at 153). Certainly they are constitutionally entitled to as much protection as those involved in the *Gomillion* and *Grosjean* cases.

Plainly S. 158, including Section 2, is intended to prevent if possible, and at least to obstruct, fulfillment of the rights recognized in *Roe* v. *Wade*. Indeed, the sponsors of this and similar bills have been commendably frank in acknowledging that purpose, and have no effort to mask it. I am taking the liberty of attaching to my statement the letter to me from the ranking minority member of this Subcommittee, requesting my views on the constitutionality of Section 1 of S. 158, together with my reply. The Senator's letter states that the purpose of S. 158 "is to overturn the effect of the Supreme Court decision in *Roe* v. *Wade*." That, of course, is not a jurisdictional but a substantive purpose, and indicates that Section 2 is not, despite its form, intended as a jurisdictional enactment.

But it is quite unnecessary to rely on such statements by the bill's sponsors, and my conclusion that Section 2 is unconstitutional is based squarely on the text of the bill itself. For it is impossible to conceive of any jurisdictional considerations to which the bill is relevant. There are, to be sure, a number of litigations involving the performance of abortions pending in the federal courts, but they constitute but an infinitesmal part of the total volume of federal court litigation. Thus the bill cannot reasonably be regarded as intended to reduce the burdens on the federal courts.

Cases involving the federal constitutionality of state laws are, to be sure, very numerous in both state and federal courts. A view could be advanced that since state laws are involved, their validity should be first passed upon in the state courts. Of course, that would throw on the Supreme Court the entire burden of ensuring uniformity among the states of the standards of constitutional validity, and I do not think such a course would commend itself as a matter of policy. But recognizing that such a decision is within the ambit of Congressional power, S. 158 accomplishes this only with respect to injunction and declaratory judgment actions involving the particular rights recognized in *Roe* v. *Wade*. It cannot reasonably be contended that so singular a change is reasonably related to a general jurisdictional purpose. Nor do abortion litigations present any features that explain singling them out from other rights similarly derived from the Fifth or Fourteenth Amendments, for exclusion from the federal courts.

The conclusion is inescapable, on the face of the bill, that its only purpose and its inevitable effect are to obstruct the judicial protection of the constitutional rights recognized in *Roe* v. *Wade*. Such purpose and effect, in the absence of a compelling state interest, are unconstitutional: "It is well settled that, quite apart from the guarantee of equal protection, if a law 'impinges upon a fundamental right secured by the Constitution [it] is presumptively unconstitutional.'" *Harris* v. *McRae*, 480 U.S. —, 65 L.Ed. 2d 784, 801 (1980); *Mobile* v. *Bolden*, 446 U.S. 55, 76 (1980); *San Antonio School District* v. *Rodriguez*, 411 U.S. 1, 17, 31 (1973); *Shapiro* v. *Thompson* 394 U.S. 618, 634 (1969).

I should add, though it may be unnecessary, that Section 2 of S. 158 also violates the principle of equal protection of the laws, which has been held to be embodied in the due process clause of the Fifth Amendment, and is therefore binding on the federal government as well as the states. *Bolling* v. *Sharpe*, 347 U.S. 492 (1954). For the jurisdictional withdrawal in Section 2 singles out pregnant women, whose rights are protected by *Roe* v. *Wade*, as a group subjected to a denial of access to the federal courts. There is no conceivable state interest which warrants subjecting them to this deprivation of access to the federal courts equal to that enjoyed by those seeking to protect comparable constitutional rights.

4. There is no valid precedent for the jurisdictional withdrawal attempted in Section 2 of S. 158:

There remains to be considered the question whether there are precedents, legislative or judicial, which might be effectively invoked to justify the jurisdictional withdrawal attempted by Section 2 of S. 158. Its acknowledged purpose is not novel. The Supreme Court must, in the nature of things, deal with issues which arouse strong political, social, and religious feelings. Some of its decisions are bound to antagonize individuals and even large groups of people who believe with deep sincerity that what the Court has done is very wrong, but who also realize that the prospect of undoing its work by the method prescribed in the Constitution—i.e., by amendment pursuant to Article V—is remote. The device of accomplishing a nullification, complete or partial, of a Court decision by withdrawing from the courts jurisdiction to enforce it, has been used in many bills introduced in Congress on many previous occasions.

Constitutional scholars tell us that between 1953 and 1968 over sixty bills were introduced in Congress to eliminate the jurisdiction of the federal courts over a variety of particular subjects. Hart and Wechsler, The Federal Courts and the Federal System (2nd edit. 1973) 360. That is not surprising, since those years witnessed a number of Supreme Court decisions which were sharply denounced, both within and without Congress. What is perhaps surprising, in view of the heat generated, is that not one of those bills was enacted into law. Congress as a whole has exhibited a most commendable restraint in this regard, realizing no doubt that this is a dangerous game which can be played at both ends of the spectrum, and that if such devices begin to take hold as statutes, the ultimate result will not be to ensure the dominance of a particular point of view, but to alter radically the long-established relation and balance among the legislative, executive, and judicial departments.

In consequence of this enduring Congressional restraint, the statutory and judicial examples which are somewhat comparable to S. 158 are very few, and there are only three which I think warrant comment.

The Norris-LaGuardia Act (1932):

I deal with this statute (now 29 U.S.C. Secs. 101-115) first, not only because it is the earliest chronologically, but also because some of the language of Section 2 of S. 158 appears to be derived from it.

The Norris-LaGuardia Act arose out of the belief, shared by leaders of both the Republican and Democratic parties, that there had been abuses in the issuance of injunctions in labor disputes. S. Rep. No. 163, H.R. Rep. No. 669, 72d Cong., 1st Sess.; Frankfurter and Greene, *The Labor Injunction* (1930) *passim*. Section 1 of the Act provides:

"No court of the United States . . . shall have jurisdiction to issue any restraining order or temporary or permanent injunction in a case involving or growing out of a labor dispute, except in strict conformity with the provisions of this chapter; nor shall any such restraining order or temporary injunction be issued contrary to the public policy declared in this chapter."

It will be noted that, unlike Section 2 of S. 158, the Norris-LaGuardia Act does not wholly withdraw the jurisdiction to issue the specified injunctions. Section 2 declares a public policy of freedom for workers to associate and organize for collective bargining and other labor ends; Sections 4 and 5 specify certain conduct which is excluded from injunctive jurisdiction; Sections 7 and 9 specify certain findings which the courts must make and procedures they must follow before issuing injunctions.

None of these provisions involved infringement of constitutional rights, and Congress' power to regulate and limit the remedies (including injunctions) available to litigants in the lower federal courts (in the absence of such infringements) had never been seriously questioned. When a case arose wherein a lower federal court had issued an injunction on the basis that the case did not involve a "labor dispute" as defined in the Act, the Supreme Court, in reversing that decision, gave general approval to the Act's jurisdictional limitations: "There can be no question of the power of Congress thus to define and limit the jurisdiction of the inferior court of the United States." *Lauf* v. *E.G. Shinner & Co.*, 303 U.S. 323, 330 (1938).

But the *Lauf* case did not concern other provisions of the Norris-LaGuardia Act which (Section 3) declare "yellow dog contracts" (i.e. employment agreements conditioned on the employee's undertaking not to join a union) to be "contrary to the public policy of the United States" and "not . . . enforceable in any court of the United States," and (Section 4(b)) withdraw from the federal courts jurisdiction to enforce such contracts. Many years earlier the Supreme Court had invalidated, as violations of due process, both federal and state statutes outlawing "yellow dog" contracts. *Adiar* v. *United States*, 208 U.S. 161 (1908); *Coppage* v. *Kansas*, 236 U.S. 1 (1915). Thereafter the Supreme Court also held state legislation, limiting employers' rights to state court injunctions against striking employees, to be invalid under the due process and equal protection clauses. *Truax* v. *Corrigan*, 257 U.S. 312 (1921).

None of these decisions had been formally overruled at the time the Norris-LaGuardia Act was adopted, and it was certainly arguable that Sections 3 and 4(b) were unconstitutional, insofar as they rendered "yellow dog" contracts unenforceable in, and outside the jurisdiction of, the federal courts. In all probability it was such doubts that led Congress to provide for the withdrawal of injunctive jurisdiction, guided by a memorandum from (then) Professor Felix Frankfurter stressing the scope of Congressional power over federal court jurisdiction (H. Rep. No. 669, *supra* pp. 12-16); see also Frankfurter and Greene, *supra* pp. 210-20.

The constitutional validity of Sections 3 and 4(b) of the Norris-LaGuardia Act was never judicially tested, no doubt because the Act's importance was greatly diminished by

passage of the National Labor Relations Act in 1936. The *Adair* and *Coppage* cases were not explicitly over-ruled until 1941. *Phelps Dodge Corporation* v. *Labor Board*, 313 U.S. 177, 187 (1941). But they were in poor constitutional health as early as 1930, when the Court unanimously upheld the Railway Labor Act of 1926, in an opinion by Chief Justice Hughes (who had dissented in the *Coppage* case) which distinguished the *Adair* and *Coppage* cases in casual and unconvincing fashion. *Texas & N.O.R. Co.* v. *Ry. Clerks*, 281 U.S. 548, 570 (1930). And of course, if those cases were no longer governing in 1932, the constitutional rights they declared had likewise withered, and the jurisdictional withdrawal in Section 4(b) of the Norris-La Guardia Act impaired no such rights.

For all these reasons, I do not believe that the Norris-La Guardia example offers any substantial support to the constitutionality of Section 2 of S. 158.

The Emergency Price Control Act of 1942:

This statute, enacted under the pressures of wartime, contained provisions narrowly channeling federal court jurisdiction to review orders and regulations of the Price Administrator, in order to secure rapid and uniform enforcement of wartime price controls. An "Emergency Court of Appeals," composed of three federal district or circuit judges, was established to hear and determine such cases, subject to review by certiorari in the Supreme Court. All other courts, both federal and state, were denied jurisdiction to pass on the validity of the Administrator's acts, with certain specified exceptions.

Whether the prohibitions running to the state courts were ever judicially reviewed, I do not know; state court obligation to entertain damage suits for violation of price ceilings was confirmed in *Testa* v. *Katt*, 330 U.S. 386 (1947). The withdrawals of jurisdiction from the federal district and circuit courts were sustained. *Lockerty* v. *Phillips*, 319 U.S. 182 (1943); *Yakus* v. *United States*, 321 U.S. 414 (1944).

The statutory feature most susceptible to constitutional challenge was the denial of the Emergency Court of any power to grant interim relief, by temporary restraining order or injunction. This provision was upheld in the *Yakus* case not as a general proposition but only "in the circumstances of this case," meaning the war emergency (321 U.S. at 437, 439): "If the alternatives, as Congress concluded, were wartime inflation of the imposition on individuals of the burden of complying with a price regulation while its validity is being determined, Congress could constitutionally make the choice in favor of the protection of the public interest from the dangers of inflation."

There is no such emergent and compelling public interest to be invoked in support of the denial of federal injunctive relief in abortion litigation. Abortion cases, on the contrary, are of a nature that especially requires the availability of interim protection; the pregnant woman can hardly be required to comply with an anti-abortion statute while its constitutional validity is being determined.

The price control statutes and decisions, born as they were of the urgent necessities of wartime, thus offer no support to the jurisdictional withdrawal attempted by S. 158.

The Portal-to-Portal Act of 1947: In decisions rendered between 1944 and 1946, the Supreme Court construed the "work week" clause of the Fair Labor Standards Act of 1938 as including underground travel time in mines. Time so spent had not theretofore been generally treated as compensable, and these decisions precipitated a flood of litigation embracing claims for back pay totalling over 5 billion dollars, including claims against the United States totalling over 1½ billion dollars. Congress then enacted the Portal-to-Portal Act of 1947 (29 U.S.C. 251-62), in which Congress found that such unexpected retroactive liabilities threatened financial ruin to many employers and serious consequences to the federal Treasury. To avoid these hazards, the Act not only wiped out the liabilities, but also withdrew jurisdiction to adjudicate such claims from all federal and state courts without exception.

In the numerous litigations which ensued, it was contended that Congressional nullification of these claims destroyed vested rights in violation of the Fifth Amendment. The courts uniformly rejected this contention, but most of them took jurisdiction and decided the cases on the substantive merits, despite the attempted withdrawal of jurisdiction. Thus a distinguished panel of judges in the Court of Appeals for the Second Circuit wrote in *Battaglia* v. *General Motors Corp.*, 169 F.2d 254, 257 (C.C.A.2d, 1948):

"A few of the district court decisions sustaining . . . the Portal-to-Portal Act have done so on the ground that since jurisdiction of federal courts other than the Supreme Court is conferred by Congress, it may at the will of Congress be taken away in whole or in part . . . We think however, that the exercise by Congress of its control over jurisdiction is subject to compliance with at least the requirements of the Fifth Amendment. That is to say, while Congress has the undoubted power to give, withhold, and restrict the jurisdiction of courts other than the Supreme Court, it 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 [citing cases] . . ."

That decision and the passage quoted squarely support the position I am taking here today. Just as in the Portal-to-Portal Act, Section 2 has been included in S. 158 for the sole purpose of blocking judicial review of Section 1 thereof. And since Section 1 seeks to achieve ends which are unconstitutional under the Fifth Amendment, as was established in *Roe* v. *Wade*, Section 2 is itself in violation of the Fifth Amendment.

I should deal with one further matter. The Portal-to-Portal Act sought to close off access to all courts, state and federal alike, while both the Norris-LaGuardia Act and Section 2 of S. 158 leave access to the state courts untouched. Although the *Battaglia* court did not rest its decision on that circumstance, it is the view of some constitutional scholars that this difference is crucial, and that would-be litigants barred by Congress from access to the federal courts have no basis for complaint if the state courts remain open to them.

It is hard for me to take this argument seriously. The fact that a statutory withdrawal of jurisdiction is limited to the federal courts certainly does not immunize that statute from constitutional scrutiny. It cannot be seriously contended that a statute limiting federal court access to white litigants could be sustained on the ground that the suits of black litigants could be determined in the state courts.

This does not mean that continued access to the state courts may not in some circumstances be a relevant constitutional factor. If a substantial state interest is asserted as the basis for denying federal jurisdiction, and that interest must be weighed against the disadvantage to litigants, the fact that the state courts remain available may well tip the scales in favor of the withdrawal. In all three of the instances of withdrawal discussed above, such interests were credibly asserted. But no such interests are or can be credibly invoked in support of Section 2 of S. 158, which shows on its face that its only purpose is to chill and obstruct the vindication of constitutional rights.

In theory, if not in practice, Congress has power to repeal the 1875 legislation which gave the federal courts general jurisdiction in cases arising under the Constitution and laws of the United States. But having conferred such general jurisdiction, Congress must have a constitutional basis for making exceptions to it, and the fact that the state courts may be available is but one factor for consideration. With regard to Section 2 of S. 158, I believe it is of no weight, since no valid purpose of the withdrawal is invoked.

CONCLUSION

For all the reasons given, it is my opinion that Section 2 of S. 158, or any comparable bills that would selectively withdraw federal court jurisdiction over particular constitutional claims, if enacted, would be unconstitutional. I thank the Subcommittee for affording me this opportunity to present my views.

U.S. SENATE,
Washington. D.C., April 29, 1981.

Prof. TELFORD TAYLOR,
Department Law, Columbia University, New York, N.Y.

DEAR PROFESSOR TAYLOR: I am currently serving as the ranking minority member of the United States Senate Judiciary Committee, Subcommittee on Separation of Powers. On April 23 and 24, the Subcommittee is beginning a series of hearings on S. 158. This legislation is designed to define human personhood as beginning at conception. The purpose of the legislation is to overturn the effect of the Supreme Court decision in *Roe* v. *Wade*. I am enclosing a copy of the bill for your review.

I am writing to you in your capacity as a leading expert on American constitutional law. I am interested in your assessment of whether or not the Congress has the authority under the Constitution and particularly under Section 5 of the 14th Amendment to enact Section 1 of S. 158. Does the Congress have the authority to define legal/constitutional personhood in the face of the Supreme Court decisions on abortion? For legal analysis by the sponsor of the bill, see Volume 127 *Con. Rec.* S.288-S.294 (Daily Ed. January 19, 1981).

The Subcommittee will be considering these matters in the near future and so a timely response would be most helpful.

I appreciate your assistance in this matter and look forward to hearing from you as soon as possible.

With best personal regards, I am

Sincerely,

MAX BAUCUS.

Enclosure.

MAY 7, 1981.

Hon. MAX BAUCUS,
U.S. Senate,
Washington, D.C.

DEAR SENATOR BAUCUS: This will acknowledge your letter of April 29, 1981, requesting my opinion on the constitutionality of bills

such as S. 158 and H.R. 900, which undertake to define "person" as used in the Fourteenth Amendment to the Constitution as including the human fetus from the moment of conception. It is understood that the purpose of these bills is to override the Supreme Court's rulings in *Roe v. Wade*, 410 U.S. 113 (1973) and subsequent decisions based on the principles of that case. Since those decisions are based on the Constitution itself, it appears that the purpose of these bills is to bring about a change in the scope and effect of the relevant Constitutional provisions by statutory means, rather than by amendment of the Constitution in accordance with the procedures prescribed in Article V.

The bills in question rely explicitly on the power of Congress under Section 5 of the Fourteenth Amendment as the constitutional basis of their provisions. The scope of this power, during the last fifteen years, has been the subject of at least four significant Supreme Court decisions. *South Carolina v. Katzenbach*, 383 U.S. 301 (1966); *Katzenbach v. Morgan*, 384 U.S. 641 (1966); *Oregon v. Mitchell*, 400 U.S. 112 (1970); *Rome v. United States*, 446 U.S. 156 (1980); see also *Fullilove v. Klutznick*, 448 U.S. (1980). In all these cases except the first, the Court was divided in opinion on the governing principles, and professional comment on the problem has reflected its controversial nature.

Despite this division of opinion, I believe it to be clear that the bills in question are unconstitutional. The majority opinion in the *Morgan* case goes further than any other in giving scope to Congressional power under Section 5 of the Fourteenth Amendment, but in that opinion it was categorically stated that Section 5 gives Congress no power "to restrict, abrogate, or dilute" constitutional guarantees. *Katzenbach v. Morgan*, 384 U.S. at 651 n. 10. There can be no doubt that the purpose and purport of the bills in question is to "restrict, abrogate, or dilute" the constitutional rights of pregnant women as established in *Roe v. Wade*.

As for the members of the Court who do not share the expansive views of Congressional power under Section 5 articulated by the majority in the *Morgan* case, it is my belief that, regardless of their agreement or disagreement with *Roe v. Wade*, they would conclude that the constitutional principles it established cannot be nullified by statutory action.

For the foregoing reasons, stated above in summary form, it is my opinion that the bills you have called to my attention are unconstitutional.

Sincerely yours,

TELFORD TAYLOR,
Nash Professor of Law, Emer.

Mr. HART. Mr. President, I yield to the Senator from Massachusetts.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized.

Mr. TSONGAS. I thank the Senator from Colorado.

Mr. President, those of my colleagues whose children are still young, or whose children are older, will remember Alice in Wonderland and the ironic situation in that tale where everything is topsy turvy, where what is said is the opposite of what is meant, and what is meant is the opposite of what is said.

I find it ironic to sit here and watch someone who has an American flag in his lapel engaged in an activity that would eviscerate the Constitution.

It seems to me that, if you wear a flag on your lapel, it suggests a reverence for the Nation, a reverence for the Constitution.

The Founding Fathers were limited in their capacity. They did not have Gallup polls. They did not have PAC committees. They did not have media consultants.

They were naive enough to believe that you could have Government by balance of powers. In our very sophisticated world of today, some would replace this precept with Government by direct mail operations.

What difference does it make if you hurt the Constitution, as long as you generate direct mail contributions?

If there is no reverence for the Constitution, if it is simply an inconvenient document, why not just say so? Maybe coming from Massachusetts, I have been overly sensitized to the works of the Founding Fathers. Many of my predecessors, if not ethnically at least geographically, were involved in that process. It seems to me that what they had to say was true not only for their time but for our time as well.

Although I have been in politics for 13 years, I have never managed to develop the capacity to tolerate those who make a great display of their patriotism and yet involve themselves in an effort to denigrate the process that has made this country as great as it is.

What I would like to do now is to read from a document that I suspect most Members do not read at night, the Federalist Papers, Federalist No. 78 and Federalist No. 81.

They refer to the judiciary. I will not read all of both papers, but I will read the most relevant parts.

The issue that we are dealing with here today of court stripping is not dissimilar to the issues that were argued some 200-plus years ago by our Founding Fathers. The difference between then and now is: they were less skittish. Can you imagine Alexander Hamilton or Thomas Jefferson arguing with his colleagues what his mail count was?

Can you imagine an Adams going to his staff and arguing that a poll should be done on how the people felt about a particular issue?

If that is all they were capable of, which is what most of us are apparently capable of, they would have come up with a document that would have gotten them past the next election but would have long since been destroyed.

Rather, they came up with the Constitution. They thought that if they did it right, the people of this country would elect Senators and Congressmen who would have the same reverence for the document. If one is prepared to undermine or eviscerate the Constitution, then what is likely to be the point at which one stops? Today, the Constitution; tomorrow, whatever.

Mr. President, however one feels about the issue of school prayer or whatever, and we may differ, I hope that we, as the Senate of the United States, would, at a minimum, consider the Constitution to be inviolate. When we got sworn in, if you remember that, we were sworn to uphold and protect the Constitution of the United States. I assume we took that seriously. We did not swear that we would uphold the direct mail operations or we would uphold the wishes of special interests or we would uphold the concerns of our PAC committees or we would uphold what the Gallup poll is telling us. We said we would uphold the Constitution.

So, 200 years-plus later, we have gone from the Federalist Papers and the Founding Fathers to this Alice in Wonderland scenario. I am going to read from Federalist No. 78 by Alexander Hamilton, May 28, 1788:

Whoever attentively considers the different departments of power must perceive, that in a government in which they are separated from each other, the judiciary, from the nature of its functions, will always be the least dangerous to the political rights of the constitution; because it will be least in a capacity to annoy or injure them. The executive not only dispenses the honors, but holds the sword of the community. The legislature not only commands the purse, but prescribes the rules by which the duties and rights of every citizen are to be regulated. The judiciary on the contrary has no influence over either the sword or the purse, no direction either of the strength or of the wealth of the society, and can take no active resolution whatever. It may truly be said to have neither Force nor Will, but merely judgment; and must ultimately depend upon the aid of the executive arm even for the efficacy of its judgments.

This simple view of the matter suggests several important consequences. It proves incontestibly that the judiciary is beyond comparison the weakest of the three departments of power; that it can never attack with success either of the other two; and that all possible care is requisite to enable it to defend itself against their attacks.

(Mr. HUMPHREY assumed the chair.)

Mr. TSONGAS. That was in 1788. One would think we would have learned by now. Let me read that again:

. . . and that all possible care is requisite to enable it to defend itself against their attacks.

To continue:

It equally proves, that though individual oppression may now and then proceed from the courts of justice, the general liberty of the people can never be endangered from that quarter: I mean, so long as the judiciary remains truly distinct from both the legislative and executive. For I agree that "there is no liberty, if the power of judging be not separated from the legislative and executive powers." And it proves, in the last place, that as liberty can have nothing to

fear from the judiciary alone, but would have every thing to fear from its union with either of the other departments; that as all the effects of such an union must ensue from a dependence of the former on the latter, notwithstanding a nominal and apparent separation; that as from the natural feebleness of the judiciary, it is in continual jeopardy of being overpowered, awed or influenced by its coordinate branches; and that as nothing can contribute so much to its firmness and independence, as permanency in office, this quality may therefore be justly regarded as an indispensable ingredient in its constitution; and in a great measure as the citadel of the public justice and the public security.

The complete independence of the courts of justice is peculiarly essential in a limited constitution. By a limited constitution I understand one which contains certain specified exceptions to the legislative authority; such for instance as that it shall pass no bills of attainder, no *ex post facto* laws, and the like. Limitations of this kind can be preserved in practice no other way than through the medium of the courts of justice; whose duty it must be to declare all acts contrary to the manifest tenor of the constitution void. Without this, all the reservations of particular rights or privileges would amount to nothing.

Some perplexity respecting the right of the courts to pronounce legislative acts void, because contrary to the constitution, has arisen from an imagination that the doctrine would imply a superiority of the judiciary to the legislative power. It is urged that the authority which can declare the acts of another void, must necessarily be superior to the one whose acts may be declared void. As this doctrine is of great importance in all the American constitutions, a brief discussion of the grounds on which it rests cannot be unacceptable.

There is no position which depends on clearer principles, than that every act of a delegated authority, contrary to the tenor of the commission under which it is exercised, is void. No legislative act therefore contrary to the constitution can be valid. To deny this would be to affirm that the deputy is greater than his principal; that the servant is above his master; that the representatives of the people are superior to the people themselves; that men acting by virtue of powers may do not only what their powers do not authorize, but what they forbid.

If it be said that the legislative body are themselves the constitutional judges of their own powers, and that the construction they put upon them is conclusive upon the other departments, it may be answered, that this cannot be the natural presumption, where it is not to be collected from any particular provisions in the constitution. It is not otherwise to be supposed that the constitution could intend to enable the representatives of the people to substitute their *will* to that of their constituents.

Mr. President, for those who just tuned in and are wondering where the sentiments are coming from that I am reading, they are from the Federalist Papers No. 78, Alexander Hamilton, May 28, 1788.

Since this is the foundation of our society, constitutionally and politically, I urge anyone who finds what I am saying to be contrary to their own views, it is time to do some soul-searching.

Continuing:

It is far more rational to suppose that the courts were designed to be an intermediate body between the people and the legislature, in order, among other things, to keep the latter within the limits assigned to their authority.

That is us, the latter.

The interpretation of the laws is the proper and peculiar province of the courts. A constitution is in fact, and must be, regarded by the judges as a fundamental law. It therefore belongs to them to ascertain its meaning as well as the meaning of any particular act proceeding from the legislative body. If there should happen to be an irreconcileable variance between the two, that which has the superior obligation and validity ought of course to be preferred; or in other words, the constitution ought to be preferred to the statute, the intention of the people to the intention of their agents.

Nor does this conclusion by any means suppose a superiority of the judicial to the legislative power. It only supposes that the power of the people is superior to both; and that where the will of the legislature declared in its statutes, stands in opposition to that of the people declared in the constitution, the judges ought to be governed by the latter, rather than the former. They ought to regulate their decisions by the fundamental laws, rather than by those which are not fundamental.

This exercise of judicial discretion in determining between two contradictory laws, is exemplified in a familiar instance. It not uncommonly happens, that there are two statutes existing at one time, clashing in whole or in part with each other, and neither of them containing any repealing clause or expression. In such case, it is the province of the courts to liquidate and fix their meaning and operation: So far as they can by any fair construction be reconciled to each other; reason and law conspire to dictate that this should be done. Where this is impracticable, it becomes a matter of necessity to give effect to one, in exclusion of the other. The rule which has obtained in the courts for determining their relative validity is that the last in order of time shall be preferred to the first. But this is a mere rule of construction, not derived from any positive law, but from the nature and reason of the thing. It is a rule not enjoined upon the courts by legislative provision, but adopted by themselves, as consonant to truth and propriety, for the direction of their conduct as interpreters of the law. They thought it reasonable, that between the interfering acts of an equal authority, that which was the last indication of its will, should have the preference.

But in regard to the interfering acts of a superior and subordinate authority, of an original and derivative power, the nature and reason of the thing indicate the converse of that rule as proper to be followed. They teach us that the prior act of a superior ought to be preferred to the subsequent act of an inferior and subordinate authority; and that, accordingly, whenever a particular statute contravenes the constitution, it will be the duty of the judicial tribunals to adhere to the latter, and disregard the former.

It can be of no weight to say, that the courts on the pretense of a repugnancy, may substitute their own pleasure to the constitutional intentions of the legislature. This might as well happen in the case of two contradictory statutes; or it might as well happen in every adjudication upon any single statute. The courts must declare the sense of the law; and if they should be disposed to exercise will instead of judgment, the consequence would equally be the substitution of their pleasure to that of the legislative body. The observation, if it proved any thing, would prove that there ought to be no judges distinct from that body.

If then the courts of justice are to be considered as the bulwarks of a limited constitution against legislative encroachments, this consideration will afford a strong argument——

(Disturbance in the Visitors' Galleries.)

The PRESIDING OFFICER. Will the Senator suspend?

The Sergeant at Arms will restore order in the gallery, please.

The Senator will resume.

Mr. TSONGAS. Mr. President, I am sometimes accused by my supporters of not giving flag-waving speeches, and I think the incident just now will set that straight once and for all.

Back to the Constitution (continuing):

for the permanent tenure of judicial offices, since nothing will contribute so much as this to that independent spirit in the judges, which must be essential to the faithful performance of so arduous a duty.

This independence of the judges is equally requisite to guard the constitution and the rights of individuals from the effects of those ill humours which the arts of designing men, or the influence of particular conjunctures, sometimes disseminate among the people themselves, and which, though they speedily give place to better information and more deliberate reflection, have a tendency in the mean time to occasion dangerous innovations in the government, and serious oppressions of the minor party in the community. Though I trust the friends of the proposed constitution will never concur with its enemies in questioning that fundamental principle of republican government, which admits the right of the people to alter or abolish the established constitution whenever they find it inconsistent with their happiness; yet it is not to be inferred from this principle, that the representatives of the people, whenever a momentary inclination happens to lay hold of a majority of their constitutents incompatible with the provisions in the existing constitution, would on that account be justifiable in a violation of those provisions; or that the courts would be under a greater obligation to connive at infractions in this shape, than when they had proceeded wholly from the cabals of the representative body.

To put it in modern terminology, what Alexander Hamilton is saying is that there is a Constitution which is paramount and that the Constitution is there to protect the country from those in legislative bodies such as our own who bend to a sentiment that may be politically popular but happens to violate the Constitution.

Mr. DENTON. Mr. President, will the distinguished Senator from Massachusetts yield?

Mr. TSONGAS. I do not yield. If the Senator will simply have the staff——

Mr. DENTON. It is not for a question. I was simply inquiring, in connection with the goodwill policy which the Senator from Connecticut outlined, if some time be afforded equitably to both sides. I thought perhaps the Senator had finished for the moment.

Mr. TSONGAS. I just have a few more sentences from Federalist 78, and then I indicated that I would yield to the Senator from Montana.

I will attempt to work out the interests of the Senator from Alabama.

The PRESIDING OFFICER. The Chair advises the Senator that he cannot yield the floor to the Senator from Alabama.

Mr. TSONGAS. I take it that the only one who could yield would be the Senator from Connecticut. Is that correct?

The PRESIDING OFFICER. The time is not under control. Under the Senate rules, no Senator can yield the floor to another Senator.

Mr. TSONGAS. I thank the Chair.

I continue to read:

Until the people have by some solemn and authoritative act annulled or changed the established form, it is binding upon themselves colectively, as well as individually; and no presumption, or even knowledge of their sentiments, can warrant their representatives in a departure from it, prior to such an act. But it is easy to see that it would require an uncommon portion of fortitude in the judges to do their duty as faithful guardians of the constitution, where legislative invasions of it had been instigated by the major voice of the community.

But it is not with a view to infractions of the constitution only that the independence of the judges may be an essential safeguard against the effects of occasional ill humours in the society. These sometimes extend no farther than to the injury of the private rights of particular classes of citizens, by unjust and partial laws. Here also the firmness of the judicial magistracy is of vast importance in mitigating the severity, and confining the operation of such laws. It not only serves to moderate the immediate mischiefs of those which may have been passed, but it operates as a check upon the legislative body in passing them; who, perceiving that obstacles to the success of an iniquitous intention are to be expected from the scruples of the courts, are in a manner compelled by the very motives of the injustice they mediate, to qualify their attempts. This is a circumstance calculated to have more influence upon the character of our governments, than but few may be aware of. The benefits of the integrity and moderation of the judiciary have already been felt in more states than one; and though they may have displeased those whose sinister expectations they may have disappointed, they must have commanded the esteem and applause of all the virtuous and disinterested. Considerate men of every description ought to prize whatever will tend to beget or fortify that temper in the courts; as no man can be sure that he may not be tomorrow the victim of a spirit of injustice, by which he may be a gainer today. And every man must now feel that the inevitable tendency of such a spirit is to sap the foundations of public and private confidence, and to introduce in its stead, universal distrust and distress.

That inflexibile and uniform adherence to the rights of the constitution and of individuals, which we perceive to be indispensable in the courts of justice, can certainly not be expected from judges who hold their offices by a temporary commission. Periodical appointments, however regulated, or by whomsoever made, would in some way or other be fatal to their necessary independence. If the power of making them was committed either to the executive or legislature, there would be danger of an improper complaisance to the branch which possessed it; if to both, there would be an unwillingness to hazard the displeasure of either; if to the people, or to persons chosen by them for the special purpose, there would be too great a disposition to consult popularity, to justify a reliance that nothing would be consulted but the constitution and the laws.

There is yet a further and a weighty reason for the permanency of the judicial offices; which is deducible from the nature of the qualifications they require. It has been frequently remarked with great propriety, that a voluminous code of laws is one of the inconveniences necessarily connected with the advantages of a free government. To avoid an arbitrary discretion in the courts, it is indispensable that they should be bound down by strict rules and precedents, which serve to define and point out their duty in every particular case that comes before them; and it will readily be conceived from the variety of controversies which grow out of the folly and wickedness of mankind, that the records of those precedents must unavoidaby swell to a very considerable bulk, and must demand long and laborious study to acquire a competent knowledge of them. Hence it is that there can be but few men in the society, who will have sufficient skill in the laws to qualify them for the stations of judges. And making the proper deductions for the ordinary depravity of human nature, the number must be still smaller of those who unite the requisite integrity with the requisite knowledge. These considerations apprise us, that the government can have no great option between fit characters; and that a temporary duration in office, which would naturally discourage such characters from quitting a lucrative line of practice to accept a seat on the bench, would have a tendency to throw the administration of justice into hands less able, and less well qualified to conduct it with utility and dignity. In the present circumstances of this country, and in those in which it is likey to be for a long time to come, the disadvantages on this score would be greater than they may at first sight appear; but it must be confessed that they are far inferior to those which present themselves under the other aspects of the subject.

Upon the whole there can be no room to doubt that the convention acted wisely in copying from the models of those constitutions which have established good behaviour as the tenure of their judicial offices in point of duration; and that so far from being blameable on this account, their plan would have been inexcuseably defective if it had wanted this important feature of good government. The experience of Great Britain affords an illustrious comment on the excellence of the institution.

Mr. President, I ask unanimous consent to have printed in the RECORD a summary and an analysis of Federalist 78 by Benjamin Fletcher Wright of the University of Texas, Harvard University Press.

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

Federalist 78 is important, then, not for its discussion of judicial tenure during good behavior, but for the conception of judicial supremacy expressed by the man whose constitutional and economic philosophy was followed in case after case by the greatest of American judges. Madison's Notes on the debates in the Federal Convention were not published until 1840, five years after Marshall's death. Nor could the Chief Justice have found there the doctrine of the judicial power that he was to state for the Court in 1803. For in Number 78 Hamilton declares that the Constitution is not only fundamental law, it is the will of the people, and the courts are its only true guardians. The Constitution is the highest man-made law; any legislative act contrary to it must be held void by the courts, since "the interpretation of the laws is the proper and peculiar province of the courts." The law "which has the superior obligation and validity ought, of course, to be preferred; or, in other words, the Constitution ought to be preferred to the statute, the intention of the people to the intention of their agents." Moreover, the courts of justice are obligated not merely to hold void acts in clear conflict with the Constitution. They are also "to declare all acts contrary to the manifest tenor of the Constitution void." He denies that this makes the courts superior to the legislature. In fact it "only supposes that the power of the people is superior to both; and that where the will of the legislature, declared in its statutes, stands in opposition to that of the people, declared in the Constitution, the judges ought to be governed by the latter rather than the former."

In this philosophy of constitutional law as it was developed by Hamilton, presumably during the spring of 1788, the judges emerge as the only branch of government that can give a final interpretation to the meaning of the Constitution, the only branch that can express the will of the people as it is embodied in that document. He goes so far as to say that the independence of the judges is equally necessary to guard the people against "the effects of those ill humors which the arts of designing men or the influence of particular conjunctures sometimes disseminate among the people themselves. . . ." Where Madison saw in bicameralism, and especially in the stabilizing influence of the Senate, a means of checking momentary violations of the true will of the people of rights of minorities, Hamilton finally arrives at a conception of the judiciary as the branch of government that can be trusted to maintain constitutional order and thus preserve the will of the people.

Mr. TSONGAS. Mr. President, there are a number of Federalist Papers that deal with the issue of the judiciary, and No. 78 deals with the independence of the judiciary in order to maintain a capacity to withstand the onslaught of the legislative branch.

Now I deal with Federalist No. 81, also by Alexander Hamilton, on May 21, 1788.

Let us now return to the partition of the judiciary authority between different courts, and their relations to each other.

"The judicial power of the United States is" (by the plan of the convention) "to be vested in one Supreme Court, and in such inferior courts as the Congress may, from time to time, ordain and establish." [1]

That there ought to be one court of supreme and final jurisdiction, is a proposition which is not likely to be contested. The reasons for it have been assigned in another place, and are too obvious to need repetition. The only question that seems to have been raised concerning it, is, whether it ought to be a distinct body or a branch of the legislature. The same contradiction is observable in regard to this matter which has been remarked in several other cases. The very men who object to the Senate as a court of impeachments, on the ground of an improper intermixture of powers, advocate, by implication at least, the propriety of vesting the ultimate decision of all causes, in the whole or in a part of the legislative body.

The arguments, or rather suggestions, upon which this charge is founded, are to this effect: "The authority of the proposed Supreme Court of the United States, which is to be a separate and independent body, will be superior to that of the legislature. The power of construing the laws according to the spirit of the Constitution, will enable that court to mold them into whatever shape it may think proper; especially as its decisions will not be in any manner subject to the revision or correction of the legislative body. This is as unprecedented as it is dangerous. In Britain, the judicial power, in the last resort, resides in the House of Lords, which is a branch of the legislature; and this part of the British government has been imitated in the State constitutions in general. The Parliament of Great Britain, and the legislatures of the several States, can at any time rectify, by law, the exceptionable decisions of their respective courts. But the errors and unsurpations of the Supreme Court of the United States will be uncontrollable and remediless." This, upon examination, will be found to be made up altogether of false reasoning upon misconceived fact.

In the first place, there is not a syllable in the plan under consideration which directly empowers the national courts to construe the laws according to the spirit of the Constitution, or which gives them any greater latitude in this respect than may be claimed by the courts of every State. I admit, however, that the Constitution ought to be the standard of construction for the laws, and that wherever there is an evident opposition, the laws ought to give place to the Constitution. But this doctrine is not deducible from any circumstance peculiar to the plan of the convention, but from the general theory of a limited Constitution; and as far as it is true, is equally applicable to most, if not to all the State governments. There can be no objection, therefore, on this account, to the federal judicature which will not lie against the local judicatures in general, and which will not serve to condemn every constitution that attempts to set bounds to legislative discretion.

But perhaps the force of the objection may be thought to consist in the particular organization of the Supreme Court; in its being composed of a distinct body of magistrates, instead of being one of the branches of the legislature, as in the government of Great Britain and that of this State. To insist upon this point, the authors of the objection must renounce the meaning they have labored to annex to the celebrated maxim, requiring a separation of the departments of power. It shall, nevertheless, be conceded to them, agreeably to the interpretation given to that maxim in the course of these papers, that it is not violated by vesting the ultimate power of judging in a part of the legislative body. But though this be not an absolute violation of that excellent rule, yet it verges so nearly upon it, as on this account alone to be less eligible than the mode prefered by the convention. From a body which had even a partial agency in passing bad laws, we could rarely expect a disposition to temper and moderate them in the application. The same spirit which had operated in making them, would be too apt in interpreting them; still less could it be expected that men who had infringed the Constitution in the character of legislators, would be disposed to repair the breach in the character of judges. Nor is this all. Every reason which recommends the tenure of good behavior for judicial offices, militates against placing the judiciary power, in the last resort, in a body composed of men chosen for a limited period. There is an absurdity in referring the determination of causes, in the first instance, to judges of permanent standing; in the last, to those of a temporary and mutable constitution. And there is a still greater absurdity in subjecting the decisions of men, selected for their knowledge of the laws, acquired by long and laborious study, to the revision and control of men who, for want of the same advantage, cannot but be deficient in that knowledge. The members of the legislature will rarely be chosen with a view to those qualifications which fit men for the stations of judges; and as, on this account, there will be great reason to apprehend all the ill consequences of defective information, so, on account of the natural propensity of such bodies to party divisions, there will be no less reason to fear that the pestilential breath of faction may poison the fountains of justice. The habit of being continually marshalled on opposite sides will be too apt to stifle the voice both of law and of equity.

These consideration teach us to applaud the wisdom of those States who have committed the judicial power, in the last resort, not to a part of the legislature, but to distinct and independent bodies of men. Contrary to the supposition of those who have represented the plan of the convention, in this respect, as novel and unprecedented, it is but a copy of the constitutions of New Hampshire, Massachusetts, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia; and the preference which has been given to those models is highly to be commended.

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

Mr. TSONGAS. I yield.

Mr. DENTON. The Senator from Massachusetts said he was going to read a few more lines. Can he interpret the timeframe he has in mind, please?

Mr. TSONGAS. It is my intent to speak until 1:45. I am not exactly clear where we are in terms of parliamentary procedure. Perhaps the Senator from Oregon will be in a position to speak about that.

Mr. PACKWOOD. Mr. President, I believe I can answer the question of the Senator from Alabama. He does not have to worry in this case about time disproportionately used by one side or the other. We are not under a time agreement. Nobody has control of the time, as a matter of fact. So long as a Senator has the floor, he can speak, but he cannot pass control of the floor from person to person, and there is no time limit.

Mr. DENTON. I understand that. In accordance with the courteous policy which the Senator from Connecticut mentioned, I was simply trying to inquire, for the purpose of my own convenience, when it might be possible to speak. I have been waiting for about an hour-and-a-half.

Mr. PACKWOOD. So far as I am concerned—and I think I speak for the Senator from Connecticut—when the Senator from Massachusetts is done, I will be perfectly happy to have the Senator from Alabama recognized to speak.

Mr. TSONGAS. If it would accommodate the Senator from Alabama, I would be pleased to yield at this point.

Does the Senator have any idea how long he will be?

Mr. DENTON. Perhaps 15 or 20 minutes would be my guess.

I thank the Senator from Oregon and the Senator from Massachusetts.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. DENTON. Mr. President, I just want to enter some points on the other side of this question. I shall endeavor to remain impersonal and polite.

Many facets of this issue can be presented and have been presented. Many more will be. Many arguments will be offered. I do want to reduce smokescreens which have been laid to obscure visibility in this Chamber. Proponents of the school prayer and abortion amendments are not really arguing for some unspeakable effort to vitiate the Constitution. I am not wearing an American flag. I would not criticize those who do and, whoever was being referred to might not be here at the moment.

There is no effort by anyone who favors voluntary school prayer in our public schools to vitiate the Constitution. Nor do I think that anyone who wants to end Federal support for abortion and abortion-related activities is interested in vitiating the Constitution.

I am amused by the reference to Alice in Wonderland. I think a good point was made that we are in an Alice in Wonderland condition.

However, I would not characterize it in the same way as my friend from Massachusetts who suggested that we are departing from our Founding Fathers' ideals and vision, and that not enough of us have read the Federalist Papers or Alice in Wonderland.

[1] Art. 3, sec. 1.—Publius.

The Alice in Wonderland which I see and which I believe would have the Founding Fathers spinning in their graves is that we have arrived at a point in the history of this "One Nation Under God" at which no prayer is permitted in our public schools. In one lower court action, a few kindergarten children who tried to say grace together were ordered to desist. I think that this sort of holding is the real Alice in Wonderland story.

Moreover, I believe another "wrong" is "right" world is that created by the Supreme Court with regard to abortion. For hundreds of years, civilized society was appalled by the practice of abortion; it was relegated to a crime. Now, however, we have no restrictions on the practice and indeed Federal money is spent to support and encourage it.

I do not believe that those who favor school prayer and oppose abortion, which are indeed the issues before us, are using improper means or methods.

We are interpreting and trying to apply article III, section 2, of the Constitution. We are not outside the Constitution. We are within it. While that effort is debatable, it is no more objectionable than reversing a Supreme Court ruling as was done during consideration of the Voting Rights Act.

I believe that congressional reversal of the Supreme Court in that instance was misguided and that is why I voted against the voting rights bill, not because I am opposed to equal rights for all. I think it was constitutionally suspect. Incidentally, I believe it also weakens the motivation of those States which are in good faith trying to improve their record regarding voting rights, and eliminates any hope that they would escape from the act's discriminatory restrictions.

The exception provision, like the commerce clause, is a plenary power to be exercised at the discretion of the Congress. To construe language of the Constitution to reach another conclusion is a tortured effort. I and others are working in good faith.

I do not want to be personal, and I do not relish the thought that others will be personal, as we work into the night tonight or tomorrow night on these measures. I hope we can debate as gentlemen this extremely important set of issues.

The method which we who oppose abortion on demand are utilizing is simply a flat prohibition against the use of Federal taxpayer dollars to either support or encourage abortion of unborn children.

I do not think these are "Mad Hatter" methods. I do not think the aim of permitting prayer in our public school is a meaningless gesture or that stopping Federal Government support for the abortion of unborn childern is a meaningless gesture.

In harkening back to the words of our Founding Fathers, it might be worthwhile to remember the words of William Penn who said that "nations which do not choose to be governed by God condemn themselves to be ruled by tyrants."

We have heard talk about embarrassing children, persecuting children, being uncompassionate, imposing faiths, and official prayers. There is no such intent on the part of this Senator. I chaired a hearing on this subject, in what I believe was an impartial manner, and I learned much. I simply believe that it is better not to prohibit prayer in schools than to prohibit it. I do not wish to come to any conclusions about what the wording of any prayer might be. There is no suggestion in the motion before us by the Senator from North Carolina that we draft official prayers. The issue is whether we are going to continue to prohibit prayer in our public schools.

I do not think our fellow-citizens are going to be distracted by the arguments of those who contend otherwise, although I agree with the Senator from North Carolina that not many Senators understood the significance of the vote they took on whether to table the motion by the Senator from Connecticut.

As a Christian, I believe the Jewish faith, the Moslem faith, and a multitude of others together produce a commonality of understanding that draws this Nation and many of our allies together.

I lived in a society which is the opposite of ours, which denies the existence of God and which does not claim to be one nation under God. That society does not recognize the family as the essential social unit because it says officially that the commune is the social unit. We, on the other hand, say the family remains the central social unit and, I believe every responsible historian will have to admit that no society has ever succeeded without recognizing that the family is indeed the basic social unit of society.

Our concepts of both the family and the free enterprise system are derived from the belief in God. The compassion which would prevent us from being unfair to children in devising school prayers comes from that belief in God. Moreover, our national foreign policy is relatively benign and compassionate compared to that of totalitarian atheistic communistic nations because of that enduring belief in God and in the human rights he bestows upon each of us.

Our citizens' rights vis-a-vis the State and the State's perception of its rights vis-a-vis the citizenry is derived from that belief in God and in the God-derived principles which we share as Christians, those of us who are, with Jews, Moslems, and others who possess a concept of God. One such principle is "love thy neighbor as thyself." That precept is the source of human compassion. Such compassion must be the twin to free enterprise. We must apply compassion to one of another color as evidenced by the Biblical story, which demonstrates what is meant by the word neighbor and love thy neighbor as thyself, of the Good Samaritan. The man aided by the Samaritan was a man of another country, a man of another color, a man of another religion and he is like our neighbor whom we must love as we love ourselves.

I believe that is the germ of greatness of this country. I believe it is the germ of greatness which permits us to enjoy the heritage passed on to us by those who have practiced as well as they can, and as we ourselves try to do in our private lives, some behavior which permits one to live in accordance with the dictates of conscience. St. Paul mentioned the proof of our faith. I think this can apply to any faith which believes in the existence of the Diety, and I believe that the societies which have faith have prospered much more than those which have not, proving that a good tree bringeth forth good fruit.

I believe we must continue to emphasize our national belief in God. St. Paul said, "The proof of our faith"—he did not say a good reason to believe that your faith is true, he said, "The proof of our faith is the voice within us which cries out 'Abba'" meaning "father."

I believe most Members of this body and most members of the citizenry of this country have been through experiences in which pain, some kind of extremity in life's experience, have caused them to feel that voice "Abba," "father," and they have cried out either silently or vocally to that father.

Not to remind ourselves, at least occasionally, in school of that while we learn reading and writing and arithmetic would be something which the man who was the father of the public school system would consider unthinkable. Horace Mann would not have believed that we would come to the point of forbidding nonsectarian prayer in schools.

To provide a personal opinion to those who oppose the idea of prayer in schools for what I consider to be in all cases sincere reservations, let me say that I believe that we could trust the children themselves. Each child might care to offer a prayer, reflecting the religious diversity in that classroom. Others who may choose to leave voluntarily or to stay would show respect for that person's faith. I think that such an exchange inculcates something that is not altogether bad. That is but one way to approach this subject.

I do not want any person's feelings to be hurt. I do not want any particular religious faith to be imposed upon the schools because that would truly be the establishment of a religion.

The question, however, is did the Supreme Court, fallible as it is, rule correctly when it said, "It is the establishment of religion to permit voluntary prayer in schools?"

I think that a referendum in this Nation would show that the overwhelming majority wish to stop the prohibition against prayer in schools and that few wish the Government to support through tax dollars unrestricted abortion.

I believe the bill which the Senator from North Carolina presented is relatively moderate, quite moderate. It, in fact, does not meet my own personal standards, but that is no problem as far as I am concerned.

I hope we can be kind to one another in the way in which we debate this because I love each Member of this body. I do not feel self-justified. I do not feel that I have any more patriotism than anyone else in this body, and I do not intend to attack their goodness or their patriotism, and I hope we do not stoop to that.

I know the Senator from Massachusetts did not strike heavily when he made that remark concerning the American flag in the lapel of a Senator. I just hope if I start talking that way someone will warn me because I, too, am pretty committed to the twin measures proposed by the Senator from North Carolina.

I thank the Chair.

Mr. SPECTER addressed the Chair.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, I rise to speak on the issue of limiting the jurisdiction of the Supreme Court of the United States.

The procedural posture of the matters pending before the Senate is very complex indeed. There was substantial discussion before this week on an effort to arrange a time limitation so that the issue of abortion could be fully debated by this body as a part of the debt limit bill.

Last week there had been concerted efforts, by the majority leader and others, to have a time agreement with 8 hours devoted to the proposal expected by Senator HELMS, and 8 hours devoted to the constitutional amendment expected to be submitted by Senator HATCH.

That time agreement never came to fruition because, as I understand it, Senator HELMS modified the proposal that he was about to make. Senator HELMS did introduce a so-called amendment whose entire text was "title II." After "title II" was introduced, Senator PACKWOOD began what has been widely described as a filibuster.

I personally did not see the wisdom of speaking at length on a pending matter denominated solely "title II," and declined to commit myself to participate in a discussion of any sort, whether extended or not, whether labeled a filibuster or not, if it related only to "title II."

There is much media speculation about the way that lines are drawn in this body on these issues. Again, speaking only for myself, I have made no prejudgments on many of the matters which are being discussed. I have inclinations and have stated positions on a variety of issues. But I resist being categorized. I resist making commitments in a vacuum. And I resist joining any side until the issues have been defined and we know what it is we are debating.

When my name has appeared in newspapers saying that I am committed to one position or another, I have contacted those responsible for the statement and reminded them that they have no such authorization. I have consistently said that I will examine the issue pending and speak out at an appropriate time and in a constructive manner.

In my judgment, a protracted debate on the proposition "title II" advances no cause. Once we have a fully stated proposition it will be appropriate for Members of this body to express themselves as they see fit.

The majority leader has taken the position in his leadership role that he will honor his commitment to allow free-standing debate on the abortion issue. Therefore this body is going to consider these issues, and I, for one, am prepared to debate, consider, and ultimately vote on the propositions to be submitted by Senator HELMS. and the constitutional amendment to be submitted by Senator HATCH.

As the issue have actually evolved, however, the proposition submitted by Senator HELMS is significantly different from what had been expected. Senator HELMS now submits an amendment which provides, in part, that "the Supreme Court shall not have jurisdiction to review by appeal, writ of certiorari, or otherwise any case arising out of any State statute, ordinance, rule, or regulation, or any part thereof, or arising out of any act interpreting, applying, or enforcing a State statute, ordinance, rule, or regulation which relates to voluntary prayers in public schools and public buildings." So that the issue that had been expected to be introduced by Senator HELMS on the proposition that life begins at conception has taken a decidedly different turn.

There are two distinct aspects embodied in Senator HELMS' proposal on school prayer. One aspect relates to the substance of school prayer itself, another to the jurisdiction of the Supreme Court of the United States.

Regarding the substance of school prayer, I said earlier today at a hearing before the Committee on the Judiciary that I have an open mind on the constitutional amendment that has been proposed. Deputy Attorney General Edward Schmults testified at length this morning before the committee. I raised a number of questions with Mr. Schmults concerning the current status of the law which allows meditation, according to the concurring opinion by Mr. Justice Brennan in the 1962 decision and according to a holding by a three-judge court sitting in Massachusetts. I raised the question of whether the subject of voluntary school prayer might not better be decided by an adjudication of the Supreme Court of the United States or whether the law in its current posture does not, in fact, allow voluntary school prayer.

That issue is proceeding through hearings in the Committee on the Judiciary and it will ultimately be decided by that committee. If submitted to the floor it will be voted upon by each Member of this body in the form of a constitutional amendment.

It is a complex subject, one that requires substantial analysis and thought before a judgment is reached. And, to repeat, my mind is open on that subject and I will address it in due course as the matter moves through the Judiciary Committee and to the floor of the U.S. Senate.

However, when the issue is raised in terms of the jurisdiction of the Supreme Court of the United States and any effort to limit its jurisdiction, I have a fixed opinion that has evolved from substantial experience both in the law and in dealing with decisions of the Supreme Court of the United States on constitutional issues.

In my judgment it is unconstitutional to limit the jurisdiction of the Supreme Court of the United States because, as our constitutional doctrine has developed, the Supreme Court is, as stated, supreme. And given a form of government with three coordinate branches, one unit must have the power to break the tie and decide what is the law of the land.

Since Marbury against Madison, our Government has functioned with the Supreme Court of the United States having that ultimate power. I suggest that our national Government has functioned very well indeed; that we have evolved into a powerful Nation that cherishes worthy values and guarantees maximum freedom and maximum opportunity for every citizen. It is not a perfect system but it is the best one yet devised.

When I have disagreed with the Supreme Court of the United States on matters affecting my professional responsibilities, and I have done so vehemently, I have nonetheless accepted

its judgments. My acceptance of its judgments has led me to oppose seeking amendments to the U.S. Constitution to overrule the Court's decisions.

The case of Miranda against Arizona is a case in point. Decided on June 13, 1966, its judgment tied the hands of law enforcement officials by prescribing a series of warnings and waivers that all law enforcement officers had to obtain before a defendant's statements could be used in a criminal case.

The Miranda decision was especially difficult for law enforcement officials because it was held to apply retroactively. Any incriminating statement produced by an investigation conducted prior to June 13, 1966, could not be introduced into evidence if the trial started after June 13, 1966.

A simple case is illustrative, one which occurred in the Philadelphia district attorney's office while I served as district attorney.

In mid-May, a man named Hickey was charged with a robbery of a taxicab. He was arrested as a suspect and questioned in what was then a constitutionally permissible manner. He was not subjected to physical abuse. He was not subjected to psychological coercion. He confessed. He told the police the location of the weapon and of the proceeds of the robbery. The police found the money and the weapon and Hickey was indicted for first-degree murder, felony murder.

It was, of course, impossible to bring Hickey to trial between the middle of May and June 13, the day the Miranda decision was issued. When the U.S. Supreme Court said that the Miranda case applied to any matter which had not been tried before the date of the decision, it was required, as a matter of constitutional law, that Hickey's confession be suppressed and that the prosecutor not be permitted to use the weapon or robbery proceeds as evidence. Hickey walked out of court a free man. It was, I thought, an outrageous result.

But once the Supreme Court of the United States had decided Miranda, I disagreed with any efforts to reverse the decision by amending the U.S. Constitution. Instead, I participated in efforts to reargue the Miranda case and, in fact, found such a case in Commonwealth against Ware, where the Supreme Court of the United States granted certiorari to hear the issues raised in the Miranda decision.

Ware had been charged with four robbery-murders involving pushing elderly people down staircases. In 1963, when so charged, he was committed to a mental institution and was not released until 1968.

In the meantime, Miranda had been decided. When Ware's trial came up we were again confronted with a situation where we could not use the confession. But it was obviously impossible to have tried Ware before the Miranda decision because he was not competent to stand trial. So an appeal was taken from the lower court judge's suppression of Ware's confession. The Supreme Court of Pennsylvania upheld that decision saying we could not use Ware's confession, and application was made to the U.S. Supreme Court for certiorari, which was granted. It is a rare occurrence when the Supreme Court grants certiorari in any case.

When that occurred, the Supreme Court of Pennsylvania took the case back and decided that Ware's confession could not be used consistently with the Pennsylvania constitution, which rendered the controversy before the Supreme Court of the United States moot and certiorari was rescinded. Miranda stood as good law.

I refer at some length to that decision to illustrate my personal conviction on the ultimate desirability of vesting in the U.S. Supreme Court the authority to make these final judicial decisions. In the long history of this country, the pronouncements of the Supreme Court of the United States have served us well and the jurisdiction of the Supreme Court of the United States ought to be retained.

I see enormous peril in the course which is being pursued in recent efforts to limit the jurisdiction of the U.S. Supreme Court.

When this body earlier this year, by a 57-to-37 vote, limited the jurisdiction of the Supreme Court of the United States on the busing issue, I predicted serious problems down the road.

Most would agree that busing has been a colossal failure. Neither blacks nor whites like the result of busing. But the substantive issue, the quality of busing, is not the real question. The real question is whether this country continues the jursidiction of the U.S. Supreme Court.

The effort in this amendment by Senator HELMS to limit the jurisdiction of the Supreme Court on voluntary prayer in school again raises that very serious problem.

What I anticipate as the ultimate problem will be an enactment by the Congress that the Supreme Court does not have jurisdiction on a given subject. Congress will then declare that the Supreme Court does not have jurisdiction to decide whether its earlier enactment is constitutional. To amplify, the Congress would say that the Supreme Court does not have jurisdiction on subject A. Then in a second bill, the Congress will say the Supreme Court does not have jurisdiction to decide whether it has jurisdiction over subject A.

The Court will take these two congressional enactments and almost, certainly, rule that both are unconstitutional; that it was a nullity for Congress to declare that the Court did not have jurisdiction over subject A and it was a nullity for the Congress to say that the Court did not have jurisdiction over the subject matter of A.

Congress will then respond by declaring the action of the Court a nullity in deciding that both acts were unconstitutional because the Court did not have jurisdiction. That would create a constitutional deadlock, with the Congress saying the Court's action is a nullity and the Court saying the congressional action is a nullity.

If that unhappy situation occurred, the marshal would have to decide what order to enforce because under our system of government the Court's orders can only be enforced by the executive branch, through the marshal. If it were necessary to enforce court orders in this country, our entire judicial system would break down.

The reason we are able to function under our judicial system is that no one challenges a court order. When a litigant has exhausted his judicial remedies, no matter how disappointed he may be, he abides by the ruling of the Court.

But on the course that we are headed, with a congressional effort to limit the jurisdiction of the Supreme Court, we face a constitutional deadlock and, I submit, anarchy.

So when this discussion reaches the point where the jurisdiction of the Supreme Court of the United States is at issue, then I certainly want to join with the voices of opposition as loudly or perhaps as cogently or as persuasively as possible in order to stop any such stripping of the jurisdiction of the Supreme Court of the United States.

Mr. President, I now yield the floor without this being construed as the end of my speech for the purposes of the two-speech rule.

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

MORE GOOD NEWS FROM WALL STREET

Mr. BAKER. Mr. President, I might say I have just been handed a note that at 2 p.m. today, the Dow Jones was up 17 points on a volume of 100 million shares, which is the highest turnover in the history of the New York Stock Exchange.

I yield the floor.

TEMPORARY INCREASE IN THE PUBLIC DEBT LIMIT

The Senate continued with the consideration of the joint resolution.

Mr. BAUCUS. Mr. President, I yield to the Senator from Alabama without losing my right to the floor.

Mr. HEFLIN. Mr. President, this amendment, which says it may be recited as the Voluntary School Prayer Act of 1982 has been called a court

stripping bill, meaning that it strips the Supreme Court and the Federal courts of jurisdiction dealing with prayer in public schools and public buildings. I have read very carefully every word in this amendment. This amendment in no way strips the Supreme Court and other Federal courts of jurisdiction relating to involuntary prayers in public schools and public buildings.

The language of the amendment is directed toward voluntary prayers in public schools and public buildings. In my judgment, there will be few court cases or court actions dealing with voluntary prayer. The use of the courts will be related to involuntary prayer.

This amendment my bring about the decision at the entry stage of whether or not the case, statute, ordinance, rule, or regulation involves involuntary prayer. I doubt seriously that if prayer in voluntary, there will be many court cases. The court cases that will arise will involve involuntary prayer. In reviewing this, it seems to me that the language of the amendment accomplishes very little but is, rather, an exercise in symbolism.

I support prayer in public schools if the prayers are voluntary. The key issue is voluntariness.

Mr. BAUCUS addressed the Chair.

The PRESIDING OFFICER (Mr. SYMMS). The Senator from Montana.

Mr. BAUCUS. Mr. President, the issue here today is very simple. Some would call this a school prayer amendment, the amendment offered by the Senator from North Carolina as the school prayer amendment, and someone else would say that the second amendment offered by the Senator from North Carolina is an abortion amendment. Mr. President, those who look at those two amendments closely will find that is not the case. These are court-stripping amendments. These are amendments which would limit the Supreme Court's jurisdiction over Federal constitutional issues. That certainly is the school prayer amendment. That amendment boldly, expressly, in black and white, definitely states the Supreme Court shall not have jurisdiction over school prayer, and, similarly, the Federal courts will not have jurisdiction.

The abortion amendment is not strictly a court-stripping amendment at all, but, rather, an attempt by statute to overturn Supreme Court decisions. But, nevertheless, the effect is the same.

Mr. President, let me say a few words about the arguments in behalf of the proponents of the amendment; that is, their arguments why the Congress does have the authority to, by statute, limit Supreme Court review.

In my view, the Congress does not have that authority. It would be a travesty of Congress to try to exercise that authority. If the Congress can limit Supreme Court jurisdiction over this issue here today, we could preclude Supreme Court jurisdiction over any other constitutional provision, regardless of what it is, which includes free speech, freedom of religion. It includes the right to bear arms. It includes the right against self-incrimination. Any particular constitutional provision could be rendered useless if we adopt this today, by statute overturning the Supreme Court decisions.

Proponents of this amendment rely both on specific provisions in the Constitution and on language in Supreme Court decisions.

With regard to Supreme Court jurisdiction, they cite article III, section 2—the exceptions clause—which gives the Supreme Court appellate jurisdiction "with such exceptions and under such regulations as the Congress shall make." It is argued that the exceptions clause gives Congress power to withdraw specific categories of cases from the Court's review.

Furthermore, the argument is buttressed by the Supreme Court's holding in ex parte McCardle which recognized that the exceptions clause gives Congress some meaningful power to control the Supreme Court's jurisdiction. In McCardle, the Court upheld the constitutionality of a congressional statute which withdrew the Supreme Court's jurisdiction to hear cases arising under an 1867 habeas corpus statute.

Congressional power to remove the jurisdiction of lower Federal courts presents less complications. Article III, section 2 gave Congress the power to create the lower Federal courts. Arguably, this power to create these courts carries with it the lesser power to reduce or eliminate lower court jurisdiction.

These arguments ignore the fact that these bills represent legislative encroachment on the judicial function and therefore violate the doctrine of separation of powers and the principle of judicial independence as articulated in Marbury against Madison.

Additionally, the Court's holding in McCardle is limited by its holding in United States against Klein. In Klein, the Court overturned a Federal statute stating that congressional authority to control jurisdiction did not include the power to tell the court how to determine cases within its jurisdiction.

However, I would concede that reliance on Supreme Court precedence alone is not satisfactory because the cases are over 100 years old and none of them directly address the legal issues presented by this amendment. Although McCardle and Klein have some relevance, they are clearly not dispositive.

In order really to understand whether the exceptions clause was intended to be utilized in the manner contemplated by this amendment, it is helpful to focus on the circumstances surrounding the inclusion of the clause in the Constitution.

Article VI, clause 2 of the Constitution, the supremacy clause, established the Constitution and Federal laws as the "supreme law of the land." However, the supremacy clause standing alone would have little, if any, meaning if there were no enforcement mechanism for its provisions.

The Articles of Confederation also contained a supremacy clause similar to the one contained in the Constitution. However, the articles provided no enforcement mechanism.

Recognizing this deficiency of the articles, the Framers of the Constitution intended that the Supreme Court enforce the supremacy clause.

Alexander Hamilton wrote in the Federalist Papers:

> A circumstance which shows the defects of the confederation remains to be mentioned—the want of a judiciary power. Laws are a dead letter without courts to expound and define their true meaning and operation. * * * If there is in each state a court of final jurisdiction, there may be as many different final determinations on the same point as there are courts. * * * To avoid the confusion which would unavoidably result from the contradictory decisions of a number of independent judicature, all nations have found it necessary to establish one tribunal paramount to the rest, possessing a general superintendence and authorized to settle and declare in the last report a uniform rule of civil justice.

The proceedings of the constitutional convention give additional support to the premise that the Framers intended to design a judicial branch with one Supreme Court capable of enforcing the supremacy clause. Prof. Lawrence Sager has recently written an important article on Congress power to restrict Federal court jurisdiction which includes an analysis of the convention's proceedings.

Professor Sager notes that the convention adopted the supremacy clause in close to its final form on August 23, 1787.

Then, on August 27, the convention spent the day addressing article III. In discussing the purpose of the clause, Professor Sager writes:

> The exceptions and regulations language was also approved on August 27th, under circumstances that favor a limited view of its scope. . . . It was adopted by the convention on August 27th without a ripple of recorded debate, concern or explication. In light of this quiesence, it is hard to imagine that the framers were consciously adopting a provision that could completely unravel one of the most basic aspects of the constitutional scheme to which they had committed themselves.
>
> Thus, as the delegates to the Constitutional Convention made their peace on issue after issue, the Supreme Court's superintendence of state compliance with national law emerged as the fulcrum of the nation's government.

In a recent letter to STROM THURMOND, chairman of the Senate Judiciary Committee, Attorney General William French Smith expanded on Professor Sager's analysis of the historical purpose of the exceptions clause. Like Sager, the Attorney General finds the absence of debate surrounding the constitutional convention's adoption of the clause proof that the framers did not intend for the clause to give Congress the power to interfere with core functions of the Court.

The Attorney General presents three arguments for this interpretation of the exceptions clause.

Mr. President, let me call special attention to those three arguments that the Attorney General presented in his conclusion that the Founding Fathers did not intend to give Congress such power and scope under the exemptions clause as is argued by the proponents of the underlying amendments.

Argument No. 1: The framers agreed without dissent on the necessity of a Supreme Court to secure national rights and national uniformity of judgments. Yet, there was no debate whatsoever concerning the meaning of the exception clause. The Attorney General argues that if the framers intended Congress to have plenary power under the clause, the obvious inconsistency between the presumed inviolate functions of the Supreme Court and plenary congressional power to control the Court, would have aroused debate.

Second, the creation and function of the lower Federal courts were vigorously debated at the Convention. Ultimately, it was resolved that lower Federal courts would not be created by the Constitution but that Congress would have the power to create such courts, should Congress deem them necessary.

Given the intensity of the debate regarding the lower Federal courts, and the unanimity of the Convention with regard to the role of the Supreme Court, it is unlikely that the Convention would have adopted without comment the exceptions clause, which for practical purposes would place the Supreme Court and the lower Federal courts in the same position vis-a-vis Congress.

Third, the framers were extremely concerned with the concentration of power in one branch of the Government. One of the basic principles of the Constitution was that each branch of Government must be given the means of defense against encroachments by the other branches of Government.

Congressional power under the exception clause would render the Supreme Court virtually defenseless. In view of the carefully structured doctrine of separation of powers, the Attorney General argues that it is inconceivable that the framers would have contemplated an expansive interpretation of the clause.

In addition to these historical views, one must consider how Congress power under the exceptions clause serves as a check on the judicial branch. The framers did not intend to give the legislative branch a direct means of responding to court decisions. If they had, they would have clearly included such a provision in the Constitution.

Instead, the framers authorized the appellate jurisdiction of the Supreme Court "with such Exceptions, and under such Regulations as the Congress shall make." Alexander Hamilton explained in "The Federalist Papers" that the language was intended "to obviate and remove" the "inconveniences" likely to arise within the judicial system.

A clause designed to address "inconveniences" is a far cry from a clause intended to keep the Court from engaging in "unconstitutional" conduct.

More importantly, the exceptions clause does not provide Congress with a direct check on the judicial branch. A direct check would permit Congress to directly veto or directly amend the substantive result of the Court's decision.

By withdrawing the jurisdiction of the Supreme Court over particular issues through congressional legislation, the issue remains unaddressed by Congress.

The result of the divestiture of Federal court jurisdiction is that 50 State supreme courts are free to decide the issue without ultimate resolution by the Supreme Court. However, it is important to note that Congress would be powerless to affect the outcome of the issue in the State courts.

Thus, the exceptions clause would be an odd creation—a legislative check on the judicial branch that does not return power to Congress. Rather, it would be a check on the Federal judiciary that would merely give power to another set of courts. Not only would they be Federal courts but they would be State courts.

In addition, because State courts would become the ultimate decisionmakers, there could not be a monolithic response to fundamental constitutional questions, and there are many such questions which require a monolithic response. The framers would not have designed a check on the judicial branch which would be difficult for Congress to control and inappropriate in many critical situations.

These points were recently made most cogently by now Circuit Judge Robert Bork of the District of Columbia Court of Appeals. Mr. Bork is a distinguished conservative constitutional scholar. He commented on these aspects of the jurisdiction bills at this confirmation hearings before the Senate Judiciary Committee just a short while ago. Part of the dialog went as follows:

Senator BAUCUS. Could you also indicate to this committee why, in your view, it would be unconstitutional for Congress to pass a statute that would limit Supreme Court jurisdiction say, in a Federal constitutional question?

Mr. BORK. Well, the attempt to eliminate Supreme Court jurisdiction as opposed to lower court jurisdiction would have to rest upon the exceptions clause of Article III of the Constitution, which allows Congress to make such exceptions and regulations of the Supreme Court's appellate jurisdiction as it desires. Literally, that language would seem to allow this result. However, I think it does not allow this result because it was not intended as a means of blocking a Supreme Court that had, in Congress' view, done things it should not. The reason I think it was not intended is that clearly in the most serious kinds of cases, where the Supreme Court might do something that the Congress regarded as quite improper, the exceptions clause would provide no remedy. For example, if the Supreme Court should undertake to rule upon the constitutionality or the unconstitutionality of a war, and the Congress was quite upset, thinking that is not the Supreme Court's business, as indeed I agree it is not, to use the exceptions clause to remove Supreme Court jurisdiction would have the result not of returning power to the Congress but of turning the question over to each of the State court systems. We could not tolerate a situation in which 50 states were deciding through their own judges the constitutionality of a war.

Senator BAUCUS. Well, as I hear you, I hear you address the question more on a policy ground. Apart from the policy ground——

Mr. BORK. No, I do not think that is a policy ground, Senator. I think that is a constitutional argument. One of the ways of construing the Constitution, as Chief Justice Marshall showed us so well in *McCulloch* v. *Maryland*, is to argue from its structure: What is the necessity of government? Would the framers have done something that led to results like this? I think the answer is that the framers would not have devised a check upon the judiciary which does not return power to the Congress but returns power to the state judiciary systems, from which it probably cannot be removed. When one perceives that that is the result, then I think one has to say the framers did not intend this as that kind of a check upon the Court. I do not know any way to apply the Constitution that I regard as legitimate other than in terms of the intent of the framer, as best as that can be determined.

This perspective on the exceptions clause is most instructive. The glaring deficiencies of the exceptions clause are an effective retort to the argument that it was intended to be used as a significant check on the judicial branch.

In the final analysis, the deficiencies of the exceptions clause as a check on the judicial branch are much less troubling that its potential to undo the protections of the Constitution. While the Framers of the Constitution designed a judicial branch which could protect the supremacy of the Federal Government, they also designed the

judiciary to assure that individual liberties would not be abridged.

Alexander Hamilton stated in the 78th "Federalist" that the courts have a duty "to declare all acts contrary to the manifest tenor of the Constitution void. Without this, all reservations of particular rights or privileges would amount to nothing."

If Congress authority to remove subject matter jurisdiction over school prayer were upheld as constitutional, there is no "right" or "privilege" in the Constitution that could not be removed from Supreme Court review. Proponents of this amendment have argued that this is an alarmist view. The exceptions clause would still be subject to other constraints contained in the Constitution, they argue.

Yet, under the analysis offered by the proponents of these bills, Congress authority under the exceptions clause is virtually without limits.

Theoretically, Congress could dismantle any constitutional provision it wished, and paralyze the courts from reviewing such an act. It is this theoretical opening which makes the premise underlying the court-stripping bills most distressing.

Under this analysis, the Supreme Court is only free to enforce a constitional guarantee if 51 percent of Congress does not preclude it from doing so.

IMPACT ON THE COURTS

Notwithstanding these legitimate and seemingly overwhelming constitutional concerns, this amendment is still being offered. Why?

In large part this is because some Members of Congress believe something drastic must be done to rein in an "activist Court."

Therefore, their objective is to overturn or minimize the impact of previous "activist" decisions.

However, it is clear that this amendment does not have the effect of overturning previous Court decisons.

In fact, these bills could have precisely the opposite effect they are intended to have.

Withdrawing court jurisdiction over school prayer would not return prayer to the schools.

Instead of promoting school prayer, these bills could elevate the last Supreme Court decision on the subject to a "permanent" status of the law. Engle against Vitale and Abbington School District against Schempp would still be the controlling Supreme Court decisions on the school prayer issue.

Any assessment of whether the bills would minimize the effect of previous decisions would amount to speculation. No one really knows precisely what impact they would have on a specific body of law.

The proponents of this amendment say they are attempting to restore more traditional and stable judicial decisionmaking to the courts.

However, it is difficult to imagine any set of proposals more inconsistent with the goals of certainty or stability than the court-stripping bills.

The simple fact is that the court-stripping proposals remove Federal court jurisdiction while offering State court judges no real indication of what judicial standard they should follow.

It is ironic that those who are complaining about judicial usurpation of the legislative function are promoting legislative solutions devoid of any substantive direction and inviting further and potentially more disparate pronouncements. Such a vacuum of substantive standards is an open invitation to judicial activism in its purest form. The more helpful solutions would be ones that actually set a new substantive standard for the courts to follow.

Not only do the court-stripping bills fail to provide a substantive legal standard, but they preclude the Supreme Court from enforcing its previous decisions.

The sponsors of these bills realize that they cannot directly reverse a constitutional decision of the Supreme Court. Instead, the sponsors are actually promoting an open invitation to State court judges to alter or reverse the controlling Supreme Court decisions.

They want to withdraw the Supreme Court's jurisdiction and give the State courts a knowing wink and say, "Go-ahead—they can't touch us now." This congressional wink is not responsible legislation.

It is an open invitation to the State courts to overrule decisions of the Supreme Court. Likewise, it is an open invitation for the general disrespect of the rule of law.

In fact, the jurisdiction bills are more than an invitation to such disrespect—their success depends on it. The court-stripping bills would have no substantive impact unless State court judges were willing to seize advantage of this opportunity.

This aspect of the court-stripping bills has been criticized by the Conference of State Court Chief Justices. By a resolution adopted at their midyear meeting in Williamsburg, Va., the chief justices raised serious concerns about the impact of these bills on State courts.

Their resolution observed in part:

These proposed statutes give the appearance of proceeding from the premise that state court judges will not honor their oath to obey the United States Constitution, nor their obligations to give full force to controlling Supreme Court precedents.

It is difficult to see how such proposals restore more traditional and stable decisionmaking to our judicial system. A court-stripping bill would throw a given body of law into total disarray. In the name of restoring "constitutional" decisionmaking to the courts, the proposals in fact leave open the possibility of 50 unconstitutional decisions being pronounced by the State courts.

Should Congress engage in continued court-stripping, we would be left with a crazy quilt of rights and recourses. In the real world of litigation, it is also likely that an individual will not be pursuing a single constitutional issue at a time.

Would it make sense to tell a citizen that the "due process" portion of his case can be brought in Federal court but the "equal protection" part can only be brought in State court?

Further, would it make sense to tell that same individual that the "due process" portion of the case can be appealed to the U.S. Supreme Court, but the "equal protection" portion cannot?

This amendment is being offered without sufficient consideration of the ultimate impact on our judicial system. The proponents have failed to adequately explain why we should abandon the current constitutional scheme for vindicating rights. It is a burden which they must be forced to assume before we begin to dismantle a carefully constructed judicial system.

IMPACT ON CONGRESS

The impact of these jurisdiction-limiting bills on the judicial system has been underestimated. The same is true of the impact of these bills on the Congress itself.

If Congress decided to enter this arena, the pressure to respond to a wider range of constitutional issues will increase. Every constituency that feels victimized by an adverse constitutional ruling will come running to Congress for a jurisdiction-removal bill.

Proponents of this amendment suggest that fears of congressional abuse of the jurisdiction removal power are exaggerated. They argue that this amendment represents a narrow "surgical" removal of a limited area of jurisdiction.

However, a review of the proposals being considered by the 97th Congress is illuminating as to how the Congress might actually utilize this power to remove court jurisdiction.

One bill, H.R. 114, underscores the unlikelihood of a narrow and "surgical" approach. It would remove court jurisdiction over "any order of a State if such order is, or was, subject to review by the highest court of such State."

This bill hardly represents a carefully circumscribed removal of Federal jurisdiction. It would preclude any lower Federal court challenge to any State court decision. For example, it would totally preclude Federal court review of any habeas corpus case.

Another bill, the Women's Draft Exemption Act, H.R. 2791, is equally instructive. It would remove Supreme Court and lower Federal court jurisdiction over cases involving equal protection and the draft. The sponsor of the bill was attempting to maintain an all-male draft. However, the solution being offered is to leave the decision as to the composition of the armed services up to 50 separate State courts.

The result is that women from Pennsylvania might be constitutionally required to be drafted while women from Arizona might be immune from induction.

In fact, if the proposed statute had been enacted, the all-male draft would have been in more disarray and more discriminatory than if the Supreme Court had determined that an all-male draft violated the equal protection clause.

It is also interesting to note that the bill was introduced on March 24, 1981. At that time, the question of the constitutionality of the all-male draft was pending before the Supreme Court. The Court announced its decision in the case on June 25, 1981.

Although the proponents of this amendment argue that Congress will only use its power to correct flagrant cases of judicial excesses, in the case of H.R. 2791, the jurisdiction removal was being proposed before the Supreme Court had rendered its decision. It is difficult to see what constitutional authority the court had abused.

The author of H.R. 2791 feared the Court's ruling on an all-male draft and the bill was written in anticipation of an adverse decision. His worst fears were not realized as the Court upheld the constitutionality of the all-male draft.

One assumes that after June 25, 1981, the bill became moot and that the subject matter suddenly became appropriate for on-going Supreme Court review. Thus, once the Court made the "correct" decision on the issue—that is, what one Congressman saw as "correct"—there was no need to remove the subject from the Court's jurisdiction.

This highly questionable use of the power to remove Court jurisdiction is only one step removed from the most cynical use of that power.

After reviewing all the bills introduced in this Congress, the prediction that jurisdictional removal language will become a boiler-plate provision of much legislation is not wholly implausible. Any time a Member of Congress is unsure whether the Supreme Court would uphold legislation, he or she could tack on a section denying the Court jurisdiction over that issue.

This could apply to taxation and personal property as well as to social issues.

Let us keep in mind that jurisdiction-limiting legislation is a politically two-edged sword. Although associated with conservatives in the 97th Congress, such legislation could very well be used in ways which would be anathema to traditional conservative values.

If Congress can remove Supreme Court jurisdiction over the issue of school prayer, why can it not pass stringent gun-control legislation and include a provision to prevent Supreme Court review of any case involving the "right to bear arms?"

Why could Congress not impose onerous and discriminatory taxes and include a provision to prevent Supreme Court review of the constitutionality of all Federal taxation cases?

Why could Congress not attempt to totally preempt the States from engaging in conduct traditionally within their power and remove Supreme Court jurisdiction over cases arising under the 10th amendment?

These hypotheticals are the reasonable extension of the strategy being put forward in this amendment. If one supports removal of Supreme Court jurisdiction over school prayer, one necessarily supports the possibility of Congress precluding review of any legislation that might run afoul of any constitutional principle, including those held most dear by the proponents of this amendment.

After reviewing the jurisdictional proposals pending in the 97th Congress, the potential for abuse is apparent. While the simple introduction of a bill is not evidence of what 51 percent of the Congress would agree upon, it is instructive as to the possibilities should Congress continue in its attempt to respond to individual Supreme Court decisions by utilizing the jurisdiction removal device.

Mr. President, I see the Senator from New York in the Chamber. He has very deeply held views on this matter, and I now yield the floor, without it being construed as the end of the speech, for the purpose of the two-speech rule.

Mr. MOYNIHAN. Mr. President, I thank my distinguished and learned friend from Montana for yielding me this time to speak to a matter which he and I and others in this body consider the single most serious constitutional challenge the U.S. Congress has faced in this generation.

In 1981, not long after the 97th Congress convened, representatives of the American Bar Association testified before the Judiciary Committees of Congress that legislation then beginning to be introduced which would strip Federal courts, including the Supreme Court, of jurisdiction over various subject matters, was both unwise as to policy and profoundly questionable as to constitutional validity.

The then-president of the American Bar Association, Mr. David R. Brink, wrote the committees and I quote:

> We confront at this very moment the greatest constitutional crisis since the Civil War.

Mr. President, this is not a casual utterance by one of the many members of the bar or merely a concerned citizen. On behalf of the American Bar Association its president wrote the Judiciary Committees of the Congress and said:

> We confront at this very moment the greatest constitutional crisis since the Civil War.

And we are going to decide on the floor of this Chamber in this session of Congress whether that crisis will be surmounted or whether we will succumb to it and fail in the most fundamental of all commitments we have made to American society, the commitment we made in our oath of office to uphold and protect the Constitution of the United States.

More than 1 year has gone by since the ABA testified and in that year this body has passed a measure to strip lower Federal courts of part of their jurisdiction. It has happened. And we now find ourselves confronted with an amendment that would strike at the heart of the jurisdiction of the Supreme Court.

Mr. President, the Attorney General of the United States has addressed himself to this matter in a letter of May 6, 1982, addressed to the Honorable STROM THURMOND, the chairman of the Senate Committee on the Judiciary.

I ask leave of the Senate to read an extensive passage from the Attorney General's letter to see if there can be any doubt in this body as to its import and its consequence.

The Attorney General wrote to the chairman of the Committee on the Judiciary:

> There is no doubt that Congress possesses some power to regulate jurisdiction of the Supreme Court.

And, Mr. President, no one doubts that. The Constitution is clear in its language on that point; the question is the extent of that power.

To resume my quote:

> There is no doubt that Congress possesses some power to regulate the appellate jurisdiction of the Supreme Court. The language of the Constitution authorizes Supreme Court appellate jurisdiction over enumerated types of cases "with such Exceptions, and under such Regulations as the Congress shall make." The Supreme Court has upheld the congressional exercise of power under this clause, even beyond widely accepted "housekeeping" matters such as time limits on the filing of appeals and minimum jurisdictional amounts in controversy. See Ex parte *McCardle*, 74 U.S. (7 Wall.) 506 (1869).

I will devote some attention to this case later in my remarks, Mr. President, but I should say at this point while the cases holding is clear, its

present meaning is clouded. To continue!

Congress may not, however, consistent with the Constitution, make "exceptions" to Supreme Court jurisdiction which would intrude upon the core functions of the Supreme Court as an independent and equal branch in our system of separation of powers.

Mr. President, it appears to me that this paragraph, this single sentence should be reread and pondered.

Attorney General Smith states, and I quote:

Congress may not, however, consistent with the Constitution, make "exceptions" to Supreme Court jurisdiction which would intrude upon the core functions of the Supreme Court as an independent and equal branch in our system of separation of powers.

The Attorney General continues:

In determining whether a given exception would intrude upon the core functions of the Supreme Court, it is necessary to consider a number of factors, such as whether the exception covers constitutional or nonconstitutional questions, the extent to which the subject is one which by its nature requires uniformity or permits diversity among the different states and different parts of the country, the extent to which Supreme Court review is necessary to ensure the supremacy of federal law, and whether other forums or remedies have been left in place so that the intrusion can properly be characterized as an exception.

Concluding that Congress may not intrude upon the core functions of the Supreme Court is not to suggest that the Supreme Court and the inferior federal courts have not occasionally exceeded the properly restrained judicial role envisaged by the Framers of our Constitution. Nor does such a conclusion imply an endorsement of the soundness of some of the judicial decisions which have given rise to various of the legislative proposals now before Congress. The Department of Justice will continue, through its litigating efforts, to urge the courts not to intrude into areas that properly belong to the State legislatures and to Congress. The remedy for judicial overreaching, however, is not to restrict the Supreme Court's jurisdiction over those cases which are central to the core functions of the Court in our system of government. This remedy would in many ways create problems equally or more severe than those which the measure seeks to rectify.

May I suggest, Mr. President, that the latter is an understatement of some considerable degree.

Scholars of the court have recorded a long sequence of decisions in which the court has overruled itself, has stated that an earlier reading of the Constitution was wrong and it no longer was sustained.

One of the more notorious of these cases was Lochner against New York, a decision by the Supreme Court in 1905, in which the Court held that the 14th amendment made invalid an act of the New York State Legislature which regulated the hours of work in bakeries.

Mr. Justice Holmes, in that wonderfully caustic observation of the kind he was capable of at such moments, said:

The 14th amendment does not enact Mr. Herbert Spencer's social statics.

Yet it was a full generation before the Court accepted that fact and gradually acknowledged that legislatures did indeed have the right to regulate hours and working conditions, and openly acknowledged that what was once held simply was no longer held.

That is a vital process, part of the living Constitution whose meaning changes from generation to generation.

The fidelity of the American people to the Court's decisions has only been equaled by its fidelity to the Constitution. The judiciary "the least dangerous branch" as James Madison had it in his well-known comment in the Federalist Papers.

Is silent in its obedience to custom and its constitutional role.

It asks only that its integrity be preserved by the other two branches of the Government on which it must in this regard depend.

The Congress until now has been faithful to this arrangement.

We know of no more assertive statement of the necessary dependence of the Court on the other two branches than the famous observation of President Andrew Jackson, who, to paraphrase, said with respect to a ruling of the Court having to do with an Indian treaty:

John Marshall made the decision. Let him enforce it.

One can hope that was a mere deviation from President Jackson's normal constitutional faithfulness and, indeed, in the end the Court rulings were observed. The executive branch did, in effect, enforce them, and we have never in point of fact, until this time, come to the situation where one of the other branches of the Government proposed directly to assault the independence of the judiciary.

President Jackson made his remarks, he did nothing about it. Any President is entitled to a certain amount of frustration from time to time, but when it came down to the decision of whether he would abide by the Court or not, he abided by the Court, and every President has, and until now every Congress has. We are the first Congress to break that faith. In the long history of the Republic we alone have failed in the constitutional duty we inherit from the founders to preserve the integrity of the Court.

We have endured under our Constitution, we have prevailed under our Constitution, and only now, as we approach two centuries of incomparable stability, marred only by one great falling out of the States, only now do we assault the balance of powers built into the Constitution and the integrity of the least dangerous branch.

Do not suppose we shall be forgotten by history if we fail in the effort now underway to stop this. Do not think that history will not record the names of those who rose and defended the fidality of our oath and the integrity of law. And equally record the names of those who failed in their duty, broke their oath—a strong term but not too strong, Mr. President, for a situation in which the president of the American Bar Association has called the greatest constitutional crisis since the Civil War.

I speak, if you will, as someone who has been much interested in the history of the Court's reversing itself and very much involved in some of the issues at the present age in which it seems to me the Court ought to do and which I dare to think it will do.

Put plain, the Supreme Court is often wrong. Not in the sense that one of us might think it wrong, but in the specific sense that the Court, having decided an issue, subsequently declares that its decision was incorrect and either modifies or, in some cases, quite reverses its earlier decision.

As I noted earlier, in the largest matters, these changes occur over a generation; more often over two generations. If we use the somewhat dim convention that a generation is to be measured as 30 years, it was one generation before the Court reversed itself in Lochner, two generations before it reversed itself in Plessy.

On the other hand, as I have said earlier, the Court can reverse itself within a space of a year as it did this past June 1 in United States against Ross.

In the fall of 1979, I published an article in The Public Interest, entitled "What Do You Do When the Supreme Court is Wrong?" I argued that at various points in American history, and sometimes for extended periods, the Court had been wrong about one of another of the principal constitutional issues of that day, and that the Court had subsequently reversed itself, saying, in effect, that it had been in error.

My purpose in that paper was to examine the process by which earlier Court reversals had come about and could do so from the controversies of this time. I described a simple hierarchy of responses to the question, "What do you do when the Supreme Court is wrong?"—responses that in one combination or another had led the Court to change its position. My argument, deriving as much from Finley Peter Dunne as from any more contemporary political scientist was that the Court does respond to positions reasonably propounded. I suggested a hierarchy, if you will, of advocacy. One was to Debate, to Legislate, to Litigate.

Briefly, issues upon which the Court had ruled would remain vital in public forums. Debate would continue on the same question. Variations of the originally contested law would be enacted by legislators who thought the Court had been wrong. The laws would be challenged in the lower Courts and indeed in the Supreme Court, which might already have changed its position. If it was not already convinced, if it ruled again that legislators had written an unconstitutional law, I wrote, the solution was to draft yet another law to the same effect. Changed social circumstances, a differently, or better, argued case, or a new justice might lead to a favorable ruling.

I hoped that those who disagreed with one or another of the Court's decisions, as I had done with respect to opinions on aid to nonpublic schools and public access to pretrial judicial proceedings, would remember that the Court can change its mind and that there is a legitimate and time-tested way to get it to do so.

But I fear that something else has happened; has intervened. In the 3 years since I wrote that paper some people—indeed, a great many people—have decided that they do not agree with the Supreme Court and that they are not satisfied to debate, legislate, litigate.

They have embarked upon an altogether new, and I believe quite dangerous, course of action. A new triumvirate hierarchy has emerged. Convene, meaning the calling of a constitutional convention, overrule, the passage of legislation designed to overrule a particular Court ruling, when the Court's ruling was based on an interpretation of the Constitution and restrict, to restrict the jurisdiction of certain courts to decide particular kinds of cases.

Surely the most pernicious of these is the attempt to restrict the Court's jurisdiction. For it is both colorably constitutional, at least in the case of the inferior courts, as the Attorney General acknowledged in his letter to the chairman of the Committee on the Judiciary, and yet profoundly at odds with our Nation's customs and political philosophy.

It is commonplace that our democracy is characterized by majority rule and minority rights. Our Constitution vests majority rule in the Congress and the President, while the courts protect the rights of the minority.

And there is no more solemn truth than that our democracy or any democracy's quality is measured by the degree to which the rights of the minority are protected. It is no great feat in Government to see that the majority rules. The feat is to see that the majority does not misrule. That the minority is protected.

While the legislature makes the laws, and the Executive enforces them, it is the courts that tell us what the laws say and whether they conform to the Constitution. A court that tells us that, when the meaning of a law is disputed by citizens.

This notion of judicial review has been part of our heritage for nearly 200 years. There is not a more famous case in American jurisprudence than Marbury against Madison and few more famous dicta than that of Chief Justice Marshall who said:

(i)t is emphatically the province and the duty of the judicial department to say what the law is.

The law to which he had the primary reference was, of course, the fundamental law—the Constitution itself.

It is not for the Congress of the United States to say that the Court shall not say what the law is. And in order for the Court to interpret the law, it must decide cases. If it cannot hear certain cases, then it cannot protect certain rights and the rights are accordingly abridged. The rights, for practical purposes, are extinguished, a nation characterized by majority rule and minority rights disappears and the ancient tyrannies reappear.

As cases produce winners and losers, so the ideas and principles on which the cases rely produce supporters and enemies. So I suppose it is only natural that those who see the courts ruling against them should seek to prevent these rulings by denying certain kinds of relief.

The Senate, on February 4 of this year, by a vote of 58 to 38, substantially limited the authority of lower Federal courts to require busing as a remedy for unconstitutional segregation of schoolchildren.

One, could hold the widest range of views on busing or no views on busing or no views whatever and still see our act as an abomination, still see that we blotted the Constitution with that decision. A decision which we seem bent upon escalating in the measure before us.

Mr. President, as the Attorney General has written, the exceptions clause of the Constitution cannot extend to the core functions of the Supreme Court as an independent and equal branch in our system of separation of powers. If the Court is to be but a subordinate branch of the U.S. Congress, then we are no longer the Republic founded at Philadelphia in 1787. We shall have changed, we shall be a different body politic. The claim which those of us who have served our Nation abroad have been able to make around the world, that unique among the peoples of the Earth the Americans have lived two centuries under a written Constitution, a Constitution of majority rule and minority right, that claim will no longer be possible. It will no longer silently be understood and and acknowledged even by those who would wish this Republic worse.

The apparent meaning of the exceptions clause, as the Attorney General referred to it, is that the Congress may, by statute, set boundaries for the Supreme Court's appellate jurisdiction. In McCardle, the Court seemingly bowed. But although McCardle is frequently cited as the leading case in the area by those who would have the Congress restrict the jurisdiction of the Court few seem to have read the case.

The Court said:

We are not at liberty to inquire into the motives of the legislature. We can only examine into its power under the Constitution and the power to make exceptions to the appellate jurisdiction of this Court as given by express words. What, then, is the effect of the repealing act upon the case before us? We cannot doubt as to this. Without jurisdiction the Court cannot proceed at all in any case. Jurisdiction is power to declare the law, and when it ceases to exist, the only function remaining to the court is that of announcing the fact and dismissing the cause.

But McCardle is, not the end of the matter, for the Constitution has other sections, including article VI, which states, in part:

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the Supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution of Laws of any State to the contrary notwithstanding.

Must we not presume from this, the "supremacy clause," that the Constitution's framers intended that there should be but a single arbiter of this supreme law, rather than the anarchy of a separate interpretation by each State? Why write a "supremacy clause" if there were not to be a single supreme tribunal authorized to interpret and pronounce the meaning of the Constitution? Indeed, in the case of Martin against Hunter's Lessee a case decided in 1816, Mr. Justice Story said as much:

A motive of another kind, perfectly compatible with the most sincere respect for state tribunals, might induce the grant of appellate power over their decisions. That motive is the importance, and even necessity, of uniformity of decisions throughout the whole United States, upon all subjects within the purview of the constitution. Judges of equal learning and integrity, in different states, might differently interpret a statute, or a treaty of the United States, or even the constitution itself: If there were no revising authority to control these jarring and discordant judgments, and harmonize them into uniformity, the laws, the treaties, and the constitution of the United States would be different in different states, and might, perhaps, never have precisely the same construction, obligation, or efficacy, in any two states. The public mischiefs that would attend such a state of things would be truly deplorable; and it cannot be believed that they could have escaped the enlightened convention which formed the

constitution . . . (T)he appellate jurisdiction must continue to be the only adequate remedy for such evils.

This from Mr. Justice Story, a mere 28 years from the time of the adoption of the Constitution, the time when the meaning and intent of the people involved were still very much alive, very much a part of American contemporary life.

Mr. President, I rush to the elemental fact. We have before us the greatest constitutional crisis since the Civil War. It is a crisis which has already forced the Senate into extended debate, and none should doubt that this debate will continue until New Year's Eve and the expiration of this Congress, if it must be. I repeat, history will not fail to record which of us, at its moment of greatest peril, stood to defend the Constitution and the Court, and those who chose to attack it.

As it says on the pediment of the Court opposite "Equal justice under law."

Equal justice under law, for whomsoever appeals and whatsoever the issue. Not merely such matters as we who make the laws deem it agreeable to allow the Court to interpret.

The very fact that Congress makes the laws is the fact that requires an independent body to judge whether those laws transgress the basic tenets of the Constitution.

A government of majority rule and minority right. That right of the minority is protected by the Court. When we take that right away, we take away that power of the Court to protect the rights of the minority. We have changed America. We have failed in our oath. The oath we take in this Chamber to protect and preserve the Constitution of the United States.

Mr. President, liberty has not always prevailed. Indeed, liberty has not often prevailed. We count its epochs in years, months, days even, generations rarely. The American Republic, has for two centuries lived under law—under institutions established by a Constitution—and proved durable and stable and productive beyond the experience of mankind. And here we are, Mr. President, assaulting these very institutions in the very center of these institutions' life the Senate of the United States.

It would have been beyond my comprehension that such a moment should come to us. Historians will write of this period and ask, how did it come about? And they will record who prevailed against the mood.

I point with my right hand, meaning to neither one side of the aisle nor the other, because the abhorrence of this measure is felt with intensity on both sides, with the greatest intensity, perhaps, of all by our distinguished manager of this legislation, the Senator from Oregon (Mr. PACKWOOD) who is on the floor.

Mr. President, I now ask unanimous consent to yield the floor, without this being construed as the end of a speech for purposes of the two-speech rule. I observe that the Senator from Oregon (Mr. PACKWOOD) has risen. I now turn my attention to his word.

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

Mr. PACKWOOD. Mr. President, may I ask what the order is when we reach 3:30 p.m.?

The PRESIDING OFFICER. At the hour of 3:30, the Senate, under a previous order, will proceed to the consideration of the conference report on H.R. 6955. There is a time limit of 2 hours equally divided between the Senator from New Mexico (Mr. DOMENICI) and the Senator from South Carolina (Mr. HOLLINGS).

Mr. PACKWOOD. Have the yeas and nays been ordered?

The PRESIDING OFFICER. The yeas and nays have not been ordered.

Mr. PACKWOOD. Is my understanding correct that in the order, when we dispose of that business, whoever had the floor at 3:30 will have the floor when we again take up this matter?

The PRESIDING OFFICER. The Senator is correct.

Mr. PACKWOOD. I thank the Chair.

Mr. President, let me compliment my colleague from New York on one of the most eloquent addresses we have heard in this Chamber, not just on this subject, but on any subject we have considered in my memory in the 13 years I have been here, on perhaps the most important topic that has been addressed since I have been here.

My friend and colleague from New York and I have been involved in many, many battles together—tuition tax credits, aid to urban areas, a whole panoply. But those issues pale by comparison in relation to the issue of who will be the final determinant of the fundamental constitutional liberties of this country.

My distinguished colleague was absolutely right when he said that it is imperative that those rights be determined by a body as insulated from the passions of the moment as possible. Even supreme courts are not totally insulated, but they are surely more insulated than Presidents; surely more insulated than the Congress; and surely more insulated than State legislatures, to whom many would like to turn over the fundamental liberties of this country and prohibit any appeal except to State judges, who have to suffer the buffets of elections.

Mr. MOYNIHAN. I thank my friend from Oregon for his more than generous words. I just point out once again that the point he just made was made by Mr. Justice Story in 1816.

Mr. PACKWOOD. The battle we are facing here is not—I suppose to outsiders in every generation, they think they are facing the battles of the liberties of Americans. Indeed, it is not the liberties of Americans whose battles we face. Great Britain has faced them for years; in the entire history of Jewish tradition, these are battles they have faced.

These battles that they have faced—

The PRESIDING OFFICER. The Senator will suspend.

OMNIBUS BUDGET RECONCILIATION ACT OF 1982—CONFERENCE REPORT

The PRESIDING OFFICER. The hour of 3:30 p.m. having arrived, under the previous order the Senate will now proceed to the consideration of the conference report on H.R. 6955. The clerk will report.

The legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 6955) to provide for reconciliation pursuant to the first concurrent resolution on the budget for fiscal year 1983 (S. Con. Res. 92, 97th Cong. having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by a majority of the conferees.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report is printed in the House proceedings of the RECORD of Aug. 17, 1982, p. H6137.)

The PRESIDING OFFICER. Who yields time?

The Senator from New Mexico is recognized.

Mr. DOMENICI. Mr. President, I suggest the absence of a quorum and that it be charged to 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. DOMENICI. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. DOMENICI. I yield myself 10 minutes.

Mr. President, as we begin our consideration of the conference report on the Omnibus Reconciliation Act of 1982 (H.R. 6955), I thank the conferees and, in particular, the subconferees for their hard work.

The provisions of this act are the culmination of the work of seven Senate committees in complying with their reconciliation instructions. I

think their efforts have produced an important and workable piece of legislation that is a substantial step in reestablishing congressional control over Federal expenditures.

This act contains savings that are more than $2 billion above those mandated in the reconciliation instructions included in the first budget resolution for fiscal year 1983. In fiscal year 1983, the savings amount to $3.3 billion. In fiscal year 1984, the savings are $4.8 billion, and in fiscal year 1985, they are $5.2 billion. The total 3-year savings are $13.3 billion.

These savings by themselves will make a substantial dent in our deficits, but—more than that—they are a crucial step in implementing the budget plan agreed to in Congress earlier this year. This reconciliation bill complements the Tax Equity and Fiscal Responsibility Act (H.R. 4961), the other reconciliation bill. Together, these two bills provide a very substantial downpayment on the $280 billion in spending restraint provided for in the budget resolution. These actions will reduce our National Government's need to borrow and that will lower interest rates and help put our Nation's unemployed back to work.

There have been some very encouraging signs recently that the economic outlook may at long last be changing. The improvements this week in the stock market and interest rates are undoubtedly the result of many influences. It is not unreasonable to conclude, however, that the movement of the two reconciliation bills toward final passage had an impact. Congressional approval of these bills in an election year will be a clear demonstration of congressional willingness to bite the bullet on spending restraint and deficit reductions.

Spending restraint is necessary for a more efficient Government. It is good for the economy, not in any abstract sense but in the very real sense that the economy touches all our lives—through our jobs, our earnings, our taxes, the prices of things we want to buy.

I have some tables that show the savings provided in this bill and some brief explanations of the bill's main provisions. I ask unanimous consent that they be printed in the RECORD at the end of my remarks.

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

(See exhibit 1.)

Mr. DOMENICI. Mr. President, now let me move from my broad overview of this bill to a more detailed look at its provisions. Because a title-by-title breakdown of the savings in this bill is included in the tables I have submitted, I will cover only a few highlights of the bill at this time.

TITLE I—AGRICULTURE

I might say at this point that the House and Senate, by mutual understanding handle the conference negotiations on a reconciliation bill through a series of subconferences. The members of the substantive authorizing committees are the ones who do the work, the ones who arrive at the conclusions. The Budget Committees are charged with assembling the bill, presenting it to the two Houses, and costing it out. As general conferees, members of the Senate Budget Committee are available, if needed, to go to the meetings and lend our assistance, and as a last resort to vote if that is necessary in order to achieve agreement.

I can report that the Budget Committee conferees did not have to vote in the subconferences on this bill. The authorizing committees did the work; they made the decisions.

In title I of the bill, the conference substitute makes major changes in agricultural programs and reauthorizes and reforms the food stamp program.

It achieves substantial savings in the dairy price support program. It limits the milk price support level to $13.10 per hundredweight for the 2-year period beginning October 1, 1982. Dependent on the levels of Government milk purchases under the price support program, the bill provides for the Secretary of Agriculture to collect either 50 cents or $1 per hundredweight from the proceeds of milk sales. These collections will be used by the Commodity Credit Corporation to offset part of the cost of the price support program. These and other changes in the milk price support program will produce savings estimated at $4.2 billion during the fiscal year 1983–85 period.

Title I also provides for a program of "advanced deficiency payments" for the next 3 years for wheat, feed grains, upland cotton, and rice, whenever an acreage limitation or set-aside policy is implemented by the Secretary of Agriculture. The Congressional Budget Office projects that this program would save money over the 3-year period because it would encourage more farmers to participate in the acreage limitation programs and reduce further price support payments.

The conference agreement also provides for revised loan rate for wheat and feed grains and authorizes the Secretary of Agriculture to use up to $190 million in Commodity Credit Corporation funds to promote export of American agriculture products.

Subtitle E of title I deals with the food stamp program. It reauthorizes the program for 3 years. The bill also revises aspects of the program such as eligibility rules, the manner in which benefit levels are calculated, inflation adjustments, and work requirements, and it tightens administration to reduce fraud and abuse. The CBO estimates that the food stamp provisions will save $1.9 billion over the next 3 years.

Mr. President, I think the Senate should take special note of the fact that the Senate Agriculture Committee and its counterparts in the House produced budget savings which substantially exceeded the reconciliation instructions. The Agriculture Committee was instructed to achieve savings of $3.290 billion during the next 3 years. The conference agreement will save $6.555 billion during this period.

The Senate should understand that these savings are derived by using a uniform estimating practice, which is the practice that the Congressional Budget Office uses, and that is what we used on all of the estimates. I am not here saying that they are in every respect absolutely and totally right, but for consistency, they are the best we have; and certainly in the past, on these kinds of pricing issues, the CBO estimates have been closer and more consistent than most.

TITLE II—FHA INSURANCE PREMIUMS

Title II of the bill changes the way in which the FHA mortgage insurance premium is collected from home purchasers. Up to now, the insurance premium has been collected through fees collected throughout the life of mortgage. The new law will provide for "up-front" collection of the fees at the time of settlement. CBO estimates that the offsetting receipts collected because of this law will amount to $2 billion during the next 3 years.

TITLE III—CIVIL SERVICE PROGRAMS AND GOVERNMENT OPERATIONS

Title III of the reconciliation bill recognizes that an essential element in controlling growth of Government spending is controlling automatically indexed programs. This is a historic change. In the past, automatic cost-of-living adjustments (COLA's) have led to spending growth of as much as $26 billion in a single year. Increases in a single year not the whole story, of course, because increases in 1 year are compounded by increases in subsequent years.

This bill restrains COLA's in Federal military and civil service retirement programs in what I believe is a fair and responsible way when we consider that the Senate bill would have limited COLA's for all military and civilian retirees to 4 percent a year for 3 years and the House of Representatives had voted not to put any COLA's restraint in its bill at all. So we went to conference, Mr. President, with our 4-percent cap and literally zero limitations on the House side. Let me repeat: Despite that wide difference between the two Houses, the conference agreement restrains COLA's in Federal military and civil service retirement in a fair and responsible way.

All retirees aged 62 and over, disabled retirees, and survivors of retirees

will receive a full cost-of-living adjustment. There will be a 1-month delay each year. Those 62 and over are still to receive the full COLA but there will be 13 months instead of 12 between increases in their pension checks.

COLA's will be restrained, however, for relatively young retirees—those 61 years old or younger. Many of these people are still working, even though they receive Federal retirement benefits. Under this bill, these younger retirees will receive a cost-of-living adjustment equal to at least one-half of the increase in the Consumer Price Index. However, if inflation exceeds the rate assumed in the budget resolution for any of the 3 years, this group will receive a full percentage point cost-of-living increase for every percentage point the CPI exceeds the assumptions. They are, in other words, protected if inflation turns out to be significantly higher than predicted.

Despite this restraint, benefits for the retirees who are affected would continue to grow over the fiscal 1982–85 period. For instance, civil service retirees now on the rolls receive an average of $12,441 per year. Under this bill, their benefits would grow to at least $13,876 per year by 1985. Likewise, military retirees, on average, would see their benefits increase from $11,596 to at least $12,819 during the same period.

This new arrangement for COLA's is, so to speak, a diet-COLA plan. It is appropriate for a Government that is trying to get rid of some of its excesses but it is not a starvation diet. Even with this restraint on COLA's for young retirees, the Federal civilian and military retirement system will still require $107 billion of taxpayers' money in fiscal years 1983 through 1985.

TITLE IV—VETERANS' PROGRAMS

The bill makes a variety of changes in veterans' pension, compensation, and housing loan programs. The net effect will be to reduce Federal costs by $552 million during the next 3 years. These savings are achieved through minor adjustments in the compensation and pension programs and through enactment of a housing loan origination fee.

I think the Senate is totally familiar with those. We had them before the Senate in nearly the same form when we passed the original Senate version of this reconciliation bill.

TITLE V—REGULATORY AGENCIES

Title V of the bill reduces the size of the Federal Communications Commission from seven to five members and reduces the Interstate Commerce Commission from 11 to 5 members. This is estimated to save approximately $1 million during the next 3 years.

CONCLUSION

The Omnibus Reconciliation Act, as I see it, less than 90 days before a general election in this country, having passed the House of Representatives today by a vote of 243 ayes, 176 nays, if passed here in the Senate, as I hope it will be within an hour or so, is an indication to me that we are willing to tackle some very hard issues and move steadily toward strengthening fiscal control. I believe it deserves the Senate's endorsement.

Also I think it is fair to say that, with the passage of this bill, and hopefully the passage of the tax reform and equity bill tomorrow, implementation of the budget resolution is well on its way.

Many in the country did not think Congress would do what is necessary to implement that resolution. If we do what I have just described there will remain only three things that have to happen before we leave for elections this year. The total appropriation package will have to shave about $6 billion off current policy for discretionary, nondefense programs—something akin to a freeze. And then the military budget appropriated accounts will have to be reduced by about $8 billion below what the President originally requested. Finally, Congress will have to support the President in holding Federal pay raises to 4 percent. Just three additional actions and we will have made for this year all of the spending reductions and tax reform, revenue increases that the budget resolution contemplates.

I think when we are finished it will be a testimonial to the desire, the willpower, the courage of Congress, especially when you consider the difficulty of many of the issues and the fact that this is an election year.

CONFERENCE AGREEMENT: H.R. 6955—OMNIBUS BUDGET RECONCILIATION ACT OF 1982

The following tables summarize the savings in H.R. 6955, the Omnibus Budget Reconciliation Act of 1982, as agreed to by the Conference Committee on August 16, 1982. These tables have been prepared by the staff of the Senate Budget Committee and are based on Senate scorekeeping methodology.

All of the dollar amounts in the tables have been estimated by the Congressional Budget Office based on the materials provided by the Conference Committee.

SUMMARY OF SAVINGS

[In millions of dollars]

	Fiscal years—			Total fiscal years 1983–85
	1983	1984	1985	
Savings in bill:				
Reduction in budget authority	−2,405	−3,575	−3,910	−9,888
Reduction in outlays	−3,274	−4,671	−5,170	−13,113
Increase in revenues		+94	+55	+149
Reduction in deficit	−3,274	−4,765	−5,225	−13,262
Reconciliation instructions to committees:				
Reduction in budget authority	−1,073	−2,188	−3,379	−6,640
Reduction in outlays	−2,144	−3,704	−5,336	−11,184
Increase in revenues				
Reduction in deficit	−2,144	−3,704	−5,336	−11,184

Note: Details may not add to totals due to rounding.

SUMMARY BY TITLE

[In millions of dollars]

	Fiscal years—			Total fiscal years 1983–85
	1983	1984	1985	
Title I: Agriculture, forestry and related programs:				
Budget authority	−1,954	−2,427	−2,174	−6,555
Outlays	−1,954	−2,427	−2,174	−6,555
Title II: Banking:				
Budget authority				
Outlays	−690	−679	−649	−2,018
Title III: Civil service programs and government operations:				
Budget authority	−282	−957	−1,539	−2,778
Outlays	−462	−1,375	−2,150	−3,987
Revised		+94	+55	+149
Title IV: Veterans' benefits:				
Budget authority	−169	−190	−196	−554
Outlays	−168	−189	−196	−552
Title V: Commerce, science, and transportation:				
Budget authority	−(1)	−1	−1	−1
Outlays	−(1)	−1	−1	−1
Total bill:				
Budget authority	−2,405	−3,575	−3,910	−9,888
Outlays	−3,274	−4,671	−5,170	−13,113
Revised		+94	+55	+149

[1] Less than $500,000.

Note: Details may not add to totals due to rounding.

TITLE I.—AGRICULTURE, FORESTRY, AND RELATED PROGRAMS

[In millions of dollars]

	Fiscal years—			Total fiscal year 1983–85
	1983	1984	1985	
Dairy price supports:				
Budget authority	−1,482	−1,361	−1,311	−4,154
Outlays	−1,482	−1,361	−1,311	−4,154
Crop adjustment programs:				
Budget authority	+192	−367	−99	−274
Outlays	+192	−367	−99	−274
Export promotion:				
Budget authority	−116	−64	−8	−188
Outlays	−116	−64	−8	−188
Food stamps:				
Budget authority	−548	−635	−756	−1,939
Outlays	−548	−635	−756	−1,939
Total, title I:				
Budget authority	−1,954	−2,427	−2,174	−6,555
Outlays	−1,954	−2,427	−2,174	−6,555

TITLE II.—BANKING

[In millions of dollars]

	Fiscal years—			Total fiscal year 1983–85
	1983	1984	1985	
FHA mortgage insurance premiums (total, title II):				
Budget authority				
Outlays	−690	−679	−649	−2,018

TITLE III.—CIVIL SERVICE PROGRAMS AND GOVERNMENT OPERATIONS

[In millions of dollars]

		Fiscal years—			Total 1983–85
		1983	1984	1985	
Spending reduction:					
Cost-of-living adjustments in retirement programs:					
Civil Service	BA		−34	−76	−110
	O	−150	−385	−580	−1,115

TITLE III.—CIVIL SERVICE PROGRAMS AND GOVERNMENT OPERATIONS—Continued

[In millions of dollars]

		Fiscal years—			
		1983	1984	1985	Total 1983–85
Military	BA	−260	−732	−1,223	−2,215
	O	−260	−732	−1,223	−2,215
Public Health Service commissioned officers.	BA	.....	−1	−3	−4
	O	.....	−1	−3	−4
Foreign service	BA	.....	−1	−2	−3
	O	−1	−3	−6	−10
Coast Guard	BA	−5	−14	−24	−43
	O	−5	−14	−24	−43
Subtotal, cost-of-living adjustments.	BA	−265	−782	−1,328	−2,375
	O	−416	−1,135	−1,836	−3,387
Other civil service retirement changes.	BA	(1)	(1)	(1)	(1)
	O	−30	−65	−98	−193
Federal pay and travel changes.	BA	−17	−175	−211	−403
	O	−16	−175	−216	−407
Total spending reduction, Title III.	BA	−282	−957	−1,539	−2,778
	O	−462	−1,375	−2,150	−3,987
Revenue increase: Civil service retirement (total revenue increase title III).		.....	+94	+55	−+149
Total deficit reduction in title III.		−462	−1,469	−2,205	−4,136

[1] Excludes budget authority effect of proposed revenue increase.

TITLE IV.—VETERANS' BENEFITS

[In millions of dollars]

		Fiscal years—			
		1983	1984	1985	Total 1983–85
Compensation	BA	−42	−44	−45	−130
	O	−42	−44	−45	−130
Pensions	BA	−38	−46	−47	−130
	O	−36	−45	−47	−128
Home loan user fee	BA	−90	−100	−104	−294
	O	−90	−100	−104	−294
Total, title IV	BA	−169	−190	−196	−554
	O	−168	−189	−196	−552

Note.—Details may not add to totals due to rounding.

TITLE V.—COMMERCE, SCIENCE AND TRANSPORTATION

[In millions of dollars]

		Fiscal years—			
		1983	1984	1985	Total 1983–85
Reductions in size of FCC and ICC (total title V) [1].	BA	(2)	−1	−1	−1
	O	(2)	−1	−1	−1

[1] Reduction in authorizations.
[2] Less than $500 thousands.

Note.—Details may not add to totals due to rounding.

TITLE I: AGRICULTURE AND FOOD ASSISTANCE

The Reconciliation bill saves $6.6 billion over the next three years in Title I.

FOOD STAMPS

Reauthorizes the program for three years, with a total of $40 billion in spending authority (the 1982 level is $11.3 billion; the 1985 authorization cap is $13.9 billion).

Saves almost $2 billion over the next three years.

Allows a $1.8 billion "cushion" of standby spending authority for use in the event program costs should exceed current estimates.

Attacks fraud and abuse by vendors and recipients with stronger fines and penalties.

Requires stricter accounting of available client income and assets.

Sets forth incentives and penalties for states to reduce error rates to 5 percent. They now run 12–14 percent according to GAO.

Increases the maximum monthly benefit for a family of four by $20 to $253 on October 1, 1982, and by $60 to $293 by 1985. Yet the bill saves $510 million by restraining projected indexation of the Thrifty Food Plan formula.

Cuts red tape to let states simplify and coordinate program procedures.

Strengthens employment and workfare provisions to spur recipient efforts to become more self-sufficient.

Increases benefits for disabled senior citizens, veterans and veterans' dependents by creating special income eligibility standards.

DAIRY PRICE SUPPORTS

Trims this subsidy by $4.2 billion during the next three years.

Maintains the current $13.10 per hundredweight formula for the next two years, but: assesses dairy producers a 50 cent per hundredweight penalty if federal purchases for price support purposes exceed 5 billion pounds, and a possible additional 50 cents per hundredweight penalty if these purchases exceed 7.5 billion pounds.

Provides for special payments to reimburse dairy farmers who reduce production.

THE 1983 ADJUSTMENT PROGRAM FOR WHEAT, FEED GRAINS, RICE, AND UPLAND COTTON

Authorizes advance deficiency payments for these crops at 70 percent of the projected 1982 final payment and 50 percent for 1983–85.

Sets the loan rate for 1983 wheat at $3.65 per bushel; for corn, at $2.65 per bushel.

Requires wheat and rice acreage limits of 15 percent of base and a diversion program for 5 percent of base acreage. The Secretary can increase these limits in tandem; provides a $3 per bushel diversion payment.

Sets feed grain acreage limitations at 10 percent and a diversion of 5 percent of base. Corn diversion payments are $1.50 per bushel.

Contains no reduction program for upland cotton.

EXPORT PROMOTION

Provides $175–$190 million in annual spending authority (from the Commodity Credit Corporation) for the Secretary to engage in promotion and export aid programs designed to improve the competitive position of American agriculture.

TITLE II: BANKING

HIGHLIGHTS

Excludes Federal Housing Administration (FHA) mortgage insurance premiums from the maximum mortgage and down payment requirements imposed on single-family homebuyers whose mortgages are insured by FHA. This enables the Department of Housing and Urban Development (HUD), by regulation, to increase FHA mortgage insurance premium collections by requiring the FHA-insured homebuyer to pay the value in current dollars of 13.5 years of FHA mortgage insurance premiums when the mortgage loan is closed rather than over the 30-year life of the loan. The exclusions provided in this title will be effective only if HUD determines that the proposed new premium structure is actuarially sound.

Requires HUD to rebate to each homebuyer who pays off his mortgage before 13.5 years the "unearned" portion of the premium paid when the loan is closed.

TITLE III

The 1982 Reconciliation Bill saves $4.1 billion over the next three years in Title III. It:

Allows full cost-of-living adjustments (COLAs) for federal civilian and military retirees who are age 62 or older, disabled, or survivors of retirees. Retirees who have not yet reached age 62 will receive one-half of the COLA increase. Retirees under age 62 will also receive the full amount of actual inflation adjustments which exceed the levels assumed in the First Concurrent Resolution on the Budget:

All adjustments would be delayed by one month each year.

The provisions are effective for FY 1983–85.

Provides that individuals with military service subsequent to 1956 who retire under the civil service system receive retirement credit for years in the military only if they make payments to the civilian retirement system for those years. These retirees may then receive both civil service retirement and social security benefits.

Closes a loophole in current law that allows disability recipients to adjust their earnings levels to stay on the disability rolls.

Sets forth additional civil service retirement and pay reforms that:

Alter the basis for computing general schedule pay to reflect the actual number of hours worked per year;

Reduce federal civilian pay by the amount of military retirement COLA increases;

Round annuities to the next lowest dollar; and

Provide that annuities commence on the first day of the month following separation from employment.

Terminate certain travel benefits that now exist for Federal employees assigned to duty stations in Hawaii and Alaska.

TITLE IV: VETERANS' BENEFITS

The Senate and House Veterans' Affairs conferees have achieved savings of $554.0 million in budget authority and $552.1 million in outlays for the period FY 1983 through FY 1985 and exceed their reconciliation instructions under the First Budget Resolution.

The conference report provides FY 1983 reconciliation savings of $77 million in budget authority and outlays entirely in the veterans compensation and pension programs as assumed in the budget resolution. These proposals will also achieve significant reconciliation savings in FY 1984 and FY 1985. The conference agreement would:

Delay the payment of compensation and pension benefits, and certain increases in those benefits, until the first day of the first full month of entitlement;

Institute changes in dependency status under the compensation and pension programs at the end of the month in which the change occurs instead of at the end of the calendar year as is current practice.

Round the amount of compensation and pension benefit checks to the nearest lower dollar as is done for social security; and realign the dependent children's allowance under the compensation program.

Provide for enactment of the President's proposed one-half of one percent VA hous-

ing loan origination fee with an exemption for service-connected disabled veterans and surviving spouses.

Maintain current student benefits under the veterans pension program.

This title reduces the size of two regulatory agencies, the Federal Communications Commission (FCC) and the Interstate Commerce Commission (ICC) to five members each, resulting in savings of approximately $1 million over the three year period FY 1983-85. Currently, the FCC has a statutory limit of seven members and all seven commissioners have been appointed. At present, the ICC has a statutory limit of eleven members, but only six commissioners have been appointed.

Many other Federal regulatory agencies, such as the Securities and Exchange Commission (SEC), the Federal Maritime Commission (FMC), the Nuclear Regulatory Commission (NRC) and the Civil Aeronautics Board (CAB), function efficiently with five members or less.

Mr. DOMENICI. Mr. President, I have significant additional time, but at this point I yield to the distinguished minority leader of the Budget Committee.

Mr. HOLLINGS. Mr. President, before I yield to my distinguished colleague from Wisconsin I shall take but a moment.

Mr. President, on August 5, the Senate passed the omnibus budget reconciliation bill. I supported the bill then because it contained many spending reductions that must occur if we are ever to restore the fiscal credibility of our Government and give the American people confidence that their Government cares and can act responsibly.

It is no secret where I stand on the issue of the mangled economy caused by the Reagan-Kemp-Roth tax hemorrhage policies. We must lower the deficits, and we must lower them now. Each day we wait—we lose. There is but one realistic way of reducing the deficits, lowering the interest rates, and creating more jobs.

I have presented that plan time and again to move us on a path to recovery. So far, the Senate has yet to approve it. I intend to give the Senate another chance and will soon offer my proposal again. The plan consists of three major elements: First, a freeze and cap on the growth in Federal pay and all retirement programs; second, a cap at 3 percent real growth in defense spending; and third, a delay in the July 1983, 10 percent tax cut passed last year by Congress.

This approach is fair. It means that Government as well as the private sector and all elements of society would share in the sacrifice necessary to turn the economy around. The essential ingredient in the matter must be fairness. If we abandon that principle, we will not be able to prevail. And that brings us to where we are today on this reconciliation conference report. Mr. President, when we started out an honest attempt was made to bring spending down and to create discipline in the process—in an even-handed manner—but now that has been renounced. Fairness no longer matters. Discipline is not important.

The reconciliation conference agreement before us tells some of our citizens that the job of fixing the economy is not their responsibility. And it tells a small group that they have to bear the full burden.

The reconciliation instructions required a 4-percent cap on Federal pension COLA's. That was the reconciliation instruction that we had in the Senate and in the House. But this particular instruction has been frittered away. If you are a Federal retiree and 62 years of age or over there is no need to sacrifice. That is what the agreement says. But if you are 61, or 60, or under you must pay.

Let me give you a simple fact: Over 80 percent of the Federal retirees under 62 years of age are military retirees, so instead of making all Federal retirees share in this task we are pointing to one group. We are telling the military retiree that he, and virtually he alone among Federal retirees, must sacrifice again for his country.

I voted to change Federal COLA's from twice to once a year because that was fair in comparison to the once-a-year COLA for social security and other retirement programs. I have proposed comprehensive retirement reform proposals that provide similar and equitable treatment to all retirees because that is fair.

The solution found, however, in the conference agreement simply closes its eyes to equity.

To compound the unfairness of this approach, less than 70 percent of the savings assumed by the COLA cap is provided in the reconciliation agreement. It gives us only $3.4 billion of the $5 billion assumed in the original Senate provision. How can we stand here and act as if we are heroes and that we have accomplished something good, when all we have done is miss the mark on savings by over 30 percent and have at the same time surrendered the principle of fairness?

The distinguished chairman of the Budget Committee has said the COLA provision in the agreement is an excellent compromise.

I would like to quote from yesterday's New York Times:

"Considering where we started," said Senator Pete V. Domenici, the New Mexico Republican who heads the Budget Committee. "I think it's an excellent compromise."

Reading further though:

The resolution was also something of a victory for House Democrats. "There will be no cap, and that was the one principle we had," said Representative William D. Ford, the Michigan Democrat who heads the House Post Office and Civil Service Committee. "Once you give into that, you're sending a signal: If you do it for these retirees, then why not for Social Security? People are edgy about all this talk."

Well, now, Mr. President, I am edgy about the economy; I am edgy about the deficit; I am edgy about the interest rates; and, Mr. President, I am edgy about the highest unemployment figure that we have in history since the Depression. So that is what this is all about.

We need to send a signal about the cost-of-living adjustments. We need that discipline, and this so-called compromise gives in on that score and loses the particular discipline necessary in this process.

I emphasize that I am particularly keen about our military retirees. I carried that ball in an election year, in August of 1982, for candidates, which is no more pleasant than the August 1980 atmosphere. At that particular time, trying to save money, the Congress was eliminating the doubled COLA provision which applied to military and civilian retirees. Since some 35,000 military retirees live in the First Congressional District in my hometown, my campaign was a constant confrontational situation.

Well, one of the candidates for Congress on one side equated retirees with welfare recipients, constantly caterwauling that, after all, the military had given their lives, had sacrificed, they were the ones who had built the country, and the welfare people were getting a lot of welfare.

It seems as if you can always provide for welfare but you cannot provide for retirees.

Well, I had to try to calm the atmosphere and to explain that no retirement plan other than the Government's contemplated a double cost-of-living adjustment, and only 9 percent of the private plans even had a cost of living adjustment. I emphasized that in order to produce a balanced budget, we had to cut somewhere. But in so doing we were doing it in an equitable fashion.

Now this particular compromise in the conference report abandons that principle of fairness and, in essence, off-loads the burden totally on the military retirees with the rationale that they are younger. I can give an equally balancing rationale that those who are 62 or older have it made. Their expenses are not nearly as big, their children are grown and they can get help. But, those who have not reached it are now dependent on a good retirement.

I can also give you the labor argument that as long as you give a good cost-of-living adjustment to the military retirees there is less of an inducement for them to enter the labor force and take away much-needed jobs.

So there are good, equal rationales to be given to not disparaging and discriminating against the military retirees.

So we have failed the Senate, in my opinion, and I am sorry that I cannot support the conference report. I understand and know that our distinguished chairman, Senator DOMENICI, has done once again an outstanding job. He carried on the liaison work necessary between the regular authorizing committees. He tried to hold their feet to the fire as much as he possibly could. This has always been a sore point over on the House side politically. But for the military, who are not in the conference, who performed military duty, they are quickly forgotten by this particular agreement. I think it is improper and, therefore, I cannot vote for the passage or the adoption of the conference report.

I now yield such time as is necessary to my distinguished colleague from Wisconsin.

The PRESIDING OFFICER (Mr. DANFORTH). The Senator from Wisconsin.

Mr. PROXMIRE. Mr. President, I thank the distinguished Senator from South Carolina.

Mr. President, I shall vote against the conference report on H.R. 6955, the budget reconciliation bill, because its dairy provisions amount to an absolute, total, unmitigated disaster for dairy farmers in Wisconsin and throughout the Nation.

I shall cast this "no" vote reluctantly because I favor budget cuts, and this budget reconciliation conference report provides for some important and necessary cuts.

Chairman DOMENICI and ranking member HOLLINGS did some tough, hard, unpopular work. But by any standard of fairness and equity, this conference report is unacceptable when it comes to dairy farmers.

Why do I say that? Mr. President, the dairy price support level has been frozen at $13.10 per hundredweight since October 1, 1980. What that means, of course, is the price the farmer receives was frozen for nearly 2 years. Meanwhile the cost of everything they buy has gone up because they suffer from inflation. Now the conferees have come forward with a dairy provision that calls for continuing this freeze at $13.10 per hundredweight for another 2 years and then—for the year beginning October 1, 1984—the support level would be set at the percent of parity that $13.10 per hundredweight represents as of October 1, 1983.

That may be bad enough on its face. But it gets much worse. In fact, dairy farmers will be getting only $12.60, not $13.10, per hundredweight because of a 50-cent-hundredweight production adjustment assessment. So we know the prices dairy farmers will pay will go up, and what this says is the price they receive will go down, and down sharply. That 50-cent-per-hundredweight assessment would be lifted when projected Commodity Credit purchases fall below 5 billion pounds milk equivalent in any fiscal year. But that is not going to happen, in all likelihood, in all reality, probably for years to come.

There is worse to come. Just listen to this:

But if projected surpluses for a fiscal year should exceed 7.5 billion pounds milk equivalent, the Secretary of Agriculture could impose yet another assessment of 50 cents per hundredweight, thereby cutting the price support level to $12.10 per hundredweight. We voted in this body on this very issue about 2 weeks ago and overwhelmingly, two to one, rejected that position.

The Secretary could not levy this second fee until April 1, 1983. And dairy farmers who cut their production to levels specified in the conference report would receive a rebate of this second assessment.

Mr. President, the effects of these provisions will be devastating on dairy farmers in Wisconsin and the rest of the Nation.

A recent study indicates that the cost of production for the average dairy farmer in Wisconsin—and we think we have the lowest cost anywhere in the country—the cost in Wisconsin is $12.97 per hundredweight. That means the dairy farmers get nothing—get nothing—at $12.60 and certainly nothing at $12.10.

But now, under the terms of the conference report, dairy farmers face the prospect of a price support level that falls below the cost of their production—well below their cost of production. And, of course, their cost of production will continue to increase every day. The result will be cruel and absolute and sure.

This can lead to only one result: Many more dairy farmers in Wisconsin and elsewhere will be driven out of business. Because of the harsh dairy provisions agreed to by the conferees, we will be seeing depression-level dairy farm foreclosure sales across this country. Farms that have been in the same family for years will be auctioned off and yet another series of cruel blows will be inflicted on the family farm structure in America.

The land will not disappear. The herds will not disappear. The equipment will not disappear. They will be auctioned off, and that production will be done by larger units, some corporations that have the capital to suffer for a few years and then survive, and the family farm structure will have gone.

Mr. President, I must say, finally, there were other ways to solve this problem. The self-help program that the dairy co-ops suggested that would reduce production, reduce the cost of the Federal Government and permit the dairy farmer to survive, was reasonable.

For these reasons, I must vote against the conference report on H.R. 6955. I urge my colleagues to do the same.

The PRESIDING OFFICER. Who yields time?

Mr. DOMENICI. Mr. President, I yield myself 5 minutes, then I am going to yield to my good friend, the distinguished chairman of the Finance Committee, the Senator from Kansas. From what I understand on our side, the only other Senator who desires to be heard is the distinguished Senator from Washington, Senator GORTON. I say that so Senators who are listening will know that if we can, the distinguished minority manager and myself want to complete this measure without using the full 2 hours and vote as close to 5 as possible. We only need about another 10 or 15 minutes on the majority side, as far as I know.

Mr. HOLLINGS. We will put that out on our hotline.

Mr. DOMENICI. Mr. President, I am sorry the distinguished Senator from Wisconsin left the floor. But I really cannot believe what I heard. I just cannot believe that the distinguished Senator from Wisconsin, who is always willing to cut somebody else's program, when he comes to this floor talking about fiscal responsibility, that he would have the tunnel vision to vote against a $13.3 billion deficit reduction on the basis that the milk pricing subsidy in this bill is devastatingly low.

I am convinced that the American people will not think this bill is devastating when they consider what it is costing the American taxpayer for the overproduction of milk that is occurring so that we can buy it and store it, have some of it spoiled and give away some more of it. We have continued to do this year after year after year.

So while I have the greatest respect for anyone that opposes this bill I really think to oppose it on the ground that a program that is so costly to the American taxpayer, that has grown like Topsy, that has become an incredible program from the standpoint of its results, would be here used as the basis to vote against significant deficit reductions.

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

Mr. DOMENICI. I am pleased to yield.

Mr. HART. The Senator from Colorado does not recall accurately, but I believe the Senator from Wisconsin was one of those who voted to amend the Constitution of the United States to balance the Federal budget, was he not?

Mr. DOMENICI. I do not think there is any doubt. You can check the record.

Mr. HART. I thank the Senator from New Mexico.

Mr. DOLE. He also voted to close the gym.

Mr. DOMENICI. The distinguished Senator from Kansas says he also voted to close the gym.

Mr. HOLLINGS. He has gone to the gym. [Laughter.]

Mr. DOMENICI. Mr. President, I yield myself 5 additional minutes, and then I will yield as stated.

Today I wrote a letter to the Chairman of the Federal Reserve System, Chairman of the Board of Governors, Paul Volcker. I asked him in my letter for his views about the expenditure and revenue legislation before the Congress.

Mr. President, I ask unanimous consent that the letter I wrote to Chairman Volcker asking him for his views be printed in the RECORD.

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

U.S. SENATE,
COMMITTEE ON THE BUDGET,
Washington, D.C. August 18, 1982.

Hon. PAUL A. VOLCKER,
Chairman, Board of Governors of the Federal Reserve System, Washington, D.C.

DEAR CHAIRMAN VOLCKER: As you know, Congress is considering what many people regard as historic legislation, the Tax Equity and Fiscal Responsibility Act of 1982 and the Omnibus Reconciliation Act of 1982, which implement the fiscal decisions in the first Concurrent Budget Resolution for FY 1983. Taken together, this legislation reduces the federal deficit by about $130 billion over the next three years.

Since you are a leading figure in the implementation of economic policy, I would appreciate your views on the effect of this legislation on financial markets and the long term growth potential of our country.

Sincerely,

PETE V. DOMENICI,
Chairman.

Mr. DOMENICI. Mr. President, I would like to read his response.

DEAR SENATOR DOMENICI: I have your letter of today inquiring of my views about the expenditure and revenue legislation before the Congress, which, as I understand it, essentially implements major portions of the First Budget Resolution adopted earlier.

As you know, I do not feel it appropriate to comment on the specific spending and revenue actions contained in the bills before you. But I would emphasize the larger questions at stake.

I testified before your Committee recently that, while the particular actions proposed may not represent "perfection," I strongly welcomed the effort of the Congress to achieve greater fiscal restraint, and that indeed I—and the markets—would be looking toward "converting the intentions expressed in the First Budget Resolution into concrete legislative action."

Our prospective deficits are simply too large. We must recognize that monetary policy is only one instrument of economic policy, and our common objective of a strong and prosperous economy depends on appropriate and complementary fiscal policy. If we are to achieve and sustain lower interest rates and avoid preempting funds needed for housing, business investment, agriculture, and small businesses in the years ahead—greater fiscal discipline is needed. The bills before you represent important steps in that direction. Controversy about particular provisions should not obscure that fact.

My earlier testimony suggested failure to carry through now on the overall intentions of the Budget Resolution would, in my judgment, carry the implication to a skeptical audience in the markets and elsewhere that Congress will be unable to deal effectively with the large budget deficits looming ahead. Those effects on expectations would, in turn, have an adverse impact on credit markets and the prospects for sustaining declines in interest rates. I continue to believe that it is of critical importance to the budgetary outlook and confidence in the markets that the conclusion of Congressional deliberations be the realization of the improvement in the fiscal position contemplated by the Budget Resolution,

Sincerely,

PAUL A. VOLCKER.

Mr. DOMENICI. Mr. President, I note again that the House agreed to this conference report by a vote of 243 to 176 just a few months before an election in which all House seats are up for reelection.

The distinguished minority manager has been a leader in trying to restrain indexation. But this bill is a major break with the practice of automatic indexation. There is a 1-month delay in COLA's for all Federal retirees. And there is a half rather than a full COLA for all Federal retirees under 62 years of age. There are also some other reforms in the Federal retirement system. The sum total of the savings is about $4.1 billion in reduced expenditures. When you start with zero restraint, I think the compromise is a good one.

When you start with zero, with the Senate at a full 4-percent cap, I think the compromise is a good one. We should make this start this year in the very vital area of automatic indexation.

How much time does the distinguished Senator wish?

Mr. DOLE. Five minutes.

Mr. DOMENICI. I yield 5 minutes to the Senator from Kansas.

Mr. DOLE. Mr. President, I wish to commend the distinguished Senator from New Mexico. It appears that through his efforts and the efforts of the other members of the Budget Committee, we are about to help preserve the budget process, which I think we really need in this Congress. I know we have differences on specific spending reductions. But it would seem to me that passage of this measure will indicate to the American people and to the financial markets—which are going in the right direction for a change—that we mean business. To some extent, this is because of the leadership of the Senator from New Mexico. This is not business as usual. Things are changing. We are going to continue to put pressure on Federal spending. We are going to do what is necessary tomorrow and Friday, hopefully, on the revenue side through tax reform, closing loopholes, and having more tax compliance.

I am pleased to note the the distinguished minority whip, Senator CRANSTON, has indicated he will support the tax bill. I understand my colleague from Montana on the Finance Committee, Senator BAUCUS, will support the tax bill. There is no doubt in my mind it is going to be a good bipartisan package. I am still hopeful the good Senator from South Carolina will come on board. Last year, the tax cut was too big, and this year the increase is too small. Somewhere down the line they may get together.

Before I make a comment on the reconciliation, I want to put into the RECORD a list of the deficit reduction action group coalition members. I think it would be helpful to the Members if they will look over this list. It goes from the American Business Conference, the Business Round Table, the National Association of Manufacturers, Westinghouse, General Electric, National Beer Wholesalers, and on, and on, page after page, of people who understand the importance of bringing down deficits and bringing down interests rates. The list also includes the Federation of American Hospitals, American Express, Associated Builders and Contractors, Federation of American Hospitals, and the Potato Chip and Snack Food Association.

Everyone is climbing on board. I hope that message is not lost on my Republican colleagues in the House as they prepare to make a tough vote tomorrow.

In addition, Mr. Robert Georgine, president of the AFL building and construction trades department, and a number of unions are supporting the bill. The American Association of Retired People sent a mailgram to every Member of the House today supporting the revenue and spending reduction bill because they know how necessary it is to bring down spending and keep interest rates going in the right direction.

It would seem to me that this growing support is an indication that we can work together and that we are on the right track. I hope this list might be helpful to Members tomorrow.

I ask unanimous consent that the list and other attached documents be printed in the RECORD.

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

DEFICIT REDUCTION ACTION GROUP
COALITION MEMBERS

American Business Conference—Chairman.

American Automobile Association.
American Council of Life Insurance.
American Electronics Association.
American Retail Federation.
Owen Corning.
Direct Selling Association.
General Aviation Manufacturers Association.
General Mills.
General Motors.
B. F. Goodrich.
Goodyear.
Independent Business Association of Wisconsin.
Johnson & Johnson.
Latin American Manufacturers Association.
3 M.
Motorola.
National Apartment Association.
National Association of Brick Distributors.
National Association of Furniture Manufacturers.
National Association of Home Builders.
National Association of Life Underwriters.
National Association of Manufacturers.
National Association of Small Business Investment Company.
National Association of Realtors.
National Association of Retail Druggists.
National Association of Women Business Owners.
National Lumber and Building Material Dealers Association.
National Oil Jobbers Council.
National Retail Merchants Association.
National Small Business Association.
National Tire Dealers & Retreaders Association.
National Tooling & Machining Association.
Prudential Insurance.
Semiconductor Industry Association.
Small Business Association of New England.
Southern Furniture Manufacturers Association.
Specialty Advertising Association.
Sun Companies.
Uniroyal.
Westinghouse.
General Electric.
National Beer Wholesalers Association.
National Leased Housing Association.
Computer Sciences Corporation.
National Mass Retailing Institute.
Massachusetts High Tech Council.
Independent Bakers Association.
FMC.
International Association of Trade Exchanges.
Trans America Occidental Life Insurance.
New England Council, Inc.
Council for Rural Housing & Development.
Distilled Spirits Council.
Business Roundtable.
National Corn Growers Association.
Edison Electric Institute.
Chrysler Corporation.
Dresser Industries, Incorporated.
Manufacturers Agents National Association.
Small Business Legislative Council.
Dravo Corporation.
Detroit Edison.
American Trucking Association, Inc.
American Hospital Supply Corporation.
National Forest Products Association.
Texaco.
Independent Business Association of Furniture Manufacturers.
Sears Roebuck.
Miller-Schroeder Municipals.
American Pulpwood Association.
Aetna.
New York Life Insurance Company.
Independent Insurance Agents of America.
American Gas Association.
Committee for Responsible Federal Budget.
Charter Company.
Federation of American Hospitals.
American Express.
Burlington Industries.
Celeron Corporation.
Anheuser Busch Company, Inc.
American Association of Equipment Lessors.
Corning Glass.
Hanna Mining.
Kaiser Aluminum.
Bristol-Myers.
Associated Builders and Contractors.
American Retail Druggists Association.
Securities Industry Association.
Rockwell.
Federation of American Hospitals.
U.S. Steel.
Potato Chip & Snack Food Association.
John Deere & Company.
Exxon.
Bendix.
Iron & Steel Institute.

TEXT OF TELEGRAM SENT BY 20 LABOR LEADERS, AUGUST 17, 1982

DEAR MR. PRESIDENT: We, the undersigned, believe, as you do, that the tax bill reported by the Congressional Conference Committee must pass both houses of Congress in order to reduce federal deficits, continue the reduction of interest rates, and stimulate business activity which will provide more jobs for our members.

We also strongly believe that the extension of unemployment compensation benefits for approximately 2 million workers is an important component of this bill.

We further believe that failure to pass this tax measure will significantly weaken the Congressional budget process.

As responsible representatives of organized labor, we are joining with you in urging the Congress to pass the Tax Equity and Fiscal Responsibility Act of 1982.

Respectfully,

Mr. Robert Georgine, President, AFL-CIO Building & Construction Trades Department; Mr. Teddy Gleason, President, International Longshoremen's Association; Mr. John F. Sytsma, President, Brotherhood of Locomotive Engineers; Mr. Henry Schickling, President, International Union of Tool, Die & Mold Makers; Mr. Shannon Wall, President, National Maritime Union; Mr. Jesse Calhoon, President, Marine Engineers Beneficial Association; Mrs. Linda Puchala, President, Association of Flight Attendants; Mr. Frank Chiappardi, President, National Federation of Independent Unions.

Mr. Victor Herbert, President, Air Line Employees Association; Mr. Tom Martinez, Secretary-Treasurer, National Maritime Union; Mr. Joe Maloney, Secretary-Treasurer, AFL-CIO Building & Construction Trades Department; Mrs. Mary Acker, President, National Federation of Licensed Practical Nurses; Mr. Duane Millar, Vice President, International Union of Tool, Die & Mold Makers; Mr. Fred Tittle, Secretary-Treasurer, National Federation of Independent Unions; Mr. Truman Davis, President, Congress of Independent Unions; Mr. W. S. Wanke, Vice President, Brotherhood of Locomotive Engineers; Mr. Clark Libhart, Vice President, Congress of Independent Unions; Mrs. Iveas Pruitt, Secretary, National Federation of Licensed Practical Nurses; Mr. William A. Schneider, Vice President, Air Line Employees Association; Mr. Gene DeFries, Secretary-Treasurer, Marine Engineers Beneficial Association.

CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA,
Washington, D.C., August 17, 1982.

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

DEAR MR. PRESIDENT: On behalf of the over two million members of the Internatioal Brotherhood of Teamsters, I share the same beliefs as you that the Tax Equity and Fiscal Responsibility Act of 1982 must pass both houses of Congress. This legislation will serve to reduce federal deficits, continue the reduction of interest rates, and stimulate business activity which will provide more jobs for members of our Union.

The Teamster's Union also strongly believes that the provisions to extend compensation benefits for approximately 2 million workers is a vital component of this legislation.

The Tax Equity and Fiscal Responsibility Act is a piece of legislation that is unprecedented in nature and represents the serious economic dilemma that our nation is currently facing. The Congress is faced with a bill that can provide the real foundation to rebuild our great nation. If Congress fails to pass H.R. 4961, is will not only significantly weaken the Congressional budget process but serve to show all of America that there is no solution to our nation's economic plight.

As a representative of organized labor, I join with you in urging Congress to pass the Tax Equity and Fiscal Responsibility Act of 1982.

Respectfully,

ROY L. WILLIAMS,
General President.

OPERATION INDUSTRY COOPERATION,
NATIONAL GOVERNMENT RELATIONS SERVICE,
Washington, D.C., August 16, 1982.

DEAR FRIEND: I am writing you to urge your cooperation in securing the passage of the Dole Tax Bill currently awaiting final congressional action. As you know Senator Dole has shaped legislation which tries to balance and reform the current tax laws so that there is more fairness taxing the truly greedy and helping the truly needy.

This bill as a result of the cooperation of the ranking Democrat on the Finance Committee Senator Russel Long has passed the Senate with bi-partisan support. With the help of Barber Conable and Dan Rostenkowski on the House side a bi-partisan combination is pushing to get the bill accepted. Those of us who know Senator Dole are aware of his sensitivity to the issues and concerns of the Black community as well as to those of the white community.

Thus, the equity and fairness in this tax bill is better than most and certainly the best that is possible in the 97th Congress.

As you know politics is the art of the possible and I urge you to support the President and the leaders of both parties who are supporting this bill.

Please write your Congressman when you receive this and tell him to use his influence and his vote to get this bill passed.

I am sincerely yours,

Dr. MAURICE A. DAWKINS.

MAILGRAM TO ALL MEMBERS OF HOUSE AND SENATE

Hon.————————

U.S. Senate/U.S. House of Representatives, Washington, D.C.

DEAR————————: On behalf of the more than 18 million members of the American Association of Retired Persons, I want to express our support for the conference report on H.R. 4961, the Tax Equity and Fiscal Responsibility Act of 1982.

Needless to say, the bill does include provisions with which we take exception. However, we believe that the package agreed to by the conferees is a balanced one under the circumstances. Failure to pass the conference report will add substantially to the deficit, further aggravate our economic problems, and undermine the well-being of all Americans, including the elderly.

Thank you for your attention.

Sincerely,

CYRIL F. BRICKFIELD,
Executive Director.

NATIONAL COUNCIL OF LA RAZA,
Washington, D.C. August 18, 1982.

Hon. RONALD REAGAN,
President of the United States, The White House, Washington, D.C.

DEAR MR. PRESIDENT: After careful consideration of the merits of the new tax legislation (H.R. 4961) passed by the Senate/House conferees and supported by you on national television, the National Council of La Raza believes that it is in the best interests of the nation and the Hispanic community to pass this legislation.

The aforementioned legislation brings a measure of equity and fairness to our tax system and provides much needed additional revenue which will reduce Federal deficits and hopefully bring down interests rates. As with any legislation, the proposed bill has elements that some of us would have wanted otherwise. But overall it represents a compromise that we can enthusiastically support.

Sincerely,

RAUL YZAGUIRRE,
President.

[Telegram]

August 17, 1982.

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

DEAR MR. PRESIDENT: We the undersigned, businessmen and directors of the Chamber of Commerce of the United States—and as a body making up a majority of the Chamber's Board—wish to reaffirm our support of your economic recovery program and the tax bill just reported out of conference. We feel the tax bill is necessary to help reduce the deficit, bring interest rates down and to insure further spending cuts.

Respectfully yours,

Paul Thayer, Chairman, Chamber of Commerce of the United States, and Chairman and Chief Executive Officer, the LTV Corporation; V. J. Adduci, President & Chief Executive Officer, Motor Vehicle Manufacturers Association, Washington, D.C.; Roy L. Ash, Los Angeles, California; F. Caleb Blodgett, Vice Chairman of the Board, General Mills, Inc., Minneapolis, Minnesota; Andrew F. Brimmer, President, Brimmer & Company, Inc., Washington, D.C.; Theodore D. Brown, Chairman of the Board, First National Bancorporation, Inc., Denver, Colorado; John F. Burlingame, Vice Chairman of the Board & Executive Officer, General Electric Company, Fairfield, Connecticut; August A. Busch III, Chairman of the Board and President, Anheuser-Busch Companies, Inc., St. Louis, Missouri; Louis W. Cabot, Chairman of the Board, Cabot Corporation, Boston, Massachusetts; James B. Campbell, President, Mississippi School Supply Company, Jackson, Mississippi; Robert T. Campion, Chairman and President, Lear Siegler, Inc., Santa Monica, California; Frank W. Considine, President & Chief Executive Officer, National Can Corporation, Chicago, Illinois; William C. Douce, Chairman of the Board & Chief Executive Officer, Bartlesville, Oklahoma; Charles W. Durham, Chairman of the Board and Chief Executive Officer, Henningson, Durham & Richardson, Inc., Omaha, Nebraska; Virgil R. Eihusen, Chairman of the Board and Chief Executive Officer, Chief Industries, Inc., Grand Island, Nebraska; Robert F. Erburu, President and Chief Executive Officer, The Times Mirror Company, Los Angeles, California; William H. Genge, Chairman and President, Ketchum Communications, Inc., Pittsburgh, Pennsylvania; Howard H. Kehrl, Vice Chairman, General Motors Corporation, Detroit, Michigan; Breene M. Kerr, Chairman and President, Kerr Consolidated, Inc., Oklahoma City, Oklahoma; Robert D. Kilpatrick, President, CIGNA Corporation, New York, New York; Lewis W. Lehr, Chairman and Chief Executive Officer, 3M Company, St. Paul, Minnesota; Donald S. MacNaughton, Chairman of the Board and Chief Executive Officer, Hospital Corporation of America, Nashville, Tennessee; Peter A. Magowan, Chairman and Chief Executive Officer, Safeway Stores, Inc., Oakland, California; Richard J. Mahoney, President & Chief Operating Officer, Monsanto Company, St. Louis, Missouri; Robert H. Malott, Chairman of the Board and Chief Executive Officer, FMC Corporation, Chicago, Illinois; Donald C. Miller, Vice Chairman and Director, Continental Illinois Corporation, Chicago, Illinois; William G. Phillips, Chairman of the Board and Chief Executive Officer, International Multifoods Corporation, Minneapolis, Minnesota; Dean P. Phypers, Senior Vice President, IBM Corporation, Armonk, New York; Robert H. Quenon, President & Chief Executive Officer, Peabody Coal Company, St. Louis, Missouri; Gerald H. Trautman, Chairman of the Board, The Greyhound Corporation, Phoenix, Arizona; C. William Verity, Jr., Chairman of the Board, Armco Inc., Middletown, Ohio.

Mr. DOLE. Earlier, the Senator from New Mexico mentioned the dairy program. We do reduce the cost of the dairy program. We should reduce the cost of the dairy program. We have a dairy industry in the State of Kansas and in other States represented here. But I think most people in the dairy industry are saying, "If we want to stay in the program, we had better take a look at it." We will save about $1.5 billion in fiscal 1983, $1.4 billion in fiscal 1984, and about $1.3 billion in fiscal 1985.

I did not hear the distinguished Senator from Wisconsin, but I am certain he made a glowing statement on why we should not cut spending in this area. I assume Wisconsin is a fairly substantial dairy-producing State. It was, has been, and will continue to be. It is a great industry. But we cannot exempt people in our own States and just attack our own colleagues and balance the budget. Some make a career out of that. The rest of us fortunately, do not.

I suggest that we are moving in the right direction and that we are making the necessary sacrifices. I would like to join my colleagues in supporting approval of the conference report.

I have a statement as it affects paid acreage diversion and advance deficiency payments, the export financing programs, and the reduction in the cost of the dairy program. Again, I want to indicate that the National Milk Producers Federation has indicated its support for this program.

CONFERENCE REPORT ON RECONCILIATION

Mr. President, I would like to join my colleagues on both sides of the aisle in strongly supporting approval of the conference report on the omnibus reconciliation bill.

I have prepared separate remarks on the major changes in the food stamp program that accomplished $1.9 billion in savings over the 3-year reauthorization. I would like at this time to comment on the other reforms in the agriculture budget that have resulted in improved, more cost-effective programs for American farmers, taxpayers, and consumers.

PAID DIVERSION AND ADVANCE DEFICIENCY PAYMENTS

Mr. President, the conference report includes a mandatory 5-percent paid acreage diversion for wheat, feedgrain, and rice producers who participate in acreage reduction programs for 1983 crops. The conferees also agreed that one-half of this payment will be made at the time farmers sign up for the total program, a requirement that will provide up-front financing in advance of planting expenditures for many producers.

While both original House and Senate bills contained a mandate for a 10-percent paid diversion program, it was agreed that many farmers would not be able to participate if the base acreage reduction were set at 15 percent. We did specify, however, that any increase in the unpaid program would be matched by proportionate increases in the paid diversion in order to maintain the attractiveness of the plan while providing the Secretary of

Agriculture sufficient discretion to modify the percentages later this year or next.

Finally, Mr. President, I would congratulate the distinguished chairman of the Senate Committee on Agriculture, Nutrition, and Forestry for his leadership in providing for advance payments of both the 1982 and 1983 crops of all grains and cotton in case deficiency payments are indicated. This measure will provide participating farmers with additional cash to finance planting operations at moderate interest rates.

According to CBO, I understand that the paid acreage diversion program is expected to save $274 million over the next 3 fiscal years. The initial cost of $192 million in payments in fiscal year 1983 will be more than compensated for by reduced deficiency payments and other outlays of $367 million in fiscal year 1984 and $99 million in fiscal year 1985.

EXPORT FINANCING PROGRAMS

A second initiative proposed by the distinguished Senator from North Carolina and approved in conference was the establishment of a fund for facilitating the increased export of U.S. agricultural commodities.

The size of the fund—$175 to $190 million for each of the next 3 years—is small compared to the financing used by other exporting countries to move their farm production into world trade.

At the same time, any expenditure of funds must be carefully weighed against the equally important needs of other sectors of the economy which are also suffering from the lingering effects of the recession.

According to CBO, the enhancement of our agricultural export program through judicious use of this fund would contribute to an increase in commodity prices sufficient to actually reduce Federal expenditures by $188 million over the next 3 years.

While not usually sanguine about cost-benefit projections, Mr. President, the particularly gloomy outlook for farm prices at this time gives me some hope that, even if this program does not actually save money, it will offset the initial expenditure.

I was gratified that differences between the Senate bill and the Office of the U.S. Trade Representative were resolved in a mutually satisfactory way by allowing the fund to be expended in any or all programs available to the Secretary of Agriculture.

This provision will provide sufficient flexibility for the administration to conduct foreign trade policy over the next several months without recourse to programs that might be interpreted as subsidies by our trading partners and competitors. I would assume, however, that the administration may be prepared to adopt any trade practices that may be accorded formal approval under the general agreement on tariffs and trade.

REDUCTION IN THE COST OF THE DAIRY PROGRAM

Of particular importance from the taxpayer's perspective, Mr. President, is the significant reduction in the cost of the dairy program approved by House and Senate conferees.

After 2 years at over $2 billion, controversy over the alarming expense of milk production and storage of dairy products was beginning to become a rallying point for critics of farm programs in general, threatening the longstanding benefit and supply assurance which they provide.

It is to the credit of the dairy industry that a sincere effort was made to correct the growing cost of the program. The plan advanced by the Milk Producers Federation, while difficult to administer, would have brought down Government outlays significantly while giving industry a greater degree of control over the program.

The compromise worked out in conference is closer to the Senate bill in its relative simplicity, and closer to the House bill in terms of savings. The Secretary of Agriculture is given the authority to reduce the effective support level from the current $13.10 per hundredweight to $12.60 on October 1, 1982, and to $12.10 per hundredweight on April 1, 1983. These reductions are projected by CBO to save a total of over $4.1 billion during the next 3 years.

At the same time, provisions are included for returning the support price to $13.10 per hundredweight when net purchases of dairy products by the CCC fall below the equivalent of 5 billion pounds. While some additional rungs could have been put in the ladder to allow a more gradual recovery to the present support level, this approach will enable the dairy industry to make the needed transition back to comparative equilibrium in supply and demand.

The compromise dairy plan would require the Secretary to administer an incentive to reduce the production program if the second 50-cent reduction is required. While some details of such a program are mandated, there is sufficient flexibility for the USDA to design an effective program without needless complexity in its administration.

The only feature of the dairy reform that has raised the possibility of yet another effort to redesign the program is the requirement that the support price in fiscal year 1985 be fixed at a specific level of parity.

The USDA has indicated that this element may result in the decision by milk producers to remain in the industry at the same level of production rather that scaling back their herds as the support price is reduced.

We must now wait to see how the individual farmer will respond to the reform. Hopefully, we can help dairy producers by getting feedgrain and livestock prices back up so that an economic incentive to cut production can be fostered.

CONCLUSION

In closing, Mr. President, I believe that the conferees on agriculture have done a fine job in bringing together the different elements of the two bills into a sensible, coherent package.

Considering the months that have been expended on the budget process this year, the equanimity and reasonableness of both the House and Senate conferees was commendable.

I fully endorse the conference report under deliberation today, and urge my colleagues to give it their support.

Mr. President, I want to address our reductions in the food stamp program. It is a program that I know is of interest to the distinguished Senator from South Carolina. He was one of the pioneers in the efforts on the original nutrition committee. We had a number of hearings in his State. He has been a great help in that area.

We did not cut the food stamp program as much as the administration wanted. I do not think there was any way we could have or should have. But we did end up in the next 3 years with cuts totaling about $1.9 billion. Hopefully, they were carefully crafted.

What we are trying to do is to lower the error rates in States where the error rates go as high as 10 percent or more. We believe by an error rate reduction program we can save a lot of money in the program without impacting on low-income people.

We also adopt some work requirements. Nobody on the committee, Republican or Democrat, believes that we ought to spend taxpayers' money if, in fact, people are able to work and provide for themselves. So we have strengthened the work requirements. I want to thank all my colleagues in the conference committee, particularly the chairman of the conference, and the chairman of our committee, Senator HELMS, and also Congressman TOM FOLEY, who provided a great deal of support to our chairman and Congressman DE LA GARZA in their efforts to bring the Agriculture Committee's responsibilities to a successful conclusion.

FOOD STAMP PROVISIONS OF RECONCILIATION CONFERENCE REPORT

Mr. President, last week, the Senator from Kansas was privileged to participate in two budget conferences—one deliberating on the Finance Committee package on taxes and spending reductions and the agriculture reconciliation conference, which included food stamp program reauthorization and reconciliation. Although one was a marathon event, the other resolved

itself with relative ease and to the satisfaction of most members of the House and Senate Committees.

The product which has emerged from the conference largely reflects the approach to food stamp program reauthorization and reconciliation that was represented by the Food Stamp Reform Act of 1982. Most of the provisions of this legislation, S. 2493, were retained in the Senate bill. I thank Senators COCHRAN, ANDREWS, JEPSEN, BOSCHWITZ, and DANFORTH for their cosponsorship and initial support of my efforts; we were later joined by Senators COHEN, WALLOP, and BOREN.

BUDGET REDUCTIONS

Although substantial savings had been achieved in the food stamp program during the 1981 reconciliation process, the state of the national economy demanded that further savings be made in the Federal budget. The Senator from Kansas thinks this legislation represents a reasonable and responsible approach to further limiting food stamp program expenditures. Over the 3-year life of the authorization, this conference report contains about $1.9 billion in spending reductions: $548 million for fiscal year 1983, $635 million for fiscal year 1984, and $756 million for fiscal year 1985. Throughout this process, members of both the Senate and House Committees were careful to avoid the implementation of provisions that would have reduced benefits across the board or actually eliminated people from the program.

Most of the savings come from a provision to require better State performance in administration of the program. This mandate for States to reduce their error rates, in overissuances of benefits and issuances to ineligible participants, was carefully designed in consultation with State administrators and Governors, as well as the Department of Agriculture and the Congressional Budget Office. The provision that emerged from the conference was retained from the original food stamp legislation which I introduced.

Mr. President, I believe the enactment of sanctions based on tough, but realistic error rate goals will bring about better State performance and achieve significant savings without necessitating any benefit reductions in order to slow the growth of program expenditures. The error rate proposal incorporated in the conference report sets the sanctions at a level sufficient to generate State activity in the direction of improving program administration without depleting the resources needed to adequately perform the job. The major savings anticipated from this provision would come from lower error rates—not sanctions. Under this provision, program expenditures are expected to decrease by $90 million in fiscal year 1983, $200 million in fiscal year 1984, and $325 million in fiscal year 1985.

The other primary method of achieving savings is based on a modification of the Senate thrifty food plan provision, adopted by the conference committee. Instead of moving the base period in the thrifty food plan from its current month of June, October 1 increases in benefits would be based on the thrifty food plan in June minus 1 percent in each year, resulting in savings of $180 million for fiscal year 1983, $170 million for fiscal year 1984, and $160 million for fiscal year 1985.

WORK REQUIREMENTS

Mr. President, while the Congress avoided endorsing proposals that would create work disincentives in this vital social program, members of the conference committee reasserted their firm view that no able-bodied person should receive food stamp benefits unless he or she is willing to work.

While recognizing that, in times of high unemployment, increasing numbers of people become unemployed through no fault of their own and turn to the program for interim assistance, the conference report fulfills a responsibility to unemployed persons, as well as to the American taxpayer by emphasizing the importance of having strict measures enforced to limit participation in the food stamp program to those who have no alternative source of income.

PROGRAM EXTENSION AND CAP

Mr. President, perhaps the most constructive thing the Congress has done for this much-maligned food stamp program is to extend the program authorization for 3 years—to reestablish its traditional coordination with the farm bill authorization. The layer upon layer of change enacted in the laws affecting this program since 1977 require that we now give the program a period of relative stability.

As a counterpart to this effort, the conference committee adopted realistic spending ceilings, which hopefully will permit full program funding without necessitating new legislation each year. The caps endorsed by the conference include a 5-percent built-in cushion in order to accommodate unpredictable economic factors that may arise. This is particularly important in the outyears, when estimates this far in advance cannot be projected with any great amount of certainty. The caps adopted by the conference, which include funding for Puerto Rico, are as follows: $12.874 billion for fiscal year 1983, $13.145 for fiscal year 1984, and $13.933 for fiscal year 1985.

STATE BLOCK GRANT

Although a Senate provision to allow a State block grant option for this program was dropped in conference, there was an understanding that hearings in both the Senate and House committees will be in order next year to explore the merits of this block grant approach, which was contained in the chairman's bill.

CONCLUDING REMARKS

Mr. President, as chairman of the Subcommittee on Nutrition, the Senator from Kansas would like to thank my colleagues for their support of the basic approach to food stamp program reauthorization and reconciliation which was represented by S. 2493. I commend the distinguished chairmen of the House and Senate committees for their leadership during this conference, and especially thank the distinguished gentleman from the State of Washington (Mr. FOLEY) for his skillful negotiating during the conference. Although this Senator was not able to be present for all of the discussion in conference, due to tax conference responsibilities, I am pleased with the outcome of the negotiations and congratulate all those who participated in this process for their constructive efforts in addressing the food stamp program once again.

This year's legislative changes in the program seek to build upon the foundation laid during the last 5 years to strengthen the program and target benefits more effectively to needy low-income Americans. Perhaps more than any other Federal social program, this one suffers from a negative public image. We owe it to those who truly depend upon these benefits for survival to restore this program to a level of dignity. The Senator from Kansas believes that the most important changes needed to combat the many problems of the food stamp program were enacted last year in both the reconciliation and the farm bill. Just about every complaint that has been brought to our attention by witnesses during extensive hearings, as well as others familiar with program administration and enforcement, has been addressed through legislation.

Whatever changes we now make in this program should be directed toward simplifying administration and providing greater flexibility at the State and local level. At a time when we are demanding that States reduce their error rates, we should assist them in their efforts by avoiding the addition of complex, new program requirements, if at all possible.

Mr. President, the food stamp program is a very worthwhile and effective nutrition program, serving the needs of low-income Americans and significantly reducing the incidence of domestic hunger and malnutrition. We should continue to monitor the funding needs of the food stamp program from year to year in order to make certain that benefits are being targeted effectively. At the same time, we should continue to evaluate the impact of the changes we make which affect the daily lives of over 20 million

low-income Americans who participate in the program.

Finally, to return to a discussion of the economy, with reference to the letter from Mr. Volcker, I think that is good news in itself. It is an indication that we may be on the right track. I would guess that interest rates are falling in part because the economy is very weak. I would guess they are going to fall some more for that reason. But we may be on the verge of recovery. There is some hope.

I think passage of this reconciliation package, followed by passage tomorrow, or Friday, of the revenue package and the spending reduction package from the Finance and Ways and Means Conference will indicate once and for all to everyone who wants to listen that, while we may disagree on specifics, as a Congress we have demonstrated we are on the right track. For his part, we are grateful to the distinguished Senator from New Mexico, the distinguished Senator from South Carolina, and the other members of the Budget Committee.

Mr. DOMENICI. Mr. President, before the distinguished Senator from Kansas leaves the floor, I would like to indicate to him my great esteem and appreciation for what he has been able to do as chairman of a very, very important committee of the Senate, the Finance Committee.

When you are chairman of the Budget Committee and you get enough votes to report out a budget resolution, and then you have reconciliation achieving some spending reductions, you feel pretty good. But this year we had a major reconciliation instruction on taxes. We even did ourselves one better. We had revenue instructions for 3 years instead of just 1, on the Senate side.

When you have that type of reconciliation instruction, developed in consultation with the distinguished chairman of the Finance Committee, you can go home feeling comfortable that he is going to do his job, that his committee is going to work with him and they will bring back something that is fair and equitable to the American people and that accomplishes the mandated deficit reductions.

Whether it is cutting uncontrollable expenditures or reforming the tax code or raising revenue, as this instruction required of the distinguished chairman from Kansas and his committee, he can be counted on to deliver results. I want the distinguished chairman to know it has been my privilege to work with him. I believe tomorrow we will have a great victory on the tax bill. I think the country is going to respond with a continuation of lower interest rates and unemployment. I think we will have made an enormous start when we finish the two bills. I commend the chairman for his work.

Mr. HELMS. Will the Senator yield 1 minute?

Mr. DOMENICI. I yield.

Mr. HELMS. I want to thank the Senator from Kansas for his kind remarks. I want to say he has done such a masterful job under the most incredible pressures. I do not think we would have completed our section in the reconciliation had it not been for the fine efforts of the Senator from New Mexico and the Senator from Kansas. I express my appreciation to them.

AGRICULTURE COMMITTEE'S CONTRIBUTION TO RECONCILIATION

Mr. President, if the Senator will yield further I commend to the Senate the reconciliation section of the bill for which the Committee on Agriculture, Nutrition, and Forestry has responsibility. The House and Senate conferees made some progress in arriving at a reasonable compromise in the areas of disagreement—not as much as I would have liked, but some progress was made in terms of saving the taxpayer's money.

The level of savings recommended in our committee's jurisdiction exceeds the level of savings required by the first concurrent budget resolution by $3.3 billion over the 3 fiscal years covered by the bill.

The committee recommendations achieve savings of $1.95 billion in fiscal year 1983, $2.43 billion in fiscal year 1984 and $2.17 billion in fiscal year 1985, for a 3-year total of $6.55 billion as noted in the accompanying table.

These savings are achieved in four major areas—the dairy program, $4.15 billion; the food stamp program, $1.939 billion; through an export promotion proposal, $188 million; and through various changes in farm commodity programs, $274 million.

Indeed, I point out that the programs under the Agriculture Committee's jurisdiction account for almost 50 percent of the total savings contained in this bill.

While expression support for these measures, a word of caution is in order. Congressional failure to achieve larger reductions in the food stamp program will contribute to the need for the administration to propose further savings next year. A word of clarification is in order. The cost of the food stamp program has not been reduced. Rather, the rate of increase has merely been slowed. The program, as authorized in this legislation, will reach unprecedented costs of $12.874 billion in fiscal year 1983, $13.145 billion in fiscal year 1984, and $13.933 billion in fiscal year 1985. The savings represented in this legislation represent less than 5 percent of the total cost of the program. The final savings represent only 21.8 percent of the administration's recommended reductions. Clearly, more could have been done, as the administration recommended, and more will have to be done in the future.

Additionally, the dairy program recommendations, while appearing to make significant savings, will have to be monitored closely to insure that the enormous cost of this program will, in fact, be brought under control. We have been forced to deal with the dairy program on several occasions because of greater than expected costs to the Commodity Credit Corporation. If this legislation fails to redirect this program, the administration will again be forced to offer recommendations that will reduce the cost of this program.

As chairman of the Committee on Agriculture, Nutrition, and Forestry, I assure Members that we are greatly concerned about certain trade practices of the European Community which have adversely affected our commodities. We have authorized increased programs to deal effectively with these problems. Again, further action may prove necessary.

The conference actions represent a balanced approach to the problems in the farm economy. We are dealing with oversupplies of grain on both the demand side and the supply side.

As mentioned earlier, agricultural exports should be enhanced by the increased funding for export activities which the conferees adopted. I am pleased that the dollar amount for exports which I proposed in committee and which the conferees adopted will ultimately produce substantial savings to the taxpayer.

On the supply side, overproduction should be restrained by the paid diversion which the conferees approved. We agreed to a 5 percent paid diversion, which was the amendment I offered on the Senate floor.

The conferees also agreed in total to the advance deficiency payment provision which I proposed in committee. This provision will provide needed cashflow assistance to economically pressed farmers. It will not create new costs to the taxpayer, but in a case where the Government is going to make payments anyway, it will allow farmers to put the capital to more productive use.

In addition to achieving the reconciliation savings mentioned above, the conference bill reauthorizes the food stamp program for 3 fiscal years, and includes a number of provisions to reduce the food stamp program's susceptibility to fraud and abuse.

Also included in the bill are provisions to simplify the administration of the program and to provide more State flexibility in the administration of the program.

I call special attention to two items which are included in the conference report language. Both Agriculture Committees of the House and Senate

have pledged to have early and thorough hearings on the State option bloc grant concept which I introduced and which was included in the earlier, Senate-passed bill. I believe this proposal for a voluntary bloc grant holds great promise to provide States with needed flexibility in the administration of nutritional assistance to low income citizens.

Also, while retaining the Federal requirement that bilingual personnel and material be required of States, the conferees adopted language to grant the Secretary the flexibility to eliminate burdensome bilingual regulations about which many States have complained.

The provisions and their justification are more thoroughly described in the Senate report which accompanied the earlier, Senate-passed reconciliation bill and in the conference report accompanying this final version of the bill.

Mr. President, I ask unanimous consent that a summary of all provisions recommended by the conference relating to matters under the jurisdiction of the Committee on Agriculture, Nutrition, and Forestry and the related budget impact as estimated by the Congressional Budget Office, be printed in the RECORD.

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

CBO ESTIMATE OF AGRICULTURAL RECONCILIATION SAVINGS

[In million dollars]

Commodity savings	Fiscal year—			
	1983	1984	1985	3 years
Dairy assessment	−428	−707	−665	−1,800
Incentive fee	−1,073	−667	−659	−2,399
(On-farm use)	+19	+13	+13	(+45)
Wheat	+4	−191	−33	−220
Feed grains	+178	−142	−66	−30
Rice	+10	−34		−24
Export savings	−116	−64	−8	−188
Food stamps	−548	−635	−756	−1,939
Total	−1,954	−2,427	−2,174	−6,555
Reconciliation target	779	1,083	1,428	3,290
Savings in excess of target	1,175	1,344	746	3,265

DAIRY

The price support level for milk containing 3.67 percent milkfat would be continued at the current level of $13.10 per hundred pounds for the 1983 and 1984 fiscal years. For fiscal year 1985, beginning October 1, 1984, the support would be set at the percentage of parity which $13.10 represented on October 1, 1983.

In order to further encourage reduction of the dairy surplus for the period from October 1, 1982, through September 30, 1985, the Secretary of Agriculture would be authorized to provide for a deduction of 50 cents per hundred pounds from the proceeds of all milk marketed commercially by farmers, with the funds paid to the Commodity Credit Corporation to offset the cost of the milk price support program. Authority for the deduction would not apply, however, for any fiscal year for which projected annual Government price support purchases for the fiscal year fall below 5 billion pounds milk equivalent.

Further the Secretary would be authorized to provide for an additional 50 cent deduction for the period from April 1, 1983, through September 30, 1985, if the projected Government price support purchases are above 7.5 billion pounds. This second deduction would end whenever projected purchases fall below 7.5 billion pounds. If this second deduction is implemented, however, the Secretary must also provide a system under which individual farmers may obtain refunds if they reduce their milk production. In removing either of the deductions, the Secretary could act at any time during a fiscal year that projections of purchases fall below the trigger levels.

SAVINGS BY FISCAL YEARS

[In millions of dollars]

	1983	1984	1985
Dairy assessment	−428	−707	−665
Incentive fee	−1,073	−667	−659
(On-farm use)	+19	+13	+13
Net savings	−1,482	−1,361	−1,311

ADJUSTMENT PROGRAMS FOR WHEAT, FEED GRAINS, AND RICE

Advance deficiency payments

The Secretary would be required to provide an advance portion of any estimated deficiency payments for the 1982 and 1983 crops of wheat, feed grains, upland cotton and rice. Those farmers who are participating in USDA's voluntary acreage reduction program would be eligible. These farmers would receive 70 percent of estimated 1982 deficiency payments as soon as possible after October 1, 1982. Farmers would be able to receive up to 50 percent of the estimated 1983 deficiency payments at the time they sign up for an acreage reduction and paid land diversion program. The Secretary of Agriculture would be authorized to provide such advance payments for the 1984 and 1985 crops of these commodities.

Loans for wheat and feed grains

The minimum loan level for the 1983 crop of wheat would be raised to $3.65 from $3.55 per bushel, and the minimum loan for the 1983 crop corn would be raised from $2.55 to $2.65 per bushel.

Acreage reduction and paid diversion programs

For 1983, the Secretary would be required to provide for a wheat acreage reduction of 15 percent from the acreage base and a paid land diversion program of an additional 5 percent. Producers must reduce acreage by the total 20 percent to be eligible for program benefits (loan rates, target prices, and the farmer-owned reserve).

For the 1983 crop of corn and other feed grains, the Secretary would provide for an acreage reduction of 10 percent and a paid land diversion program of an additional 5 percent. Growers must reduce acreage by the total 15 percent to be eligible for program benefits.

On the 1983 crop of rice, the Secretary would be required to provide for a rice acreage reduction of 15 percent and a paid land diversion program of 5 percent, with a total 20 percent reduction as a condition of eligibility for program benefits.

For the 1983 crop of cotton, there would be no change in existing law. However, the conferees encourage the Secretary to consider a paid diversion in connection with any acreage reduction that he may implement using current authority.

Payments to producers who participate in the diversion program would be based on the farm program payment yields for the crops on the reduced acreage which is eligible for these payments. The minimum diversion payment rates would be $3.00 per bushel for wheat, $1.50 per bushel for corn, and $3.00 per hundredweight of rice, except that the rates may be reduced by as much as 10 percent if the Secretary determines that the lower rates would achieve the same program goals. All farmers eligible for wheat, feed grain, and rice acreage diversion payments would get half of these payments at the time they enroll in the program.

Acreage bases

For purposes of making an acreage reduction, the acreage base on a farm for the 1983 crop of wheat, feed grains, and rice would be the same as the acreage base for the 1982 crop, as may be adjusted by the Secretary. The conferees, however, expect the Secretary to consider the special problems of farmers who normally "summer fallow" part of their land each year.

SAVINGS OR COST

[By fiscal years, in millions of dollars]

	1983	1984	1985
Wheat	+4	−191	−33
Feed grains	+178	−142	−66
Rice	+10	−34	

AGRICULTURAL EXPORTS

In each of the three fiscal years beginning October 1, 1982, the Secretary of Agriculture would be required to use between $175 million and $190 million in Community Credit Corporation funds for export activities authorized by existing law. This authority would be in addition to, not in place of, authorities under any other laws. These authorities, under current law, could be used for such devices as export credit "buydown" plans to reduce interest rates on export credit, export subsidies, and direct export credit.

Savings: Fiscal year:	*Millions*
1983	−$116
1984	−64
1985	−8

FOOD STAMP ACT AMENDMENTS OF 1982

Definition of household

The bill requires that all parents and children or siblings who live together be treated as a single household, unless one of the parents or siblings is elderly or disabled.

The bill also specifies that an individual who lives with others, but who is 60 years of age or older and who is unable to purchase food and prepare meals because of a permanent disability recognized by the Social Security disability program or a nondisease-related disabling physical or mental infirmity shall be treated as a separate household, together with his or her spouse, without regard to the purchase of food and preparation of meals, if the gross income of the other individuals with whom the person lives does not exceed 165 percent of the nonfarm income poverty guidelines.

Savings: Fiscal year:	*Millions*
1983	−$38
1984	−40
1985	−42

Rounding of computations for the thrifty food plan and deductions

The bill revises the rounding rules for annual adjustments to the cost of the thrifty food plan to provide that rounding would occur only after the thrifty food plan amounts had been calculated for all household sizes and the amounts would then be rounded down to the nearest whole dollar.

Also, after adjustment for inflation, the result in both the standard deduction and the excess shelter/dependent care deduction would be rounded down to the nearest whole dollar increment.

Savings: Fiscal year:	Millions
1983	−$68
1984	−93
1985	−93

Thrifty food plan adjustments

The bill provides that the October 1, 1982, adjustment of the cost of the thrifty food plan would be calculated by (i) adjusting the plan to reflect changes in the cost of food covered by the plan during the 21-month period ending June 30, 1982, (ii) reducing the cost of the plan by 1 percent, and (iii) rounding the resulting figure. The cost adjustment to the thrifty food plan scheduled for October 1, 1983, and October 1, 1984, would be calculated by (i) adjusting the plan to reflect changes in the cost of food covered by the plan during the 12-month period ending the preceding June 30, (ii) reducing the cost of the plan by 1 percent, and (iii) rounding the resulting figure. The cost adjustment scheduled for October 1, 1985, and each October 1 thereafter would be calculated by (i) adjusting the plan during the 12-month period ending the preceding June 30 and (ii) rounding the resulting figure.

Savings: Fiscal year:	Millions
1983	−$180
1984	−170
1985	−160

Disabled veterans

The bill treats disabled veterans and disabled survivors of veterans in the same manner as disabled persons who receive supplemental security income benefits or who receive disability or blindness benefits under the Social Security Act.

Cost: Fiscal year:	Millions
1983	+$5
1984	+5
1985	+5

Income standards of eligibility

The bill revises the income eligibility test for households without an elderly or disabled member to require that these households have net monthly incomes (after the various expense disregards and deductions) below 100 percent of the Federal poverty level, in addition to meeting the 130 percent of poverty gross income test, in order to be eligible for food stamps.

Savings: Fiscal year:	Millions
1983	−$5
1984	−5
1985	−5

Cost-of-living adjustments to Federal benefits

The bill requires that the July cost-of-living increases in Social Security, SSI, Veterans, and Railroad Retirement benefits not be counted as income for food stamp purposes until October of the same year, when the indexing of food stamp allotment, levels occur.

Cost: Fiscal year:	Millions
1983	+$19
1984	+21
1985	+23

Adjustment of deductions

The bill delays the July 1, 1983, adjustment of the standard deduction and the excess shelter/dependent care deduction until October 1, 1983.

Savings: Fiscal year:	Millions
1983	−$42
1984	.....
1985	.....

Standard utility allowance

The bill specifically permits a State agency to use a standard utility allowance in computing a household's excess shelter expense deduction. An allowance that does not fluctuate within a year to reflect seasonal variations would be permitted but an allowance for a heating or cooling expense may not be used for a household that does not incur a heating or cooling expense and for households in public housing units with central utility meters. Prorating of the allowance would be required in the case of households sharing a residential unit.

Savings: Fiscal year:	Millions
1983	−$90
1984	−93
1985	−97

Migrant farmworkers

The bill precludes the Secretary of Agriculture from waiving, in the case of migrant farmworkers, the calculation of household income on a prospective basis as required by current law.

Financial resources

The bill precludes the Secretary, with some exceptions, from altering the food stamp financial resources limitations which were in effect as of June 1, 1982. The bill also requires accessible savings or retirement accounts to be counted in determining whether the financial resources limitation has been exceeded.

Studies

The bill deletes three studies that have been completed and deletes a requirement for an annual report to Congress on the effect of elimination of the purchase requirement.

Categorical eligibility

The bill permits States to consider households in which all members receive Aid to Families with Dependent Children benefits and whose gross income does not exceed 130 percent of the nonfarm poverty guidelines as having satisfied the resource limitation requirements under the food stamp program.

Waiver of reporting requirements; cost effectiveness of monthly reporting systems

The bill provides that a State agency may, with the approval of the Secretary and if it can show that monthly reporting would result in unwarranted administrative expense, select categories of households which may report at less frequent intervals.

The bill permits the Secretary of Agriculture, upon the request of a State, to waive any food stamp periodic reporting rules (other than those exempting certain categories of recipients from periodic reports) to the extend necessary to allow the State to establish periodic reporting rules for the food stamp program that are similar to those for the Aid to Families with Dependent Children program.

The bill also excludes from monthly reporting requirements households without earned income in which all adult members are elderly or disabled.

Approval of periodic reporting forms

The bill removes the requirement that the Secretary of Agriculture design or approve the forms used by the States for non-periodic reporting of changes in household circumstances.

Employment and job search requirements; voluntary quit

The bill provides that, at the option of the State, job search requirements could be imposed on applicants, as well as recipients.

Savings by fiscal year, in millions of dollars

1983	−5
1984	−6
1985	−7

The bill permits the Secretary to fix the starting point of the disqualification period for participants when a participant has voluntarily quit a job, and increases the disqualification period for voluntarily quitting a job from 60 to 90 days.

The bill also extends the definition of a voluntary quit without good cause (and the attendant period of ineligibility) to include Federal, State, or local Government employees who have been dismissed from their jobs because of participation in a strike against the Government entity involved.

Parents and caretakers of children

The bill eliminates the exemption from work registration for parents or caretakers of children when the parent or caretaker is part of a household in which there is another able-bodied parent or caretaker subject to food stamp work requirements. The effect of this provision is to require a second parent or caretaker in a household to register for work when the youngest child in the household reaches age 6.

Joint employment regulations

The bill removes the requirement for joint issuance of regulations on work registration by the Secretary of Agriculture and the Secretary of Labor and removes the requirement that these regulations be patterned after those for the Work Incentive program.

College students

The bill revises food stamp eligibility requirements for post secondary students by limiting participation by students with dependents to those with dependent children under age 6 and students who are receiving aid to families with dependent children unless the college student is the parent of a dependent child above the age of 5 and under the age of 12 for whom adequate child care is not available.

Savings by fiscal years, in millions of dollars

1983	−10
1984	−10
1985	−11

Issuance procedures

The bill authorizes the Secretary to require State agencies to use alternative issuance systems or to issue, in lieu of food stamps, a reusable document to be used as part of an automatic data processing system, if the Secretary, in consultation with the Inspector General, determines that use of such system or document is necessary to improve the integrity of the food stamp program. Retail food stores could not be required to bear the cost of any system or document.

Initial allotments

The bill eliminates any prorated benefits of less than $10.

Savings by fiscal years, in millions of dollars

1983	−15
1984	−15
1985	−15

The bill also requires food stamp benefits to be prorated to the day of application for recertification if the application for recertification occurs after the end of the last month for which benefits were received.

Savings by fiscal years, in millions of dollars

1983	−2
1984	−2
1985	−2

Effect of noncompliance with other programs

The bill prohibits any increase in food stamp benefits to households on which a penalty resulting in a decrease in income has been imposed for intentional failure to comply with a Federal, State, or local welfare law.

Savings by fiscal years, in millions of dollars

1983	−2
1984	−2
1985	−2

House-to-house trade routes

The bill authorizes the Secretary of Agriculture to limit the operation of house-to-house trade routes to those that are reasonably necessary to provide adequate access to households if the Secretary finds, in consultation with the Department's Inspector General, that operation of house-to-house trade routes damages the integrity of the food stamp program.

Approval of State agency materials

The bill prohibits the Secretary of Agriculture from requiring that the States submit, for prior approval, State agency instructions, interpretations of policy, methods of administration, forms, or other materials, unless the State determines that they alter or amend its plan of operation for the food stamp program or conflict with the rights and levels of benefits to which households are entitled.

Points and hours of certification and issuance

The bill eliminates the requirement that State agencies comply with Federal standards with regard to points and hours of certification and issuance.

Authorized representatives

The bill permits the Secretary of Agriculture (i) to restrict the number of households for which one individual may serve as an authorized representative and (ii) to establish criteria and verification standards for representatives and for households that may be represented.

Disclosure of information

The Committee recommendations allow the disclosure of information obtained from food stamp households to persons connected with the administration or enforcement of other Federal assistance programs and federally assisted State programs.

Expedited service

The bill requires that expedited 5-day service be provided to households (i) having gross incomes lower than $150 per month or that are destitute migrant or seasonal farm worker households in accordance with the regulations governing such households in effect July 1, 1982, and (ii) having liquid resources that do not exceed $100. The State agency would also be required, to the extent practicable, to verify the income and liquid resources of the household prior to issuance of coupons to the household.

Savings by fiscal years, in millions of dollars

1983	−15
1984	−15
1985	−15

Notice of benefit reduction or termination

The Committee recommendations would permit the States to immediately reduce benefits or terminate a household from the food stamp program when a written notice is received from the household that clearly requires such a reduction or termination.

Savings by fiscal years, in millions of dollars

1983	−10
1984	−10
1985	−10

Duplicate receipt of food stamps

The bill requires State food stamp agencies to establish a system and take periodic action to verify that no individual is receiving food stamps in more than one jurisdiction in the State.

Certification systems

The bill permits each State to choose whether (i) AFDC and general assistance households must have their food stamp application included in their AFDC or general assistance application, and (ii) food stamp applications must be certified eligible based on information in their AFDC or general assistance case file, to the extent reasonably verified information is available in the file.

Assurance of nonduplication with "cashed out" benefits

The bill mandates that the Secretary of Agriculture require State food stamp agencies to conduct at least annual verification or other measures to ensure that individuals who have been "cashed out" of the food stamp program are not also receiving food stamps.

Disqualification and penalties for food stores

The bill raises the maximum civil money penalty from $5,000 to $10,000 for each violation of the Food Stamp Act or regulations committed by a retail food store or wholesale food concern. The Senate amendment also sets, by statute, the periods of disqualification applicable to such entities. The disqualification period for the first violation shall be for a reasonable period of time between 6 months and 5 years. The disqualification period for a second violation shall be for a reasonable period of time between 12 months and 10 years. A retail food store or wholesale food concern would be permanently disqualified for a third violation or for trafficking in food stamps or authorization documents.

Bonding for food stores

The bill permits the Secretary to require retail food stores and wholesale food concerns that have previously been disqualified or subjected to a civil penalty to furnish a bond to cover the value of food stamps they may subsequently redeem in violation of the Act. The Secretary shall prescribe the amount and other terms and conditions of such bond by regulation.

Alternative means for collection of overissuances and States' share of recovered moneys

The bill permits States to use other means of collection for fraud and nonfraud overissuances besides cash repayment and benefit offset.

The bill specifies that States may retain 50 percent of recovered overissuances arising from fraud and 25 percent of recovered nonfraud overissuances, except in the case of State error, in which case the State may retain none of the recovered overissuances.

Fraud claims collection procedure

The bill allows the household of a disqualified person 30 days after a demand for an election ot choose between a reduced allotment or repayment in cash to reimburse the Government for any overissuance of food stamp benefits.

State liability for errors

The Committee recommendations would revise the provisions of the Food Stamp Act governing State liability for errors. The Federal share of a State's administrative costs would be reduced for States with payment error rates exceeding nine percent in fiscal year 1983, seven percent in fiscal year 1984, and five percent in fiscal year 1985. States would not be sanctioned for fiscal year 1983 if their payment error rates were reduced by a third of the difference between a base period rate and five percent and would not be sanctioned for fiscal year 1984 if their payment error rates were reduced by two thirds of the difference between the base rate and five percent. Each State would lose five percent of the Federal portion of its program administrative costs for each percentage point (or portion thereof) by which the State fell short of its error reduction goal. States would also continue to be liable to the Secretary for certification losses due to negligence or fraud.

Savings by fiscal years, in millions of dollars

1983	−90
1984	−200
1985	−325

Employment requirement pilot project

The bill authorizes the Secretary to conduct 4 pilot projects to determine the effects of making nonexempt individuals ineligible to participate in the food stamp program if they do not, with certain exceptions, work at least 20 hours per week or participate in a workfare program.

Benefit impact study

The bill requires the Secretary to study and report to the House and Senate agriculture committees by February 1, 1984, on the effect of reductions in food stamp benefits provided under the Omnibus Budget Reconciliation Act of 1981, the Agriculture and Food Act of 1981, and any other laws enacted by the 97th Congress that affect the food stamp program.

Appropriation authorization

The bill extends the authorization of appropriations for all programs under the Food Stamp Act, including the Puerto Rican block grant, as follows: $12.874 billion for fiscal year 1983, $13.145 billion for fiscal year 1984, and $13.933 billion for fiscal year 1985.

Puerto Rico block grant

The House bill requires that, after fiscal year 1983, food assistance under the block grant to the Commonwealth of Puerto Rico shall be made available in forms other than cash.

The bill also requires the Secretary of Agriculture to conduct a study of the cash food assistance program in Puerto Rico, including the impact of the program on the

nutritional status of residents of Puerto Rico and the economy of Puerto Rico, and report the findings of the study to the House and Senate Agriculture Committees no later than six months after the effective date of the bill.

Similar workfare programs

The bill requires the Secretary to promulgate guidelines for food stamp workfare programs that would enable political subdivisions to operate such programs in a manner consistent with similar workfare programs operated by the subdivision. A political subdivision could comply with food stamp workfare requirements by operating (i) a workfare program under the Aid to Families with Dependent Children program or (ii) any other workfare program which the Secretary determines meets the provisions and protections contained in the food stamp program.

Exemption of WIN participants from workfare

The bill deletes the current exemption from the workfare requirements for food stamp participants who are involved at least 20 hours a week in a work incentive program and provides that a State may, at its option, exempt such participants from the workfare requirements.

Hours of workfare

The bill revises the maximum number of hours that an agency operating a workfare program could require of a participating member. Under the revision, a workfare participant cannot be required to work more hours than those equal to the value of the allotment to which the household is entitled divided by the applicable minimum wage or more than 30 hours a week when added to any other hours worked during a week for compensation (in cash or in kind) in any other capacity.

Reimbursement for workfare administrative expenses

The bill directs the Secretary to reimburse agencies operating workfare projects, for administrative expenses not otherwise reimbursable, from one half of the funds saved from employment related to workfare programs. Such savings means an amount equal to three times the dollar value of the decrease in food stamp allotments resulting from wages received for the first month of employment which commences while the member is participating in a workfare program for the first time or in the 30 day period immediately following the termination of the member's first participation in the workfare program. Payments to agencies cannot exceed their share of workfare administrative costs.

Distribution of surplus commodities

The bill states the sense of the Congress that the Federal Government should take steps to distribute surplus food or food that would otherwise be discarded to hungry people of the United States, that State and local governments should enact donor liability laws to encourage private cooperative efforts to provide food for hungry people, and that food distribution and shipping entities should work with organizations to make food that is wasted or discarded available for distribution to the hungry.

Effective dates

The bill provides that all the food stamp provisions will be effective on the date of enactment of the bill, except for those provisions dealing with error rate reduction and Federal reimbursement of workfare administrative expenses, which will be effective October 1, 1982.

The bill also makes the food stamp provisions of the Omnibus Budget Reconciliation Act of 1981 (except for amendments concerning retrospective accounting and periodic reporting) and the provisions of the 1981 Farm Bill effective on the date of enactment of the bill unless already effective.

[Total food stamp savings, by fiscal years, in millions of dollars]

Fiscal year 1983	−548
Fiscal year 1984	−635
Fiscal year 1985	−756

Mr. DOMENICI. Mr. President, I yield 8 minutes to the distinguished Senator from Washington.

Mr. GORTON. Mr. President, last October, the thoughtful and farseeing Senator from New Mexico, the chairman of the Senate Committee on the Budget (Mr. DOMENICI), recognized that, in order to restore a time and a period of economic growth, it would be necessary to make difficult and courageous budget decisions during the course of 1982. He proposed a combination of budget cuts and revenue increases which were balanced, which included reforms in entitlement programs and military programs as well as in discretionary spending, and set possible revenue increases which would lower deficits and encourage economic recovery. We are now on the verge of voting on two just such proposals at a time at which we have encouraging news on the economic front.

Our goals are all the same, Mr. President. Every Member of this body, with the House of Representatives, recognizes the overriding necessity for deficits far lower than those programed simply from a continuation of spending and taxing policies without change. All of us recognize that the secret to lower interest rates is a reduction in those deficit figures and all of us recognize that economic recovery and a strong and sustained growth will depend upon predictability, upon a responsible congressional fiscal policy, and on lower interest rates. Nevertheless, the road to the position in which we find ourselves today has been very long and has been very difficult. We have constantly been faced with the proposition that, while overall spending restraint was important, it could not touch specific programs, whatever the specific favored program of an individual speaker happened to be at any specific time.

Those who have consistently voted for spending restraint have been criticized for indifference to all kinds of constituencies in the United States. We have constantly been faced with the proposition that we should reach this goal but in some other, usually mythical, and less painful fashion. We have been subject constantly to the request that we do it to someone else's constituents and not to the constituents of an individual who found something unpleasant in a specific proposal before us.

Yet, as all of us know deep within out own hearts, it is not possible to reach the very real and very significant goals of lower deficits, lower interest rates, and stronger economic growth without causing changes in programs which relate to a large number of the constituents of every single Member of this body. Yet not to take such a course of action would be entirely wrong.

The very distinguished Senator from Kansas, the chairman of the Committee on Finance, has faced this problem to an even greater degree. Almost everyone has recognized the necessity for additional revenues, but again, always it should be revenues raised at the expense of someone else's constituents.

Led by the foresighted policies of the Senate Committee on the Budget, a committee proposal on reconciliation was brought to this floor some 2 months ago. A majority of the Members of both parties eventually reached the point at which they were willing to take courageous votes to anger a number of strong interest groups in this country to develop a rational and more effective fiscal policy. Now that we have a report of the conference committee before us on reconciliation and another to come before us within the next 48 hours on a tax and spending cut bill, we are very, very close to our goal.

What do we see in the economy of the country as a whole? We have, for the first time in many months, good news, a strong recovery in the stock market, a consistently lower set of interest rates, and responsible predictions from outside the Congress of the United States that shows interest rates will become even lower—the very bases for strong economic recovery which all of us have sought over so many months. There is no question in my mind, Mr. President, that a major contributing factor to this good news is the likelihood that the Congress of the United States will, indeed, pass these two bills.

There has been other good news as well, Mr. President. For the first time, we now see a strong bipartisan majority in both Houses of Congress for the kind of steps which are necessary to cause this economic recovery. This spending bill is by no means perfect, Mr. President. The Senator from South Carolina, most specifically, has illustrated to us and will propose again during the course of the debate over the debt limit, proposals for the next 2 or 3 years which will not simply begin to reduce deficits but will see to it that, in fact, we have a balanced budget within the foreseeable future. That will require even more courage than has been shown in this body to this point, because we will no longer be able to defer the necessity to deal

across the board with a great degree of fairness with a multitude of entitlement programs and, no doubt, expenditures for military and the national defense as well.

Nevertheless, it seem to me vital that we get a strong vote of approval for this bill here today, not because it is perfect, not because it is not subject to criticism, but simply because it is a necessary first step toward economic sanity and toward a balanced budget. I regret that my good friend, the Senator from South Carolina, feels constrained to vote against this proposal because it does not deal fairly or appropriately with cost-of-living adjustments. In fact, the proposals which he made, which I had made, and which the chairman of the Senate Budget Committee made in this respect, were much better than what we have before us here, at this time. This was simply the best that could be gotten out of the Senate and out of the conference committee with the House to this point.

Mr. President the fact that there are one or two or three things wrong with this proposal is not a sufficient ground on which to vote no. I plead with my friend from South Carolina and with others of his persuasion not to burn down the forest because there is a handful of defective trees in that forest at this point. It is necessary that we work to the final goal.

I found particularly discouraging the position of the senior Senator from Wisconsin, who is quite willing to cut almost any expenditure by the United States of America which falls as a burden on the constituents of other Members of the U.S. Senate, but not those that fall on dairy. I, too, represent a State which has an extremely strong dairy industry. I find myself saddened to have to vote for a bill which may place considerable burdens on dairy farmers in my State. Yet I could not possibly justify voting against the bill which is in the overall best interests of the people of the United States and which is a step toward economic sanity and economic recovery because of its impact on one group of constituents.

It is not proper to look at this bill on an individual basis and to say it is wrong in this respect or wrong in that respect and, therefore, I shall vote against it, when this bill—and the promise that it and the tax bill coming up in the next couple of days will be passed—has been in part responsible for at least the beginning of good news on the economic front, the be beginning of changes on the economic front which will benefit not just one group of Americans or a dozen groups of Americans, but all Americans.

The chairman of the Senate Budget Committee deserves not only congratulations for a job well done, for a job much more successful than many of us even hoped for a few months ago, he deserves our support for the job which he has done in the passage of this proposal for the good of all Americans.

The PRESIDING OFFICER. Who yields time?

Mr. STENNIS. Mr. President, may I have 2 minutes to ask a question?

Mr. HOLLINGS. Mr. President, I yield to the distinguished Senator from Mississippi.

The PRESIDING OFFICER. The Senator from Mississippi.

Mr. STENNIS. Mr. President, I have a question directed to the front page of the conference report near the bottom. Will the Senator from South Carolina let me ask him this question? Item No. 2 near the bottom of the first page says:

> Civil service retirees under age 62 would receive one-half of the projected COLA adjustment over the next 3-year period and retirees subject to this limitation would receive an additional adjustment if the COLA exceeds the current projections (the full adjustments are projected at 6.6 percent, 7.2 percent, and 6.6 percent for FY 1983-85, respectively.)

Will the Senator explain just what that means? I really do not know how to calculate the total meaning of it.

Mr. HOLLINGS. The total meaning—and I would allow the distinguished chairman to give perhaps a more general answer to it—is that under the age of 62, as concerns the Senator from Mississippi and this distinguished Senator, 80 percent of those under that age are military retirees. I pointed out that what you have really done there is provided the cost-of-living adjustment for the civilian civil service retirees but for the military retirees in general you have not, and that is how they arrive at that particular mathematical formula to save the moneys that they have projected. The reconciliation instruction was for $5 billion, but mathematically this projects out to save some $3.4 billion. We are about $1½ billion shy.

That is how that formula works. They receive one-half of it over the next 3-year period, subject to that particular additional COLA ajustment limitation. If the COLA exceeds the current CPI projections, that is, the full adjustment of 6.6 percent for 1983, 7.2 percent for 1984, and 6.6 percent for 1985, then they would receive one-half of that. And knowing what the limitation is for each of the particular years involved, the 6.6, 7.2, and 6.6 percent, then mathematically they have saved $3.5 billion. But the thrust of it is that the civil service retirees, which encompass the major group over 62 years of age, will get their full COLA adjustment. Those under 62 will not. Eighty percent of those under 62 are military retirees.

Mr. DOMENICI. Will the Senator yield?

Mr. HOLLINGS. They would only get half. I yield for further explanation by the chairman.

Mr. DOMENICI. Let me say to my good friend from Mississippi retirees of the Federal Government, military and civilian, under 62, for the years 1983, 1984, and 1985 will receive a cost-of-living adjustment of 50 percent of the CPI as assumed in the budget resolution.

In 1983 we estimate it at 6.6 percent. Retirees will get 50 percent of that. But if inflation as measured by the CPI turns out to be more than 6.6, they will get an addition to their COLA of any amount which exceeds 6.6. The same for 1984. The CPI estimate for that year is 7.2 percent. Retirees get half of that. But if inflation turns out to be 9.2 percent, they get half of the 7.2 and an additional 2 percentage points because the inflation exceeded the amount stated.

Mr. STENNIS. So they pick up an additional amount if inflation brought it up that high?

Mr. DOMENICI. That is correct.

Mr. STENNIS. I thank the Senator. I do not want to ask for more time now. I might want one further explanation. I thank each of the Senators very much.

Mr. HOLLINGS. Mr. President, before I yield to my distinguished colleague from Nebraska, I think it only appropriate to clear the air somewhat. I do not want to detract from anything that is happening on the stock exchange and the wonderful news that the people are hearing. And I certainly would not want to detract from the outstanding jobs that are being done by the chairman of our Budget Committee and the chairman of the Finance Committee. But our distinguished colleague from Kansas, the chairman of the Finance Committee, commented that "last year we had a tax cut that was too big and this year the tax increase is too small and somewhere we will come out in between maybe to satisfy the Senator from South Carolina."

Inferentially, of course, you have the Senator from South Carolina as a sorehead—tax cuts too big one year, not big enough the next year. If somehow we can satisfy the political nuances of this sorehead, then we can move on and get a majority of the Senate and do these magnificent jobs of courage in changing tax policy.

Mr. President, the distinguished Senator from Kansas is one-half right. Last year the tax cut was too large. This year the tax is unnecessary. That was my position before we enacted the tax cut of last year, and since then I have made proposal after proposal to forego its second-year and third-year installments. You must understand that we are not really cutting taxes. We do not have the tax revenues to

cut. Somehow I cannot get that thought through the minds of the best of my colleagues here in the Senate and my friends in the Chamber of Commerce. They are constantly assaulting you and saying, "You act like you have got the money in the Government and are only giving back the money that you want us to have."

The fact is that this July we did not have that money in the Government to give a tax cut. We did not have that money. We are going out and borrowing $50 billion this quarter and we are going out and borrowing another $50 billion next quarter. Those borrowings are the high deficit borrowings which bring about the high interest rates which bring about the high unemployment. That is the most difficult thing to get through to my colleagues.

Now, if we had quit fooling people, next year we could pick up $74 billion. If we forestall the third year installment next July—that has not even taken place—we would save $74 billion. People are now worried about economic survival, now how their taxes are going to look in 1984 when they make their 1983 returns.

Since the distinguished Presiding Officer is on the Finance Committee and an outstanding leader in that group and others on the Finance Committee are now getting the good Government award, I would have given them even another good Government award if they had faced up to the fundamental problem of social security.

We have never asked anybody to cut social security. But if they wanted to show the courage, they could have just not given the increases that they coupled with other COLA's. We are all talking about how wonderful we are doing and all these other nice goodies for retired Senators and retired civil service workers over the land. But we freeze military retired pay.

The United Auto Workers, the airline workers, the rubber workers, and the municipal employees in the city of Detroit all worked out pay freezes. I talked to Mayor Coleman Young of Detroit. The municipal workers there will forestall their agreed to benefit increases because the city is in economic trouble, and it is trying to balance its budget. Many cities across the land are trying to balance their budgets. They are holding up and freezing. Many State legislatures are increasing taxes. They are freezing spending. But the entire discourse and dialog on the floor of the Senate—I guess we should have been talking about it more often, because somehow it seems to be slipping by. The entire dialog and everything else to raise taxes—to do what? To pay for increases. They do not even come near the deficit.

Why do they not get that letter from the Federal Reserve? I know what is happening now, I say to my friends.

I asked a certain distinguished Senator, whose name I shall not include in the RECORD at this point. He was talking to the Chairman of the Federal Reserve, in his distinguished, high, elevated position at one time on the Finance Committee, and the Chairman of the Federal Reserve said, "How long can I hold out?"

The answer was, "As long as the President of the United States allows you to hold out."

The President of the United States is not allowing the Chairman of the Federal Reserve to hold out any further, and yesterday you had a wonderful rally in the stock market. I wish it could continue. Of course, today—it starts to unwind. I hope I am dead wrong. I hope we refurbish America's industrial plant. I hope we get unemployment down. But I am very fearful, Mr. President, that what we are seeing is the same, typical political shenanigans that go on, and that is why there is no confidence in this Government.

We are coming to the end of August. Labor Day is coming. The speakers have lined up their political rhetoric. We have to save—not the Republic, not the economy. We have to save the party.

The interest rates go down, they have a big rally, and now we have a letter from the Federal Reserve.

We can hardly get that fellow to commit to anything, and he does not commit. He says, "We testified very strongly that we have to get these high deficits down," that the budget resolution was aimed in that direction, and he hoped it would be implemented. But you are being told, really, with the use of this particular letter at this time, that this bill has the stamp of approval of the Federal Reserve System. That is what you are being told. Fine business. Let him put his approval on. I am glad we woke him up and got him into the activity, whereby now he is approving budgets and bills before Congress, and we might have a clearer eye about where we are heading.

The truth of the matter is, Mr. President, that we have not faced up to social security. I think that is what we are obscuring, the entitlements. We have been obscuring it all along. The Federal Reserve stated that even with this great courage award of a tax bill that we are going to pass tomorrow—the Fed is predicting a $163 billion deficit for next year, $184 billion for 1984, and $187 billion for 1985, and the deficits go up, up and away.

On that basis, I do not find any basis in economic fact for the great rally we are supposed to be having in the stock market. I hope it continues and that President Reagan is right and that his program is taking effect. I hope that those who oppose the program are all wrong, that, as he stated, he only needed time, and that the time has now arrived. We can all get rich. But I warn you, my friends, that you are going to be facing the facts that are in another letter from the Federal Reserve, to the point that the deficits are increasing, even with passage of this conference report, and that there is no basis in economic fact for this particular rally, and it cannot be sustained.

If you read correctly the statement of Henry Kaufman, you know that his projection of further declines in interest rates is based on the deepest pessimism. In essence, he is saying that the economy has become so weak that only the Government will be borrowing. Some of my colleagues can get a letter from the Federal Reserve, but most of us cannot really find out what is going on. But temporary rallies and temporary profits are being made. Let us hope they are not temporary. Let us hope they continue and that America gets going again. That is the bottom-line.

As for the tax increase equity bill, if I went down the elements of that bill, I could cite many provisions which will seriously hurt the savings incentive.

The distinguished Presiding Officer (Mr. DANFORTH) worked to help the country increase its savings rates. But the tax bill is going to paralyze savings.

Here was an administration that was going to come to town and do away with regulations. But there are $500 million worth of additional regulations and bureaucracy in that bill—$500 million.

On the other hand, if they had faced up to social security, the cost-of-living adjustments in particular—not cut anybody, but had done exactly as the rest of America has done all year long, and held up on those increases—if the Finance Committee had only done that, it could have saved us so much.

If the administration had only said, "Look, last year we put $37 billion more in defense. We increased this year's defense budget another $37 billion." That is a $74 billion increase. Rather than another $35 billion increase, we can just taper it off a little, provide 3 percent real growth and add another $21 billion. And we can do that for another 2 years, and still save $45 billion off the deficits. We could have increased defense, not cut it, and still have saved $45 billion.

So as for all this courage and wonderful feeling about how we are now getting the country moving again, I hope they are right. Unfortunately, however, we have not really addressed the cancer in the fiscal policy of this Government, and we are not doing it in this bill, but we just keep dancing around and praising each other, and telling each other what a wonderful thing we have done.

I have had an opportunity to visit many places in the country this year.

It is a sobering influence to come back to this elegant blue rug and mahogany desk, and hear how great we are, how much courage we have. Well, the people cannot print money. They are freezing their spending. They are holding themselves together. But where they can print money, they are printing it faster than ever. They are increasing it faster than ever.

This Government—the Senator from New Jersey was listening a minute ago—this Government is bigger today, on August 18, or whatever it is, than it was on August 18 last year or August 18, 2 years ago.

When Jimmy Carter left, spending was 23.1 percent of the GNP. It is now up to 24.1 percent. The Government is bigger. We are increasing the spending. We are increasing it unmercifully, in my opinion. We are talking about all the cuts and where we are going to cut the dairy farmer and where we are going to cut the schoolchild and what we had to do about food stamps. But we are not denying the retired Senators. We are not denying the retired civil service workers. But we are denying the people back home in America, who wonder what in the world is happening here. Can they not understand and follow what they are saying, themselves?

I appreciate the kindness of the Senator from Washington. He is right; he has described my position on the bill. I am speaking in general of the charade involved here in this bill. You are going to get this bill; tomorrow you get the other one. So you can go back home and make your Labor Day talk about all the great work you have done. But I can tell you right now, you have fouled your nest. You have not done your job—none of us. Do not burn the forest to get rid of a few rotten trees.

I will yield now to the distinguished Senator from Nebraska such time as is necessary.

Mr. EXON. I thank my friend from South Carolina, and I recognize the hard work that the chairman of the Budget Committee, on which I serve, has always done.

Mr. President, I am trying to bring myself to vote for the reconciliation report. But I wish to make come comments that I think are appropriate in addition to the ones that have already been made and maybe ask a question or two of the distinguished chairman of the Budget Committee on some things that I am particularly interested in. I am talking about things that I am particularly interested in.

I have been very much impressed with what I have heard on the floor today and I think for the record I should first correct what has been said on numerous occasions on the floor today with regard to the stock market.

The stock market did not go up today. It went down. It was up 18 and went down over 2 points. I suspect that the President of the United States will take credit for that as he did for the rise of yesterday. I suspect also that the Federal Reserve Chairman will take credit for that.

We are going through so many aberrations in our economy today with the crazy quilt pattern of everything going fine according to some people and yet other people are in a desperate depression. Every time there is a rise in the stock market that is good news supposedly.

Yet when we have the largest daily increase in the Dow in history and yesterday was the second largest volume in history, today we exceeded that with the largest number of transactions in the history of the New York Stock Exchange but at the end it is down 2 points after being up 18.

Mr. LONG. Mr. President, will the Senator yield for a question at this point?

Mr. EXON. I am happy to yield.

Mr. LONG. Let me see if I understand it. Did the Senator say the stock market is down 2 points? Does he mean it lost 2 points out of the 18 that it gained or it lost the 18 back and then 2?

Mr. EXON. It dropped 2 points for the day after being ahead 18 for the day.

Mr. LONG. Then, in other words, is it fair to say it went up 18 points and then went back down 20?

Mr. EXON. The Senator is correct.

Mr. LONG. For a 2-point net loss.

Mr. EXON No. For a 2-point net loss for the day.

Mr. HOLLINGS. I will call my broker and sell.

Mr. LONG. I am dismayed to hear that. We had one of our outstanding Senators take the floor to give us the good news announcement that it had gone up 17 points at that point and then traded 100 million shares. I am dismayed to hear it is back down to where it is now a net loss.

Mr. EXON. Has the Senator from Louisiana ever heard the old phrase that what goes up must come down?

Mr. LONG. It proves that it is a mistake to assume you have won the ball game just because you are ahead at halftime.

Mr. EXON. I appreciate the timely comments by my friend and colleague from Louisiana.

Mr. President, I have been listening to some of the other rhetoric here today about special interest groups and how we are standing up to them with this $13 billion reconciliation cut in expenditures that is over a 3-year period.

I am trying to bring myself to vote for this because I recognize and realize that we have to begin to reduce the level of Government expenditures.

There has been a great deal of patting on the back here today about the eminent success of cutting $13 billion over a 3-year period and we have done just a bang-up, bully good job.

So I thought it very interesting, Mr. President, that this Senator stood at this desk yesterday and lost after advising the Senate that they were going too far in the military expenditures. And how far did we go? In round figures, Mr. President, yesterday on a vote of I believe 78 to 21 the Members of this body rejected the caution that this Senator and others brought forth with regard to the fact that we authorized $178 billion for 1 year as opposed to about $138 billion for the same category of military expenditures for this fiscal year, a $48 billion increase in 1 year.

My, we are doing a splendid job, just a splendid job patting ourselves on the back for the sacrifices that we are making. I will be interested to compare the vote after it is cast on this reconciliation measure with those who were equally as concerned about reducing some unnecessary expenditures in that vote of yesterday.

Mr. President, I am concerned about many things in this reconciliation package, but I emphasize once again that it seems consistent to me, and I think consistency is important once in awhile even in the Senate, that if I were here yesterday trying to bring what I thought was some reason into the military expenditure appropriations because I thought that deficits, the national debt, and everything else was going too far, I guess it would be a little bit inconsistent, Mr. President, for this Senator to vote the other way on this bill even though I have some serious reservations on many parts of it.

I have some reservations, Mr. President, on a whole series of matters. I will just mention a few. The dairy price support programs. The set-aside program for farmers who today are reaching into the depression level era because of the failure of this Congress and this administration to recognize the need for our family-sized grain producers.

When we talk about the percentage of the national budget, I will say again as I have said before that the percentage of the total Federal budget in the support of agricultural programs is going dramatically down and not up compared with what it was even a few years ago. Myself and others introduced legislation that was designed to save some money, to save taxpayers money, if you will, by making adjustments in the grain program that would have encouraged less production, therefore, strengthening prices.

Basically, that program was gutted in the conference report even after both the Senate and the House of Representatives voted for basically the crisis farm legislation set-aside amend-

ment that was strongly supported in both Houses. We get together in rooms and we do things that we do not do on the floor of the House of Representatives and in the Senate.

I am also concerned, Mr. President, about what appears to be on the face of it unfair treatment, as has been brought out by my friend from South Carolina, with regard to military retirees in particular.

But I shall wind up my portion of this by asking one or two questions to the chairman of the committee. To my understanding one of the things that was done and agreed to in conference between the conferees on the Senate Agriculture Committee and the House Agriculture Committee, they agreed to increase the loan program for both corn and wheat by 10 cents a bushel for next year; is that accurate?

Mr. DOMENICI. The Senator is correct.

Mr. EXON. I thank my friend.

It is rather interesting, Mr. President, that this Senator stood at this desk in December of last year when we passed the 1981 Farm Act and told my colleagues and pleaded with them at that time to raise corn and wheat by 10 cents a bushel because they were too low, that those were basically the figures that had been agreed to in the deliberations of the Senate Agriculture Committee.

One last question: I also understand that while drastic changes were made in the set-aside program for corn and wheat, I also understand the conferees agreed that the Secretary of Agriculture would have the option, if he saw fit, to raise the set-aside program by whatever he thought was appropriate; is that correct?

Mr. DOMENICI. The Senator is correct. The bill sets mandatory limits, but the Secretary has discretion to go beyond those.

Mr. EXON. At his discretion.

Mr. DOMENICI. At his discretion, that is correct, Senator.

Mr. EXON. I thank my friend.

As I am about to yield the floor, I say with hesitation and reservation and in an attempt to be consistent, I will reluctantly cast my vote for the reconciliation report.

I yield the floor.

The VICE PRESIDENT. Who yields time?

Mr. DOMENICI. I just want to thank the distinguished Senator from Nebraska for his comments. I am most appreciative of his support, and for the support he gives me in our committee, in our efforts to reduce the deficits. I think he clearly understands we have a long way to go, and this is the best we can do at this time.

I started working on these issues last year and I did propose we do much more, but I think when we consider, Senator, where we are this year, it is a pretty start, coupled with some other good things we have done. I think the budget process, with not the strongest tools in the world, has come a long way and I thank the Senator for his help.

The VICE PRESIDENT. Does the Senator from Oklahoma seek recognition?

Mr. BOREN. I ask unanimous consent to speak on the time of the Senator from South Carolina. May I ask how much time remains?

The VICE PRESIDENT. Ten minutes and thirteen seconds remain on Senator HOLLINGS' time.

Mr. BOREN. I ask unanimous consent to speak on the time of the Senator from South Carolina.

Mr. DOMENICI. Mr. President, can we first get the yeas and nays? I ask for the yeas and nays on final passage.

The VICE PRESIDENT. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The VICE PRESIDENT. The Senator from Oklahoma has the floor.

Mr. BOREN. Mr. President, I share in many ways the feelings just voiced by my colleague from Nebraska. I have mixed feelings about this final conference report we are asked to vote for.

I have been struggling today about how to vote on this report, and I have come to the same conclusion as the Senator from Nebraska that I should vote for it. With the deficits we are facing in this country, I think we have no other choice than to vote at every opportunity to try to bring spending into line and to try to bring the deficits down.

But I will say, Mr. President, that this is far from a perfect conference report, and there are many elements in it that I simply cannot support if I could have the opportunity to vote on them individually.

I have to agree with the comments made earlier by the Senator from South Carolina. There are those in this body who have tried, and tried hard, to do more to bring the deficits down, and we have not had the kind of support we should have had either out of the White House or from some of those in the other House of Congress in order to get the job done.

No one has worked harder than the Senator from New Mexico, the chairman of the Budget Committee. He made proposal after proposal and could not get the support himself from the administration necessary to bring the deficits down as they should have been brought down.

The Senator from South Carolina in a very courageous proposal earlier this year proposed a general freeze across the board, a freeze in revenue changes, a freeze in cost-of-living increases, a freeze in discretionary spending across the board. Did he get the kind of help he should have had from an administration that has been telling the public that it is dedicated to bringing the budget into balance? No; the Secretary of the Treasury ridiculed the Senator from South Carolina for his very courageous and responsible suggestion.

Here we are now faced with much less than we should have done, faced with a package that does far less than we should be doing on the spending side to get the deficit under control.

But it is, as has been said by the Senator from Nebraska, perhaps the only opportunity we have and, therefore, I feel obliged to support it.

I want to call the attention of my colleagues in the Senate to one particular aspect of this conference report—we can talk about several, there are areas affecting the veterans of the country, and others that I would not support on an individual basis—but I particularly want to call my colleagues' attention to the provision dealing with the paid diversion program in agriculture.

The Senate went on record by an overwhelming vote that we wanted to do something about the crisis facing the farmers in this country. By a 2-to-1 margin we passed a bill to establish an additional 10 percent paid diversion program for corn, wheat, and feed grains. That modest proposal would have helped at least to some degree some of our farmers in this country to stay afloat who otherwise are going to go under this year.

The very same proposal was passed in the House of Representatives, a 10-percent set-aside.

In spite of the fact that the Secretary of Agriculture himself came and sat in the Vice President's office here in the lobby and twisted the arms of Members of this body, we passed that program 2 to 1—I might mention with the vote of the chairman of the Budget Committee and the ranking minority member, and others.

What was the compromise in the conference committee between a 10-percent diversion passed by the House and a 10-percent diversion passed by the Senate? The compromise was 5 percent.

How do you average 10 and 10 and strike the difference between the two Houses and come up with a 5-percent paid diversion program? It may not be a violation of the letter of the rules—I am sorry to say it is not, because I checked that—but it is a violation of the spirit of the rules. It is a violation of the democratic process in both Houses to allow people behind closed doors to betray agriculture at a time when it is on the ropes.

If there were another opportunity to get total spending down, and if there were a way to get a separate vote on that particular issue, you can be sure, Mr. President, I would be trying to force that vote. Why was it done? It

certainly could not be said to be done in the name of economy. Every time we can do something to raise the market price we cut the Government costs of the program. The conference committee did not adopt a proposal that is going to save the taxpayers money. In fact, under current market prices—and that is really what we ought to deal with rather than some false figure—the proposal passed by the Senate and the House would have saved almost $1 billion as compared with the proposal that came out of the conference committee which is estimated to save only about $374 million.

Not only does it have the merit of providing savings, it is going to provide less savings to the taxpayers than the proposal passed by both Houses.

Mr. President, mark my words, we are going to regret the day we missed the opportunity to do what we could to save the farmers of this country. I hope every Member of this Senate will listen to me for 1 minute because I want to recite a figure for you that perhaps you have not heard.

In 1932, the worst year in the history of American agriculture, net farm income in real-dollar terms was $5.1 billion, $5,154,000,000. Do you know what it is this year? $5,060 million in real dollars, almost $100 million lower than the worst year in the history of this country.

Mr. HOLLINGS. Mr. President, will the distinguished Senator yield?

Mr. BOREN. Yes.

Mr. HOLLINGS. I have 3 minutes left, and I would like to yield to the distinguished Senator from Montana.

Mr. BOREN. I will be happy to yield to him. I just want to complete one thought.

We are at a point now where we have record numbers of farm foreclosures. We have, perhaps, a third of the Farmers Home Administration loans in this country in arrears because of this tragic situation.

Land values have begun to decline. We have farmers heavily in debt, and now they have shrinking equity. The handwriting is on the wall. Anybody who cannot see what is going to happen in agriculture, anyone who cannot see the impending collapse must have failed or refused to have opened his eyes to the facts. Why, I ask, Mr. President, in that circumstance, why, why were the farmers sold out behind closed doors? I would only say we are going to regret the day that we allowed it to happen.

I would be happy at this time to yield to the Senator from Montana who wishes to address this same point.

Mr. HOLLINGS Mr. President, I thank my distinguished colleague for his complimentary remarks. I yield the remaining time to Senator from Montana

The VICE PRESIDENT. The Senator from Montana.

Mr. MELCHER. I thank my distinguished colleague. I wish to say a few words on my objections to the conference report.

I do understand that the distinguished chairman and members of the Budget Committee have worked diligently and sincerely on this package to cut the total amount of spending for the coming year. But I have to compare two points. There are many points to look at, but I would like to look at just two of them.

The first is the sacred cow of foreign aid expenditures. We continue to go down that path of sending money abroad in huge amounts—$12 billion this year and another $12 billion the next year and another $12 billion that would be contemplated the year after that, if we follow the guidelines that have been set in place, money that we have to borrow currently, money that costs us very dearly. And yet, at the same time, we ignore the plight of agriculture.

American agriculture is the very basic, the most relevant part of our entire economy. When we talk about the little 10-cent increase in loan rate for American grain and a top on diversion payments, it relegates to the dustbin, to the trash barrel, the plight of American agriculture.

What agriculture producers want in this country is to get a fair price at the marketplace. They are not necessarily asking to be in the trough of the U.S. Treasury. The fair market price in the marketplace is available in this country to our agriculture producers if we will just have some enlightened policy in this country, led by a Congress that understands how important and how basic to our entire economy American agriculture is.

We have grain embargoes, we have timid foreign sales of American agriculture products. This country sells its grain and other agricultural products very cheaply while, at the same time, allowing our markets, our U.S. markets, to be open to any country and any manufactured goods. We do not need to do this. At the same time, we seem, to be bent and seem to be in love with sending American tax dollars abroad for foreign aid. I am against the conference report.

The VICE PRESIDENT. The time of the minority has expired.

The Senator from New Mexico.

Mr. DOMENICI. Mr. President, the conferees on the Committee on Agriculture from both sides made significant compromises.

A 5-percent paid diversion, as adopted by the conference committee, is clearly a reasonable compromise.

The House and Senate conferees were faced with resolving significant differences on the grain programs. The House proposed a sizable increase in loan rates, while the Agriculture Committee in the Senate rejected any such increase. In conference, however, the Senate agreed to a 10-cent increase in wheat and corn loan rates as part of a package which established a minimum paid diversion of 5 percent.

In other words, the final compromise involved concessions by both Houses from positions previously taken.

In addition, the House bill required a total 25-percent acreage reduction to qualify from program benefits. The Senate bill would have allowed farmers to qualify for program benefits with a 15-percent acreage reduction. The final compromise of 20 percent, including the 5-percent paid diversion, split the difference right down the middle.

A 5-percent paid diversion is a fair compromise, especially in light of other concessions in the package. It is not as costly as 10 percent in 1983 and is more appropriate in terms of trade policy.

Admittedly, it is a product of give-and-take by the conferees yet it is a fair compromise which the Senate should strongly support.

Mr. President, this conference concluded its business late in the day. Due to the lateness of the hour and the need to file the report as quickly as possible, we were unable to get the signature of one Senator. I ask unanimous consent that the permanent RECORD reflect the fact that the distinguished Senator from Mississippi, Mr. COCHRAN, would have signed the conference report as a conferee for the Agriculture portions of the bill if he had been given the opportunity to do so.

Indeed, he was there and did much of the negotiating. He would have signed that portion of the omnibus bill within the jurisdiction of the Agriculture Committee.

The VICE PRESIDENT. Without objection, it is so ordered.

● Mr. PACKWOOD. Mr. President, it gives me great pleasure to advise you and my colleagues that the members of the budget reconciliation conference committee were able to agree on a provision reducing the size of the membership of the Interstate Commerce Commission (ICC) to five members. I believe this provision will clearly further Congress goals of reducing Government spending, decreasing regulation, and increasing the efficiency with which the ICC operates. Further, the provision, as drafted, will insure that a political balance is maintained at the ICC and that no Commissioner's term of office is terminated or abbreviated.

The provision provides that effective January 1, 1983, the ICC is reduced from 11 members to 7 members. This is accomplished by eliminating 4 of the 5 existing vacant terms of office. Further, the provision provides that

upon the expiration of Commissioner Gilliam's term of office and Chairman Taylor's term of office on December 31, 1982, and December 31, 1983, respectively, anyone appointed to fill these terms, including the Commissioners themselves, will be appointed to terms of office expiring on December 31, 1985. Effective January 1, 1986, the ICC is reduced from seven members to five members. This is accomplished by eliminating the terms of offices now held by Gilliam and Taylor when they expire on December 31, 1985. The provision also provides, with one exception noted below, that effective January 1, 1984, all appointments to terms of offices expiring after that date will be for terms of 5 years. The current law provides for 7-year terms. Finally, the provision provides that upon the expiration of Commissioners Sterrett's and Andre's terms of office on December 31, 1987, anyone appointed to fill one of these terms of office after that date, including the Commissioners themselves, will be appointed to a term of office expiring on December 31, 1991. The purpose for providing in this single instance for one 4-year term of office commencing after December 31, 1987, is to bring all of the Commissioners' terms into sequence so that thereafter one term of office expires each year.●

● Mr. LEVIN. Mr. President, I support the Omnibus Reconciliation Act of 1982, which will reduce the deficit for fiscal year 1983 through fiscal year 1985 by $13.3 billion. The conference agreement on this bill represents a sustantial improvement from the version which passed the Senate earlier this month and which I opposed.

At that time, I took issue with the arbitrary 4 percent cap on the pensions for Federal retirees for fiscal year 1983 through fiscal year 1985. I stated that such a cap did not afford adequate protection to retirees who were on fixed incomes and who would be particularly vulnerable to inflation if the actual inflation rates exceeded those which are now being projected for the next 3 years. I agreed that the budgetary situation dictated that some entitlement savings were necessary, but thought that a more equitable approach would have been to limit cost-of-living adjustments to 2 percentage points below the Consumer Price Index.

The conferees have arrived at an alternate formula which, although different from my recommendation, meets my overall concerns, and which I can support. According to the conference report, Federal retirees age 62 and over would be eligible for the full COLA. Therefore, those retirees who are potentially the most vulnerable to a new burst of inflation would have their purchasing power fully protected. For Federal retirees under age 62, the conferees call for granting them 50 percent of the COLA and the full amount of the difference between the projected inflation adjustment for individuals age 62 and over and the actual inflation adjustment. For example, if the full COLA in 1983 for individuals age 62 and over is 7.6 percent rather than the currently projected 6.6 percent, retirees under age 62 would receive a COLA of 4.3 percent, which represents one-half of the projected COLA plus an additional 1 percent reflecting the difference between the actual COLA of 7.6 percent and the projected COLA of 6.6 percent. This is a reasonable formulation which instills flexibility for retirees under age 62 into the arbitrary limit of one-half of the COLA, which I would otherwise find unacceptable.

I also note the conference agreement's steps relative to double dipping by military retirees who are employed in civil service positions. Currently, these individuals receive both an annual pay increase and a cost-of-living adjustment in their retired pay. The conference agreement strikes a more appropriate balance in a time of fiscal austerity by providing that when such an individual receives a retirement COLA, the individual's civil service pay will be reduced by the dollar amount of that adjustment.

I do regret the conference decision, however, that all Federal retirees will have the initial payment of their COLA increase delayed by 1 month in each of the next 3 years. Adjustments currently are payable on April 1 of each year. Under the conference agreement, adjustments will be initially payable on May 1, 1983, June 1, 1984, and July 1, 1985. However, the importance of passing this overall deficit reduction package outweighs my objection to this individual provision.

When the Senate passed its version of this omnibus reconciliation bill, I also objected to some of the cuts in the food stamp program. I was particularly concerned that the Senate version once again delayed the adjustment for inflation in the amount of a household's income which is disregarded for the purposes of determining eligibility for food stamps. Last year's reconciliation bill delayed the adjustment for 2½ years, and the Senate version would have delayed it for an additional 15 months, until October 1, 1984. The conference agreement delays the adjustment only until October 1, 1983, thereby speeding up by a full year the inflation adjustment. Overall, I was pleased to see that the conferees restored $600 million in the total amount cut from the food stamp program over the 3-year period in the Senate version.

Mr. President, the conference agreement we have before us today is the product of good faith compromise and is an important element in bringing the deficit in this year and in future years under control. On balance it deserves the support of the Senate.●

● Mr. GRASSLEY. Mr. President, the House of Representatives acted responsibly today by passing a spend-slashing measure amounting to over $13 billion. Now it is the Senate's turn to pass the measure, and I trust that it will.

I wish to emphasize, Mr. President, the need to lower spending as a precondition for economic recovery. This is no new remedy. We have known this all along, but have failed to really take the tiger by the tail.

In this time of recession, we have seen businesses, family households, and even government bureaucracies cut back on nonessentials to a remarkable degree. It is a matter of survival for them.

But Congress, in many ways, seems unphased by these difficult times. We go on in spite of hard times as if there were no crisis. Oh, the rhetoric has been appropriate—we all have pointed out the need to be "fiscally responsible" and reduce deficits.

But rhetoric without action yields nothing.

There is a crisis, Mr. President. There is an economic crisis marked by a Federal budget crisis. Although we are in bad need of tax reform, we cannot depend on higher taxes to correct a problem that is budgetary in nature.

We have many built-in structural problems which have caused the current problems and have prevented a reversal toward recovery. the Tax Code is biased against savings and productivity, in favor of debt and overconsumption. Budget increases are based on built-in mechanisms which distort the rise in real wealth. Budget increases are not based on our ability to pay for them. They are based on the rise in inflation. Similarly, wages are not based on the increase in real wealth through increased productivity, but rather on the rise in inflation. These structural problems and attitude problems must be addressed and reversed if we are to ever get a handle on what is currently a real live crisis.

We have, here, Mr. President, in H.R. 6955, only the first of many necessary spending reduction measures. It is only a start. Later this week we will vote on another spending reduction measure as part of the tax reform package. That is another small step. It is small simply because this Congress has still not reversed its propensity toward spending and taxing. It has not gotten a handle on the uncontrollability of the Federal budget. In short, it has yet to tackle the real problems of the budget: the structural biases and the perverse spend-tax attitude.

Mr. President, I intend to support this bill. But I must warn against any complacency that might set in among

my colleagues that the job is finished. This is just the first step of a 1,000-mile-long journey toward spending reform. Unless this point is realized, then what we have accomplished here in this bill becomes meaningless. Let us look toward making the real adjustments necessary for meaningful reform.●

● Mr. LEAHY. Mr. President, as ranking minority member of the Nutrition Subcommittee, I would like to comment on the food stamp portions of the 1982 budget reconciliation bill.

As I stated when this bill originally came to the floor of the Senate, I do not believe that any additional food stamp benefit cutbacks are warranted this year. The massive benefit reductions enacted last year in food stamps and other low-income programs have had a severe effect. Reports are rampant that hunger is again on the rise in the United States and that churches and other private charities are being pushed beyond capacity to meet the swelling demand. I ask that articles on this subject in the August 12, 1982 Washington Post and the August 16, 1982 U.S. News & World Report be included in the RECORD at the close of my remarks.

There is no question in my mind about the direct relationship between cutbacks in programs like food stamps and the increase in suffering across the country. This is not the time to be reducing the level of assistance provided to needy Americans. With an unemployment rate of nearly 10 percent, even the most hardened critics of public assistance should recognize that the myth that these programs serve only loafers and malingerers surely does not apply today.

Mr. President, I strongly favor reducing food stamp costs through better program management and accountability. I am pleased that nearly one-third of the $2 billion in food stamp savings that this bill will achieve in the next 3 years will come from reducing errors in program administration. This is clearly a step in the right direction that I have supported from the outset. I am concerned, however, about the additional $1.3 billion in benefit reductions.

Several of the changes mandated in the conference report involve very technical changes in benefit calculations. I would like to spell out my understanding of how these changes would be implemented since any change in methodology could involve millions of dollars in benefits for needy people. I understand that the Congressional Budget Office developed its savings estimates using these assumptions.

THRIFTY FOOD PLAN AND ROUNDING

A large portion of these savings would come from scaling back scheduled cost-of-living increases and rounding benefit allotments down to the next lower dollar. In the next 3 years, the October adjustment of the thrifty food plan would be based on the cost of that plan through the preceding June, minus 1 percent. Allotments would be computed by taking the unrounded cost of the thrifty food plan for June, reducing this number by 1 percent, making the appropriate household size adjustments, and then rounding the resulting unrounded figure for each household size down to the nearest lower dollar.

STANDARD AND SHELTER DEDUCTION

The conference adopted the House provision to delay the next update of the standard and shelter deductions from July 1, 1983, to October 1, 1983. At that time, adjustments of these deductions will begin again, using $85 as the base for the standard deduction and $115 as the base for the shelter deduction. Adjustments after 1983 would be based on the unrounded numbers from the previous year's adjustment.

FOOD STAMP CAP

The conferees agreed upon new spending ceilings for the next 3 years. While these ceilings include a theoretical cushion of 5 percent beyond CBO's current estimate of program costs, the adequacy of these ceilings will depend upon the performance of the economy. CBO's estimates assume a significant decline in the unemployment rate. If unemployment stays at current levels, the cushion would be pretty much used up.

If the "caps" in this bill prove to be too low, it will be because the economy is performing far worse than anyone expected. Under these circumstances, I do not believe Congress would expect the Secretary to cut benefits across the board in order to keep expenditures within the ceilings. If there is a prolonged recession or depression, the Secretary should actively consult with Congress about program funding and consider requesting additional funding to maintain program benefits.

CONCLUSION

Despite my concern about food stamp benefit reductions, this conference report does require far less savings than the President and others in Congress recommended. It also deletes a Senate-passed provision for voluntary block grants that, in my view, represented the single most serious threat to the continued effectiveness of the food stamp program. considering the political realities facing this program, the final result from this year's deliberations was far better than I expected.

The material follows:

[From the Washington Post, Aug. 12, 1982]

AGENCIES WATER THE "CHARITY SOUP"

(By Marjorie Hyer)

At Sacred Heart Parish, 16th and Park Road NW, the number of families receiving church emergency food packages jumped from 70 last July to 230 in May of this year, according to the Rev. Joaquin Bazan, pastor.

SOME (So Others May Eat), a church-operated soup kitchen half a mile north of the Capitol, has watched its daily line grow from 200 persons a few years ago to 600 today.

In affluent Montgomery County, $30 emergency aid grants given by the interdenominational Community Ministry jumped from 16 a month three years ago to over 100 in June of this year.

"I don't know where it's going to end." says Marita Dean of Catholic Charities' crisis intervention service. "Last summer we were seeing 40 people a month. Now, it's close to 100. And this is summer, when it should be down. God knows what it will be in November and December."

"The churches I know are overwhelmed by the tide of need," says the Rev. Jack Woodard of St. Stephen and the Incarnation, a Northwest Washington parish where he reports the number coming for emergency groceries has tripled since last year.

Nearly a score of other Washington area agencies, the heart and soul of President Reagan's hopes for voluntarism, report they are being strained beyond their capacity to cope.

They have watered the charity soup, giving less help to more people, to stretch their resources. They have redoubled efforts to raise additional funds and supplies, in some cases scavenging food from supermarket dumpsters—but they say the same problems of inflation and unemployment that multiply the appeals for help are cutting deeply into contributions and operating revenues.

And so, increasingly, they have had to steel themselves to sending people away empty-handed.

"We tend to run out," says Noreen Buckley who runs the food pantry at St. Stephen's.

"We help what we can and after that we have to say, 'Sorry.' We have to turn people away."

At the same time, they are also turning to political pressure in their effort to cope, taking every opportunity—through testimony at legislative hearings, through pronouncements, through lobbying—to demand a reversal of cuts in government welfare programs.

"We do not need to be reminded of our responsibilities to the poor," said Roman Catholic Archbishop James A. Hickey earlier this year, responding to Reagan's suggestion that the churches take over more of the welfare burden from government. ". . . Our efforts cannot and should not substitute for a national commitment to build a just society . . ."

The Rev. Tom Nees, Church of the Nazarene minister, who heads a congregation along the 14th Street corridor, says, ". . . The first responsibility of the churches is to create that moral climate in which it is politically unthinkable to do what is going on in this town. . . ."

Officials say church involvement in charity work is already so extensive that it is impossible to estimate the total amount of aid provided by area religious groups.

In Washington alone, religious institutions operate nearly 60 food pantries or soup kitchens and 14 shelters for the homeless, where some food also is available.

SOME by itself estimates that its food and volunteer labor are worth more than $1 million annually.

In addition, religious institutions provide some free or limited-cost care at affiliated hospitals, aid for utility and mortgage or rental payments, counseling—the list of their services touches all the needs of man.

Church aid programs traditionally have been an emergency backup system for government-funded assistance programs. In recent months, the federal welfare cutbacks plus the effects of inflation and rising unemployment have produced more emergencies than the churches can deal with.

"Anybody who is single and who does not have family support is just one RIF away from disaster," says the Rev. Jennie Bull, minister of outreach for the Metropolitan Community Church.

The result is that church charities now are getting pleas for the kind of help that is far beyond their resources.

There are, for instance, what Tina Sturdevant of Catholic Charities of Prince George's County calls "a new class of poor." They are the couples with young children, a house and a mortgage based on two incomes. They are proud of their achievements. Then one of them loses a job. The family still has an income, but it's not sufficient to pay the high mortgage payments and utilities.

"These people put every cent into the mortgage—money that should have gone into medicine for children, into shoes for the children. So these people are losing their home when they come to us."

She recalls the anguish of the young mother who had to give away her children's dog because they could no longer feed it, and she adds softly, "I have seen men cry in my office because they lost their job and can't pay the mortgage."

There is little Catholic Charities can do to help. Sometimes, she says, "we help them" with a food package or used clothing "so every cent can go toward that mortgage, so maybe the one who lost the job can find another. But if the amount is way too large, there's not much we can do."

Others come with huge, long-overdue utility and rent bills. "We've had families who have had to make a choice." says Catholic Charities' Dean.

"They can't pay the oil bill" during the cold weather, "so they use electricity to heat. Then comes spring and their electricity is turned off" for non-payment.

"We negotiate with the utilities . . . Maybe they owe $200-$300. We call and send in whatever they'll accept to keep the service continued. For some . . . once it's cut off they'll never be able to get it re-installed" because of the backlog of unpaid bills.

Unpaid rent is a similar problem. "Somebody who is back in the rent two months—you're talking about $800-$900," Dean says. "There's no way we can pay that amount."

In such situations, says Delores Farrow of the Righteous Branch Commandment Church of God, church charities "bag around," searching out other religious groups, local churches, possible government sources and family or friends who might chip in so that together the total amount is raised.

This tends to be a one-time-only solution, Dean says. "If there isn't any money coming in, what are they going to do next month?"

In such cases, she says in a troubled voice, the appeal has to be turned down. "It's a hard thing to do, 'cause what is there but the shelters? It's not an easy thing to. . . ." She does not finish the sentence.

In the inner city, where the need is most acute and the resources most limited, religious groups rely on a variety of devices. Most have developed support systems linked to churches and synagogues in the suburbs or more affluent sections of the city for contributions of foodstuffs, volunteers, and cash.

SOME, for example, has a network of 70 churches and synagogues that take turns providing and serving 600 breakfasts and lunches, from the exotic spiced and fruited oatmeal of the Sikh Dharmas to the monthly soul food lunch from Shiloh Baptist.

Most food pantries and soup kitchens get some food from the Capital Area Community Food Bank, where commercial food processers and handlers can recieve tax benefits for donating food that is still edible but outdated damaged or otherwise unsalable.

The problem with the Food Bank, charity workers agree, is that by its very nature, its inventory sometimes tends toward the exotic and lacks the essentials.

"It's not the choice [of foods] you can keep a family going on, even for a day or two, and that's all we're trying to do," says Sister Julia McMurrough of Assumption Church in Anacostia.

Like most emergency food program operators, she must buy supplementary food supplies, especially protein items, to supplement the Food Bank's stale English muffins and packets of holiday colored M&Ms.

Conversations with church social service workers reflect a scrabbling for resources, wherever they can be found.

Some groups scavenge still-edible food from dumpsters outside shipping terminals and supermarkets and make regular rounds of restaurants and hotels to pick up leftovers.

"We get buckets of beautiful food—not off people's plates but food that hasn't been served—from dinners at the Organization of American States," says the Rev. Dr. John Steinbruck of Luther Place Church in the District of Columbia.

Church welfare workers, trying to raise funds, spend a lot of evenings telling church and community groups about the problems they wrestle with during the day, in an effort to raise funds. "The personal touch helps," says Sturdevant.

While excess zucchini from summer gardens in Potomac often nourishes soup kitchen patrons in Columbia Heights, contributions of cold cash are harder to raise.

The Community Ministry of Montgomery County, which has watched its Grant Assistance Program expenditures rise from $6,872 in 1979 to $15,115 last year, is pressing the more than a score of church groups that support it for $20,000 to meet this year's needs.

Given the current economic situation, fundraising is not an easy task. "We're just about holding our head above water," says the Rev. T. J. Baltimore of the People's Community Bapist Church in Wheaton. His congregation of black middleclass professionals and government workers falls in the $25,000-a-year class, he said.

"My counseling load has doubled," he says. "I get 20, 30 calls a day . . . all hours of the day and night," as both members and people from the community turn to him for help.

"Poor folks are looking to us" for help, he says, "but I'm having real trouble finding the money, finding clothes" and other items they need.

In Alexandria, Rabbi Sheldon Elster of Agudas Achim Congregation, reports similar problems.

"There are a lot of people" within the relatively comfortable congregation "who really need assistance," he says, adding that the treasurer of Agudas Achim has had "a constant load of people who need adjustments" in their membership fees as family incomes fluctuate.

Throughout the area, charity workers say they are fearful for what the future holds. At St. Stephen's, as at other soup kitchens in the area, the tensions among people waiting to be fed "are much higher," says pastor Woodard.

Recently the church's security guard, a burly ex-Marine, took three knives from men waiting to get into the dining room, Woodard says, adding, "It's getting real hairy, let me tell you."

[From U.S. News & World Report, Aug. 16, 1982]

POVERTY TRAP: NO WAY OUT?

(The words "hopeless" and "frustrated" are being heard more often now, as thousands of laid-off workers join families who have been poor for many generations.)

The U.S., after gaining steady ground in a nearly two-decades-old war on poverty, now appears headed down the path of retreat.

Sharp budget cuts, set in motion by a White House alarmed by enormous deficits, have produced the first significant decline in social spending in 30 years. Meanwhile, a crippling recession—the third since 1970—has caused the numbers of poor to swell to nearly 32 million, or 14 percent of the population, the highest percentage since 1967.

Included in these ranks are many who never before tasted real want—the so-called new poor—such as auto workers and lumbermill employes who have lost jobs and benefits as a result of an epidemic of plant closings.

Poverty agencies, both government and private, are deluged with requests for help. Makeshift soup kitchens and shelters that once catered to "bag ladies" and other drifters serve more families and displaced workers.

Yet, in the face of this misery, there is a curious quiet. Gone are the riots of the late 1960s, which came, ironically, during a time when many antipoverty programs were started. Nor is there any great groundswell of support among the more fortunate for new programs. Most citizens, experts say, believe that the basic needs of the poor are being met and that the country cannot afford to do more.

Says Princeton University economist Alan Blinder: "The war has dragged on longer than most people had expected and cost far more than had been imagined. Progress has come grudgingly, and there is a feeling that we have sacrificed too much economic efficiency at the altar of poverty fighting." Reflecting that thinking, the Reagan administration has scaled down President Johnson's Great Society programs, which caused social spending to shoot up from 118 billion dollars in 1960 to more than 430 billion today. Instead, the White House is counting on an economic rebound and a resurgence of voluntarism and self-help programs to take the place of government spending.

But those developments have yet to materialize. The result, some experts say, is that the country is without a workable policy to help the needy. Poor people, who may be better off than their counterparts of 20 years ago because of government housing, food and health programs, may face a more hopeless future because of an economy that demands greater skills to insure success.

SWELLING RANKS OF THE POOR

The last four years, riddled by two economic slumps and budget cuts, have stalled antipoverty efforts. From 1960, when 22 percent of the population was officially classified as poor, the percentage of needy people dropped steadily to a low of 11.4 in 1978. But the percentage of those living below the poverty line—$9,287 for a nonfarm family of four—rose to 14 percent in 1981. Many authorities expect it to climb higher.

Reports from around the nation give evidence of the spreading misery—

In Washington, D.C., authorities estimate that more than 660 families will have sought emergency housing at its temporary shelter in the 12 months ending in September, compared with 406 for the same period the year before.

The Garden Valley Neighborhood House in Cleveland, one of countless "hunger centers" sprouting up around the country, is serving more than 300 families—about double last year's figure. "I've got regulars now—people who come back every other month for food because they can't make it without the extra help," says Jennette Raum, food-program supervisor at the center. "Also, we're starting to get a lot of fathers whose unemployment has run out, and they haven't started getting public assistance yet. Some of these men have been working 25 to 30 years, and it seems very demeaning to them to have to do this."

In Pittsburgh, the problem for many of the poor is soaring utility bills. The number applying for hardship applications to get breaks on bills is up about 30 percent, reports Stephen Hutter of the Stephen Foster Community Center, who adds: "People are getting more termination notices because their bills are getting out of hand."

Oregon's 77 general hospitals absorbed 151 million dollars in "uncollectable" care in 1981, an increase of 40 million dollars from the year before.

Even in booming Houston, the signs of spreading poverty are obvious. Officials of the Christian Community Service Center, which represents 12 churches, say they can't help everybody who calls. Among the needy: "Immigrants" from other regions who came to Houston seeking jobs.

WIELDING THE BUDGET AX

Meanwhile, as the demand for help soars, local-government agencies complain that they have to reduce services because of budget cuts. Researchers at the Urban Institute in Washington estimate that about 10 billion dollars of the 35 billion trimmed this year from Federal spending are in programs affecting the poor. Among the major cutbacks:

Some 400,000 families have been lopped off foodstamp rolls as a result of a decision to limit eligibility to families of four earning no more than about $11,000.

The federal share of spending for medicaid, the health program for the poor, has been reduced with further cuts expected in 1983. Some states have been forced to end benefits for eyeglasses, drugs and dental checkups.

Some 340,000 public-service jobs have been eliminated, causing many people to resort to the dole.

In reducing spending for the Aid to Families With Dependent Children program by 1.2 billion dollars, children over the age of 18 are excluded, as are families of strikers. The income of a child's stepparent is being counted, and limits are being placed on work-related expenses.

Still other trims have come in school lunches, nutrition programs for needy women and infants, housing subsidies, energy assistance, legal services and college grants for disadvantaged students.

The list of local programs affected by this retrenching is endless. Denver has eliminated a homemaker's program to help the low-income elderly with housekeeping chores. North Carolina has had to cut about 9,000 families from the AFDC rolls and reduce benefits for 4,700 more. In Louisville, health services for the disadvantaged will be cut by nearly 40 percent in some parts of the city. Boston's program for feeding needy mothers and infants has been slashed in half. A St. Louis program to train unemployed women has been terminated, putting many back on welfare.

In the face of these and countless other reports, the Reagan administration insists that the budget cuts do not affect the "truly needy" and that trimming federal deficits is an essential step toward curbing inflation and spurring economic growth that will create jobs for all Americans, the poor included.

Noting that there are as many poor people now as there were before all the massive social programs, Budget Director David Stockman says that the White House's antipoverty program is to increase income, jobs and capital spending. Presidential Counselor Edwin Meese III adds that President Johnson's Great Society programs primarily helped middle-class bureaucrats. "It was really a program designed by middle and upper-class technocrats, which resulted in more government and more taxes," contends Meese. Reagan's critics see it another way. Says Senator Edward M. Kennedy (D-Mass.):

"The administration claims to have a social-safety net, but the only social-safety net now in place is the one that protects the special privileges of the very wealthy."

THE VICTIM LIST

While the debate rages over whether the "truly needy" are receiving enough protection, most authorities agree that the working poor are worse off under the budget cuts. These are the families with incomes in the upper range of poor families or perhaps slightly above the poverty line.

"The lower-level people didn't get hurt that badly," says Lawrence Ingram, secretary of the New Mexico Department of Human Services. "But the guy just above the poverty level is really suffering, because he got squeezed out of government programs."

Typical is Mary Jane Hatch of North Jay, Me., who recently lost $151 in monthly AFDC benefits because of new rules imposed by the administration. She must now support her three children on the $3.46 an hour she makes as a secretary for an antipoverty agency. "A lot of people right there on the poverty level like me feel they might as well stay at home instead of working," she says. "I could probably make a few dollars a week more sitting at home, but I'm not like that."

Beyond the federal budget cuts, however, is the fallout from an economy that has been locked in a deep slump for months. Here, the victims are not longtime welfare recipients but laid-off factory workers. "The stereotype of the poor person is changing in this country," says Marjorie Hall Ellis, director of the Cuyahoga County, Ohio, Welfare Department. "We're finding now that the poor person is no longer just from the inner city and no longer asset-free."

In Stevenson, Wash., Rick Fabian, a laid off truck driver whose unemployment benefits ran out in February, has had to sell some of his possessions, move into low-income housing and borrow money from parents to keep afloat. "All these years we paid into taxes; we paid into welfare," says his wife Judy. "We are middle-class working people, but when we're down and out, there's no place to turn."

Similarly, in Washington, D.C., a 42-year-old public-affairs specialist with two master's degrees is a victim of the widespread reductions in the federal work force. His unemployment check doesn't even pay for the rent on his apartment, and he and his wife are dipping into savings.

Such stories, repeated thousands of times by displaced factory workers and government employes whose jobless benefits have expired, are creating a whole class of needy people popularly referred to as the "new poor." Most are shocked at suddenly finding themselves in the same predicament as those who have been on welfare for years.

HOW MUCH REAL SUFFERING?

The plight of the new poor reflects an often overlooked fact about poverty: It is very changeable. James Morgan, professor of economic behavior at the University of Michigan, estimates that only one tenth of those in need are persistently poor. "They are people who are disabled, uneducated or very old." The remainder tend to be in want only temporarily because of divorce, family illness or job loss. Many bounce in and out of poverty.

Statistics show that about 29 percent of the poor are black and 12 percent of Spanish origin. About one half of all families below the poverty level are headed by women with no husband present, and more than a third of the poor are children below the age of 16.

Life for these people, while often exceedingly bleak, does not carry with it the material deprivation it did before the Great Society programs came on line, according to many experts. "Those who are poor today are not as poor as the poor used to be," says economist Sar Levitan of George Washington University, "but some of their basic needs are still not being met despite the benefits."

The Census Bureau, looking at the year 1979, estimates that if various "in kind" benefits—food stamps, housing subsidies, medicaid and the like—were counted as income, only about 6.4 percent of the population, instead of 11.6, would have been in poverty that year. However, about 40 percent of the poor receive none of this noncash aid.

Others point out that portions of the population commonly described as struggling are faring quite well. Stanford University economist Alvin Rabushka notes that more than 70 percent of senior citizens own their homes—often free and clear. Not only could that asset be converted to cash, if need be, but, says Rabushka: "The elderly have had a rate of improvement greater than the under-65 population due in part to Social Security payments." Only 15.3 percent of the elderly were poor last year, compared with 35.2 percent in 1959.

All this is not to minimize the suffering that does exist for many of the poor. Allan Steinberg, an alderman in Louisville, speaks for many around the country when he says: "We have people who don't know how they're going to make the choice in the

coming winter between paying their utility bills and buying food."

QUIET IN THE FACE OF WANT

Despite such instances of suffering, the nation has been remarkably free of protests. In June, members of the Southern Christian Leadership Conference, the civil-rights organization, came to Washington to demonstrate the needs of the poor, but drew only a small crowd—nothing to rival the huge throng that gathered in 1968 at Resurrection City.

A group called ACORN—the Association of Community Organizations for Reform Now—has sought to obtain housing for the needy in a dozen cities, sometimes encouraging families to squat in vacant properties owned by communities or the federal government. Some black leaders also have called for the use of economic boycotts against firms that fail to offer enough jobs to minorities.

But beyond these steps, the reaction to the swelling ranks of the disadvantaged has been a strange quiet. There have been no riots, such as those that racked the country in the 1960s. Economist Michael Borus of Ohio State University's Center for Human Resources attributes part of the calm to the "cushion" provided by unemployment compensation and the fact that there are so many two-income households.

Even so, a forecast by BERI S.A., a Swiss group that advises firms on business risks, assigned a "high probability" for riots in the U.S. in 1983. "The unemployable will be frustrated by their exclusion from the economy and by the cutbacks in social programs, reinforcing their sense of hopelessness," the report said.

For now, the fallout from poverty seems to be limited to such developments as spreading illiteracy, higher crime rates, rising child abuse and a jump in illegitimate births—all influenced by people's failure to find opportunity in the America of the 1980s. That is particularly true when it comes to one major group—young black males. "So many of our youth are unemployed, no longer have training programs, are not in school and have so much hopelessness," observed a Chicago delegate to a recent convention of the National Association for the Advancement of Colored People. "The only thing left to them, they think, is crime. Any little spark could set them off and create a nightmare for the rest of us."

THE SEARCH FOR SOLUTIONS

In the face of such threats, Washington has no special program to tackle the sources of poverty. Rather, most proposals involve cutting welfare costs. The administration, for example, is urging states to start "workfare," a program in which able-bodied welfare recipients are required to work at some job. But presently, the federal government provides no financial incentive to states that adopt workfare—some 25 have either started such programs or plan to do so. What's more, studies show that workfare rarely provides the training needed to get decent jobs in the private sector.

Similarly, to control costs, the administration is proposing a swap in which the federal government would take over the entire funding of medicaid, while states assume the full costs for Aid to Families With Dependent Children. Many experts believe the scheme would lead to an even greater variation in welfare benefits throughout the nation, with some states spending the bare minimum for the needy.

In Congress, there is strong support for continuing tax credits for employers who hire the poor, the handicapped and other disadvantaged workers. But few lawmakers see any chance for a major overhaul of the welfare system, such as doing away with food stamps, housing subsidies and other benefits in favor of a system of cash grants that could cut administrative costs and give the poor more leeway in the way they spend their money. Charles Murray, a Washington consultant who favors such a plan, argues that the present system of benefits encourages dependency.

Instead of vast new programs or revolutionary approaches, the President and his supporters in Congress are depending on the generosity of Americans and an improvement in the economy. On the first count, there are signs of progress. Giving to United Way campaigns nationwide rose 10.3 percent in 1981 to nearly 1.7 billion dollars. Businesses last year contributed 3 billion dollars to various charities—an 11 percent jump from the 1980 total—and surveys show that the increase in corporate giving this year could be as much as 15 percent. Still, the business community freely admits that it cannot—and in many cases should not—make up for the funding cuts in social programs voted by Congress.

The essential ingredient for improving the lot of the poor, most authorities agree, is a healthy economy. Tracing the progress in curbing poverty, political scientist Murry of Washington notes that increases in the country's gross national product—not special antipoverty programs—have accounted for most of the gains made in reducing want.

Yet an improved economy may not be enough. Because of the changes in the country's industrial mix, the number of jobs suitable for unskilled labor has shrunk. Thus, for the poor to have any hope of getting out of poverty, many experts argue the new education and training programs are needed. "We desperately need not only training, but retraining," says economist Vernon Briggs of Cornell University. "Many workers in the steel and auto industries are never going back even if the economy turns around. Many of their jobs will be taken over by machines."

Both the Senate and House have passed job-training bills, considered to be only modest when compared with the Comprehensive Employment and Training Act, which in 1978 saw 9.4 billion dollars spent on jobs and training.

Clearly, the momentum seems to be in favor of further cuts in poverty programs. The government recently put in new rules requiring residents of public housing to pay more rent, and new cuts are being considered for medicare. Observers also say that key proposals to help the needy won't go anywhere this year, including the President's plan to set up enterprise zones in depressed areas, where firms could get tax breaks and other advantages for hiring the poor.

Barring a quick and vibrant upturn in the economy—a development considered unlikely—the upshot of all this is that the poor face perhaps their bleakest outlook in years. The only question is whether they will bear their burden quietly—or lash out in protest.

● Mr. MATHIAS. Mr. President, I oppose the report of the conference committee on H.R. 6955, the Omnibus Reconciliation Act of 1982. I simply cannot support the manner in which Federal employees and retirees have been singled out in this reconciliation legislation to shoulder an unreasonable amount of the contemplated cutbacks.

Federal workers, and former Federal workers, are willing to take their fair share of budget cuts. Last year, Congress eliminated one of the two annual cost-of-living adjustments that Federal retirees had been promised. Before that, the Congress eliminated the retiree's 1 percent kicker that was automatically added to their cost-of-living adjustments. Last year, the Congress put a cap of 5 percent on the comparability increase for Federal employees. And the budget saving from these moves was substantial; the loss in real income to Federal employees and retirees was substantial as well.

Now, again this year, the Congress tells Federal retirees and military retirees that, once again, they must bear substantial cuts. The Senate instructed the Governmental Affairs Committee to make such substantial cuts in the Federal retirement program that the committee had no recourse but to approve a 4 percent cap on the cost-of-living adjustments for fiscal years 1983, 1984 and 1985. This 4 percent was to remain constant, despite what happened to the economy—and thus to the purchasing power of retirees. I did not like this approach, but it is far better than what the Senate has before it today.

What has emerged from the conference committee would produce comparable savings, but only by drawing arbitrary distinctions among Federal and military retirees based only on age.

Take my constituent John Abrahams, for example. He is from Rockville, and he called my office just this afternoon to explain how the conference proposal would affect him.

Early retirement is not always a boon to the Federal employee. Last week, Mr. Abrahams was involuntarily retired—forced out of the Federal Government in a RIF, as a result of Federal spending cutbacks. He is 59 years old, and his age works against him in two ways. It is difficult enough to find a job when unemployment is approaching 10 percent, and many employers are reluctant to hire older workers like Mr. Abrahams. At the same time, Mr. Abrahams' COLA will be reduced because he is not old enough.

If this conference report passes, for the next 3 years Mr. Abrahams will receive only one-half of the cost-of-living adjustment that retirees over the age of 62 will receive. Mr. Abrahams' cost of living certainly is not lower just because he is under 62. He has already lost his job because of Federal spending cuts, and I do not think the Congress should take away half of his

cost-of-living adjustment on top of that.

The Senate will make a very shortsighted budget cut today if it votes to approve the conference report to accompany the Omnibus Reconciliation Act of 1982. Admittedly it will save some money. But in the long run, the ultimate result could be disastrous. This action will send a message across this country that the civil service and the armed services are no longer viable places in which to make a career. It says that the Federal Government does not keep faith with its employees and its former employees.

And, in the long run, that will cost us much more than any small savings we might make today. It will cost us in terms of the Government of the future—a Government that will not be able to attract the best and the brightest minds that this country has to offer. It will be a sad day when the young people of this country are no longer willing to enter Government service. But that day is coming.

I urge my colleagues to think about the ultimate effect that this vote today will have. We cannot afford to make these cuts. I hope my colleagues will join with me in voting against them.

Mr. ZORINSKY. Mr. President, going into conference on this Reconciliation Act with the House Agriculture Committee conferees, the paid provisions in both the Senate and the House agricultural provisions were virtually identical. Both the Senate and the House had approved a 15-percent voluntary set-aside for wheat with an additional 10 percent to be diverted with a payment made for this additional diversion for participating producers. Both the Senate and the House had approved a 10-percent voluntary set-aside for corn with an additional 10-percent diversion for pay. Thus producers of wheat could divert 25 percent of their base acres and producers of corn could divert 20 percent of their corn and feed grains base. The House provision increased price support loan rates for both wheat and feed grains in addition to the paid diversion provision, a provision which had my support.

The Senate acted August 5 to defeat an amendment to lower the paid diversion to 5 percent after Senator BOREN offered, with my strong endorsement, an amendment to give producers of wheat and feed grains an additional paid diversion of 10 percent. The weakening amendment was defeated 60 to 38, with subsequent action of the Senate approval of the 10 percent paid diversion of a voice vote.

Mr. President, without prior consultation with Democratic conferees, a move was led by the majority conference leadership to reduce the paid diversion program back to 5 percent. I do not believe such a decision was justified under the circumstances. I presume that, as in the past conferences of agricultural matters last year, the administration again voiced its objection, and the threat of another veto effected the change.

I do not think I need to go into a great amount of detail about the dire straits our wheat and corn farmers are in today. Record crop levels, low prices, and high interest rates have combined to produce the worst conditions in our agricultural economy since the early 1930's.

The day before the action in the Senate, the Crop Production Report of USDA projected a second consecutive record corn crop which the Wall Street Journal said would "yield a harvest of political problems for the administration."

The price of corn in several western Nebraska locations dropped to $1.75 per bushel this week, 35 percent of parity.

What is really needed to turn this situation around is enactment of one of the so-called farm crisis bills like that introduced earlier this year by Senators ANDREWS, BOREN and myself. Unfortunately, that does not seem likely in the current political climate in the Congress.

If the Senate so-called wheat 15-10 provision and the corn 10-10 provision had prevailed in conference, several beneficial effects would have resulted. First the paid diversion would provide an infusion of dollars into the pockets of our cash-starved farmers. More importantly, that paid diversion will cause much greater participation in the Government acreage reduction program that will reduce crop yields and drive up prices.

Let us look for a moment at the expected wheat and corn production this year. For wheat, 2.77 billion bushels are expected to be produced in 1982, down only sightly from last year. Year-end stocks are expected to be a tremendous 1,314 million bushels.

For corn, the projected yield for 1982 is 8.32 billion bushels, with year-end stocks at 1,976 million bushels. These carryovers are estimated to be the highest in two decades. They not only tend to depress prices, they are also expensive to store. As a result, the Congressional Budget Office estimates a combination paid/diversion acreage reduction program would cut Govenment outlays $400 million more than the wheat program announced by the Agriculture Department last month.

Mr. President, it is difficult to understand why the administration will not act to put an effective acreage diversion program into effect. As a matter of fact, they already have such authority. I do not intend to be a part of the action of this body which ignores the economic problems inflicted on grain producers by failure to provide an effective means to strengthen market prices through reducing surpluses.

With farm exports falling for the first time in over a decade on top of mounting carryovers and with net farm income near an all-time low, the means to strengthening market prices is not just desirable, it is absolutely essential. I therefore intend to vote to table the Reconciliation Act as a means of expressing my concern over the inadequacy of the grain provisions.

Mr. President, I have written today to President Reagan expressing my dismay over the deteriorating farm economy. I ask unanimous consent to include this letter at this point in my remarks.

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

UNITED STATES SENATE,
Washington, D.C.

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

DEAR MR. PRESIDENT: There's a depression in agricultural mid-America. And it's getting worse. According to estimates from your own Agricultural Department, net farm income this year could equal the worst years of the 1930s. Farm debt is expected to be up 43 percent in 1981 compared to 1979. And, for the first time in more than 25 years, the value of a farmer's land is lower today than it was a year ago. Exports from America's farms are declining for the first time in more than 10 years.

Mr. President, the causes of this depression are many. But they all have the same effect: critically low farm prices. In my own state of Nebraska, wheat prices this week were down to 42 percent of the July 15 national parity price. Corn in some cases was as low as 35 percent of the national parity price.

The outlook for the future is even more bleak. Record corn crops are forecast this year, leading to record (and costly) carryovers and even lower prices. Wheat and feed grain crops also will be up this year over last, according to forecasts. The results will be bankruptcies of farmers throughout the United States. The farm sale already has returned to America's countryside with jarring force. Unless something is done, farm sales, too, will soon be setting records.

Mr. President, you can stop this slide and you can do it today. You have it within your power to administratively boost price support loan rates for wheat, corn and other feed grains. That would immediately increase farm income, since loan rates tend to provide a price floor. The increases would quickly put cash in hard-pressed farmers' pockets and could mean the difference between bankruptcy and solvency for many.

Please consider seriously the consequences of failing to act in the current crisis. Consider both the human consequences and the implications for our entire national economy. It's no secret that the growing lines of unemployment in Detroit started in the corn and wheat fields of the Midwest. Don't let today's agricultural depression precipitate a "farm led and farm fed" depression throughout the rest of the American economy.

Respectfully,

EDWARD ZORINSKY,
U.S. Senator.

CHANGES IN THE PAID DIVERSION PROGRAM

Mr. BAUCUS. Mr. President, I am very disturbed over one particular change that the conferees made in the reconciliation bill. I believe there was a substantial change in the paid diversion program provided for wheat and feed grains by an amendment I cosponsored with Senator BOREN.

The amendment passed by the Senate, provided for a 10 percent, voluntary paid diversion program for wheat in addition to the 15 percent acreage reduction program required for producers to qualify for Federal assistance. The Senate specifically voted on an alternative paid diversion program offered by the Senator from North Carolina (Mr. HELMS). Senator HELMS' amendment which was defeated, would have lowered the paid diversion program to 5 percent in addition to the 15 percent acreage reduction program.

Yet, when the conferees met on the reconciliation bill, the Senate offered a compromise program that instituted the 5 percent paid diverson specifically voted against in the Senate.

In other words, Mr. President, we now have a wheat and feed grain program that is essentially the same as the one originally proposed by the Department of Agriculture. There is a total of 20 percent of acreage that must be diverted from production in order to qualify for Federal farm programs. There is a 10 cent increase in the loan rate, which I heartly support—although it is far too little to address the critical fate of our farm economy.

Mr. President, we argued the merits of a 10-percent paid diversion program a few weeks ago. The significant budget savings and the additional incentive this program would have provided for producers to participate is why I supported the program. The changes made by the conference—reducing the paid diversion to 5 percent and making it mandatory—once again bring into question the amount of budget savings and the attractiveness of the program for producers. The original Boren amendment—a 10-percent voluntary paid diversion—was supported by the American Farm Bureau Federation, the National Farmers Union, the National Grange, the National Association of Wheat Growers, the National Corn Growers Association, the Independent Bankers of America, the National Farmers Organization, the American Agriculture Movement, the National Milk Producers Federation and the Grain Sorghum Producers Association.

Mr. President, I can appreciate and I support the budget savings represented by this reconciliation bill. However, I cannot understand or support a substitute change in this provision of the bill that goes directly against the expressed wishes of the Senate. I think everyone knows that the administration opposed the 10-percent paid diversion program. However, to have the Senator from Kansas (Mr. DOLE) offer their program in conference against the wishes of the Senate of the body goes too far.

I hope that U.S. wheat and feed grain producers realize that the weakening of the paid diversion program that they supported was done by the administration and not by the Members of the House and Senate that realize how critical the situation is in our farm economy. Low farm prices will not go away without meaningful action by Congress. It is unfortunate that we could not retain the paid diversion program adopted by the Senate—or for that matter by the House—and still reduce Federal spending by over $25 billion.

Mr. President, I associate myself with the comments made by the Senator from Nebraska (Mr. EXON) and the Senator from Oklahoma (Mr. BOREN). Their leadership in looking for remedies for the crisis in agriculture have not gone unnoticed by this Senator.

Mr. THURMOND. Mr. President, I am pleased to lend my support to this important spending reduction legislation.

This bill is one of several key legislative measures which will put into practice the specific changes necessary to reduce Federal budget deficits by almost $380 billion over the next 3 years. While the bill does not restrain the growth rate in entitlement programs as much as some of us would like, the $13.5 billion in savings through fiscal year 1985—as calculated by the Congressional Budget Office—which is contained in this bill is definitely a step in the right direction.

Mr. President, with the record surge in the stock markets recorded yesterday and other positive signs, especially the recent decline in interest rates, the prospects for a strong, sustained economic recovery are good. However, in order to insure a return to prosperity, with lower interest rates, lower inflation, and sufficient employment opportunities, we must steadily whittle down Federal spending.

We have not done the entire job in this bill; indeed, we have not done as well as we should. Moreover, we will not completely meet the desired objective in the other revenue-raising and outlay-reduction bills slated to come before Congress prior to adjournment. Much will remain to be done next year and in future years if we are to achieve the ultimate goal of enduring fiscal responsibility and a balanced Federal budget. Nevertheless, this bill moves us closer toward a healthy economy and fiscal stability, and I hope the Senate will approve it for the President's signature.

Mr. HUDDLESTON. Mr. President, the agriculture and food stamp program provisions of the conference report will cut Federal spending by about $7 billion over the next 3 years and help to slow the growth in the size of Federal deficits. I am hopeful that, by acting to limit the size of these deficits, which lead to higher interest rates, we will overcome one of the most serious obstacles to achieving economic recovery.

The agriculture and food stamp program provisions have been structured to insure that Federal outlays are made in a cost effective manner. As a result, we will be able to achieve significant spending cuts in the programs beyond the $3.29 billion required under the congressional budget resolution.

The farm and food stamp program provisions of the conference report represent a compromise between Senate and House positions on where spending reductions should occur. The conference report will authorize the Secretary of Agriculture to use a production adjustment assessment to encourage reduction of the milk surpluses while maintaining the current level of price support. It includes revisions in the food stamp program—to tighten work requirements, enhance program management, and reduce the Federal cost of the program—from both bills. It includes a paid land diversion for grain and rice producers to reduce the price-depressing buildup of inventories. It requires the Secretary of Agriculture to use between $175 million and $190 million of Commodity Credit Corporation funds for export promotion activities.

These actions will give the taxpayers the maximum return for every dollar spent and achieve solid savings without hardship to farmers or excessive harm to the food stamp program.

MILK PRICE SUPPORT PROGRAM

Overproduction of milk is a serious budget problem, and the milk program must be more effective in dealing with this problem. The changes made to the dairy program by the conference report should improve its operation.

The approach adopted by the conference report will maintain the minimum level at which the price of milk is to be supported at the current level of $13.10 per hundredweight during the 1983 and 1984 fiscal years.

The support price in fiscal year 1985 will be set at not less than whatever percentage of parity that $13.10 represents as of October 1, 1983.

A production adjustment assessment will be used to offset a portion of the cost of the price support program to the Government. The Secretary of Agriculture will have the authority to require a deduction of 50 cents per hundredweight beginning October 1, 1982, from the proceeds of sales of all milk marketed. This deducted amount will

be remitted to the Commodity Credit Corporation.

An additional deduction could be required by the Secretary beginning April 1, 1983, if projected annual purchases by the Commodity Credit Corporation exceed 7.5 billion pounds—milk equivalent. The provision for a second deduction could only be implemented if the Secretary establishes a program to refund the assessment to farmers who reduce their production from a base period. The base period would be fiscal year 1982—the current year—or, at the option of the Secretary, the average of fiscal years 1981 and 1982.

This approach differs from the provision passed by the Senate that would have maintained, for another 3 years, the milk support price at the same level it has been since October 1980.

For dairy farmers, this program will provide a strong incentive to bring production back into line with demand. I am hopeful that no further dairy program modifications will be required. This program should be allowed to operate for a sufficient time to judge its influence on milk marketings and Government outlays.

PAID LAND DIVERSION

The conference report includes a provision to require the Secretary of Agriculture to offer a paid land diversion program for the 1983 crops of wheat, feed grains, and rice. Mr. President, I supported Senator BOREN'S efforts to add this provision during consideration of the reconciliation bill by the Senate; I cosponsored the amendment. As long ago as last winter, several of my colleagues and I urged the Secretary to implement a paid land diversion for the 1982 crops. Had a paid land diversion program been in place this year, more farmers would have reduced grain production.

The most recent crop report by the Department of Agriculture removes any doubt that crop supplies are excessive today and that the provisions of the announced acreage limitation programs for the 1982 crops were not sufficiently attractive to encourage sufficient numbers of farmers to participate. Financially hard-pressed farmers could not afford to comply with the Secretary's announced acreage reduction programs.

The 1982 corn crop is estimated to be in excess of 8.3 billion bushels—up from last year's record of 8.2 billion bushels—and the wheat crop is estimated to be nearly as large as last year's 2.8 billion bushel crop.

Mr. President, none of us likes the idea of having to restrict the planting of commodities. But, at this time, decisive and effective action must be taken by the Secretary to reduce the stocks of grain to a level more consistent with demand. The paid land diversion provisions in 1983 will help achieve this needed reduction.

With a paid land diversion program in effect, more farmers will reduce plantings and we should get the needed adjustment to production of our major commodities. Prices would be enhanced and farmers would be assured of greater income.

Also, with a paid land diversion program, farmers will be able to obtain sufficient credit to continue production. Many farmers cannot, today, show their bankers that a profit is possible. I think this is a very grave situation.

For wheat farmers who participate, the program will consist of a 15-percent acreage limitation program and a 5-percent paid land diversion program. For participating producers of corn and other feed grains, the program will consist of a 10-percent acreage limitation program and a 5-percent paid land diversion. For rice farmers who participate, the program will consist of a 15-percent acreage limitation program and a 5-percent paid land diversion program.

A paid land diversion program will reduce Federal spending by over $360 million according to Congressional Budget Office estimates, lessen farmers' dependence on the Government, and decrease the largest carryover of wheat and corn in over 20 years.

With a paid land diversion program, I believe that farmers, farm lenders, and merchants who sell to farmers will have more confidence in the future. We must restore that confidence before we can expect much improvement in the rural economy.

EXPORT PROMOTION

The bill contains a provision designed to promote agricultural exports. This provision requires the Secretary of Agriculture to use at least $175 million, but not more than $190 million, in each of the fiscal years 1983 through 1985, to stimulate sales of U.S. agricultural products in foreign markets.

However, these new expenditures will result in net savings to the Government. This result will occur because, with improved prices, farmers will receive more from the market for their production and less from the Government under the agricultural price stabilization and related programs.

This provision is patterned after a bill—S. 2661—that Senator COCHRAN and I introduced in June of this year.

Upgrading the export development program can do more to strengthen the agricultural economy than simply cutting the budget for this program. Increasing export volume is an essential part of any program to lead American agriculture out of its current depression.

ADVANCE DEFICIENCY PAYMENTS

The conference report requires that the Secretary of Agriculture make advance deficiency payments, covering 70 percent of projected payments, under the programs for the 1982 crops of wheat, feed grains upland cotton, and rice. The payments will be made as soon as practicable after October 1, 1982.

For the 1983 crops, if there are acreage limitation or set-aside programs, the Secretary will be required to make not more than 50 percent of any projected deficiency payment in advance, as soon as practicable after producers sign up for the program involved.

I strongly support the adoption of the provisions for advance deficiency payments to farmers. This provision is also patterned after S. 2661.

These provisions will enable hard-pressed farmers to receive hundreds of millions of dollars this October and, again early in the 1983 crop year—in time to help with payment of production and harvesting costs. These payments are not additional outlays—they are partial payment of funds which farmers would otherwise receive later in the crop year. Such early payment will likely provide an additional incentive for farmers to participate in the acreage reduction programs for these commodities.

FOOD STAMPS

The conference report makes revisions that will reduce the cost of the food stamp program, tighten work requirements, and enhance program management. This is the fifth time in 5 years that Congress has acted on legislation making major changes to the food stamp program.

Food stamp program costs will be reduced by nearly $2 billion over the next 3 years, with nearly one-third of the savings coming from a reduction in errors in administration.

CONCLUSION

Mr. President, budget-cutting is extremely difficult at a time when farmers and other citizens are suffering from the effects of the economic recession. However, we must act responsibly to reduce the huge Federal deficits. I believe the provisions in the conference report are a step in the right direction. Many of these provisions will be beneficial to farmers and, because there is a strong relationship between the state of the agricultural economy and the national economy, they can help to eliminate many barriers to economic recovery.

All of the conferees are to be commended for their efforts in reaching an agreement on the farm and food stamp provisions. Three of the conferees are deserving of particular praise for their leadership and hard work. I refer, of course, to Chairman DE LA GARZA, Chairman HELMS, and Representative WAMPLER.

Mr. ROBERT C. BYRD. Mr. President, I must cast my vote against the conference report because I believe it practices unwise, unfair, and false

economy in several areas, particularly the cutbacks and delays in cost-of-living adjustments to several groups of our citizens.

Under this report, all civil service and military retirees, regardless of age, will face a 1-month delay in receiving their COLA's. In addition, those same two groups of citizens if age 62 or under, will receive only one-half the cost-of-living adjustments that others will receive in fiscal 1983-85.

I am told that the average civil service retiree would lose about $66 a year because of the 1-month delays in COLA's, and that the retiree under age 62 would lose an additional $230, for a total loss of about $300 a year. The loss for military retirees would be similar but slightly less.

Mr. President, the loss of $300 a year is a very serious blow to many older Americans. We are asked, in the name of economy, to make arbitrary cutbacks that will harm the standard of living of a great many older Americans who are already hard pressed by the inflation and recession that grip our Nation.

I believe that this singling out of older Americans to bear the burden of our Nation's economic troubles sets a dangerous precedent. I fear there are those who will soon come to us with proposals, based on the same sort of reasoning, to make drastic cuts in social security, medicare, and other programs for older Americans.

I believe the Senate can and should find better, more equitable ways to practice the economy that we all agree is necessary. For that reason, I must cast my vote against this conference report.

Also Mr. President, this conference report still has the origination fee on Veterans' home loans. A provision which I opposed in the Senate version of this bill. With the housing market as depressed as it is, this provision along with the "upfront" collection of the FHA mortgage insurance premium can only aid in making a deplorable situation in the housing industry even worse.

Mr. DOMENICI. Mr. President, I want to conclude by just saying, having heard the speeches this afternoon, that one thing I hope we will all retain and that is a good sense of humor. To some extent, it was a rather hilarious afternoon.

In addition, I would just like to say to my wonderful friend who gave the speech today of a mixture of optimism and gloom that I hope the stock market, if it went down, went down before he made his speech.

Mr. HOLLINGS. I do, too.

Mr. DOMENICI. And I would think he would want that, too. I hope that occurred.

I yield back the remainder of my time.

Mr. BAKER. Have the yeas and nays been ordered?

The VICE PRESIDENT. The yeas and nays have been ordered.

All time having been yielded back, the question is on agreeing to the conference report. The yeas and nays have been ordered and the clerk will call the roll.

The legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Florida (Mr. CHILES) is necessarily absent.

The VICE PRESIDENT. Are there any other Senators in the Chamber wishing to vote?

The result was announced—yeas 67, nays 32, as follows:

[Rollcall Vote No. 335 Leg.]

YEAS—67

Abdnor	East	McClure
Andrews	Exon	Murkowski
Armstrong	Garn	Nickles
Baker	Glenn	Nunn
Baucus	Gorton	Packwood
Bentsen	Grassley	Pell
Biden	Hatch	Percy
Boren	Hatfield	Pressler
Boschwitz	Hayakawa	Quayle
Bradley	Heflin	Roth
Brady	Heinz	Rudman
Byrd, Harry F., Jr.	Helms	Schmitt
	Huddleston	Simpson
Chafee	Humphrey	Specter
Cochran	Johnston	Stafford
Cohen	Kassebaum	Stennis
D'Amato	Kasten	Stevens
Danforth	Laxalt	Symms
DeConcini	Leahy	Thurmond
Denton	Levin	Tower
Dixon	Long	Wallop
Dole	Lugar	Warner
Domenici	Mattingly	

NAYS—32

Bumpers	Hawkins	Moynihan
Burdick	Hollings	Proxmire
Byrd, Robert C.	Inouye	Pryor
Cannon	Jackson	Randolph
Cranston	Jepsen	Riegle
Dodd	Kennedy	Sarbanes
Durenberger	Mathias	Sasser
Eagleton	Matsunaga	Tsongas
Ford	Melcher	Weicker
Goldwater	Metzenbaum	Zorinsky
Hart	Mitchell	

NOT VOTING—1

Chiles

So the conference report on H.R. 6955 was agreed to.

Mr. DOMENICI. Mr. President, I move to reconsider the vote by which the conference report was agreed to.

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

The motion to lay on the table was agreed to.

Mr. DOMENICI. Mr. President, the Senate's vote which was just concluded sends this bill to the President. I am confident he will sign it into law. Today's vote is the culmination of almost 2 months of intensive work by the members and staffs of the seven Senate committees which received reconciliation instructions. I would remind the Senate that the first budget resolution for fiscal year 1983 was approved by both Houses on June 22, the committees which received reconciliation instructions have produced legislation complying fully with those instructions. Those committees then helped sell the legislation to the full Senate, and successfully concluded the very delicate negotiations with the House which produced the conference agreement just approved by the Senate.

I also want to take note of similar work in the other body. Despite a lot of misgivings on the part of many of the House Members, and despite substantive differences between the House and Senate bills, the House Members nevertheless demonstrated repeatedly their responsibility and their concern about the fiscal conditions of the National Government. Both sides of the conference engaged in the kind of give and take that is essential when a bill of this importance is approved.

As I said before, it is noteworthy that the House Members, most of whom are facing the voters this fall, were willing to approve this bill by a substantial margin earlier today.

Finally, Mr. President, I want to take note of the fine work of the members and staffs of the Senate and House Budget Committees. It is truly a privilege to work with the type of people who serve on the Senate Budget Committee and with the staff members who work very hard in support of the committee members. Chairman JONES and the other members of the House Budget Committee are also supported by a fine staff.

Mr. President, I ask unanimous consent that the Senate express its appreciation for the effective work done by the members and staffs of the various Senate committees in developing S. 2774, the original Senate omnibus reconciliation bill, and in negotiating the agreements with the House which produced the final version of H.R. 6955.

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

Mr. BAKER. Mr. President, it is my understanding that the distinguished manager of the bill for the majority will shortly ask the Senate to proceed to the consideration of House Concurrent Resolution 396, making technical and clerical corrections. A parliamentary inquiry: Does that fall within the scope of the previous order providing that this matter would be dealt with and the Senate would then return to the consideration of the debt limit?

Further, does that action in no way jeopardize the right of the party who had the floor to be recognized under the previous order?

The PRESIDING OFFICER (Mr. HAYAKAWA). The Senator is correct.

Mr. BAKER. I thank the Chair.

I yield the floor.

TECHNICAL AND CLERICAL CORRECTIONS

Mr. DOMENICI. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of

the House Concurrent Resolution 396, which makes technical and clerical corrections to the Omnibus Reconciliation Act of 1982.

The PRESIDING OFFICER. The clerk will state the resolution.

The legislative clerk read as follows:

A concurrent resolution (H. Con. Res. 396) to correct technical errors in the enrollment of the bill H.R. 6955.

The PRESIDING OFFICER. Is there objection to the present consideration of the concurrent resolution?

There being no objection, the concurrent resolution (H. Con. Res. 396) was considered and agreed to.

Mr. DOMENICI. I move to reconsider the vote by which the resolution was agreed to.

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

The motion to lay on the table was agreed to.

TEMPORARY INCREASE IN THE PUBLIC DEBT LIMIT

Mr. BAKER. Mr. President, at this point, we return to the consideration of the debt limit.

I inquire of the Chair, what is the pending question?

The PRESIDING OFFICER. The clerk will state the unfinished business by title.

The legislative clerk read as follows:

A House joint resolution (H.J. Res. 520), to provide for a temporary increase in the public debt limit.

The Senate continued with consideration of the joint resolution.

UP AMENDMENT NO. 1253

The PRESIDING OFFICER. The pending question is the amendment of the Senator from Montana (Mr. BAUCUS).

Mr. BAKER. Mr. President, could I inquire, under the order——

Mr. BUMPERS. Mr. President, may we have order so we can hear the majority leader, please.

The PRESIDING OFFICER. The Senate will please be in order. Senators will please conduct their conversations in the cloakroom.

The majority leader is recognized.

Mr. BAKER. Mr. President, under the order, who will the Chair recognize pursuant to the previous arrangement?

The PRESIDING OFFICER. The Senator from Oregon (Mr. PACKWOOD).

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

The PRESIDING OFFICER. The Senator from Oregon is recognized.

Mr. BAKER. Mr. President, will the Senator from Oregon yield to me without losing his right?

Mr. PACKWOOD. Without losing my right.

Mr. BAKER. Mr. President, I meant to say this earlier. We will continue on this debate for as long as it appears productive to do so. I do not anticipate asking the Senate to remain past approximately 8 p.m. this evening.

Now, Mr. President, I yield the floor.

Mr. BUMPERS. Mr. President, will the majority leader yield for a question?

Mr. BAKER. Yes, I yield.

Mr. BUMPERS. Does the majority leader want to assure the Senate that we will or will not have votes?

Mr. BAKER. Mr. President, I would like to do that, but I cannot, I am afraid. I do not anticipate votes, but I must say that there is always the possibility of a vote in a situation such as this. There are a number of things that might be done as a matter of right of the Senators which will require a vote. I cannot assure that there will not be. I hope that there are not, and I do not anticipate any.

Mr. PACKWOOD. I might add to the majority leader's statement that it would be my intention to talk at some length tonight, and I do not expect votes. I do not intend to ask for any votes, and I would expect to talk to close to the time the majority leader is ready to go out.

Mr. BUMPERS. Maybe the Senator from North Carolina would like to say the same thing the Senator from Oregon just said.

Mr. HELMS. Gladly.

Mr. BAKER. Now, Mr. President, under the same conditions and terms will the Senator yield to me one more time?

Mr. PACKWOOD. I yield.

Mr. BAKER. Mr. President, I make that a unanimous-consent request.

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

Mr. BAKER. Mr. President, I do not know, it may be a forlorn——

Mr. PELL. Order, Mr. President.

Mr. BAKER. Order, Mr. President, for one more moment.

Mr. STENNIS. Mr. President, I ask for order. We like to hear what the majority leader says. We cannot hear.

Mr. BAKER. Mr. President, it may be a forlorn hope, but I still hope that we can arrive at a unanimous-consent agreement on a vote on one of these amendments. I hope that we could get one of the significant and basic amendments such as the Helms amendment as now modified, and I will not now make a request, but I urge my friend from Oregon and my friend from North Carolina to once again explore that possibility and see if we cannot get a time limitation on one of these principal amendments to this bill.

Mr. HELMS. Will the Senator yield?

Mr. BAKER. Yes, I yield.

Mr. HELMS. I will agree with anything the majority leader recommends.

Mr. PACKWOOD. Could I ask the majority leader this, and the Senator from North Carolina. Is the Senator talking about a vote on his amendment, one vote including both prayer and the abortion segments of the amendment?

Mr. BAKER. Mr. President, I can hardly wait.

Mr. HELMS. If the Senator will yield, I think that the order is established by Senate Rules. The first vote will be on the Baucus amendment, the second on the Wiecker amendment.

Mr. PACKWOOD. I think the majority leader is asking on the Senator's amendment. I do not think he was referring to the Baucus or the Weicker amendment in that request that the Senator and I try to work something out.

Mr. HELMS. Why do we not ask the Chair what is the order of votes?

Mr. BAKER. Mr. President, a parliamentary inquiry. What is the sequence of voting in the series of amendments that have been offered to this point?

The PRESIDING OFFICER. If no further amendments are offered, the first vote will be on the amendment offered by the Senator from Montana (Mr. BAUCUS), unprinted amendment No. 1253, followed by a vote on the amendment offered by the Senator from Connecticut (Mr. WEICKER), unprinted amendment No. 1252, followed by a vote on the amendment offered by the Senator from North Carolina (Mr. HELMS), unprinted amendment No. 1251, followed by a vote on the amendment offered by the Senator from North Carolina (Mr. HELMS), No. 2031, as modified, followed by a vote on the committee substitute and final passage.

Mr. PACKWOOD. Could I inquire further of the Chair, obviously anything that we can work out on a vote would be dependent on unanimous consent because there would have to be some time constraints put on it. I realized what the order of the vote was, but I am trying to find out from the Senator from North Carolina, when we get to his amendment, what it is he wants a vote on. Is it on just the abortion part, the prayer part or a vote on—because a motion to table would be in order on the overhanging amendment. What is it the Senator wants to vote on?

Mr. HELMS. Of course, I would follow the rules of the Senate and go to the Baucus and Weicker and two Helms amendments in the order stipulated by the Chair.

Mr. PACKWOOD. Do I understand that the Senator from North Carolina would or would not agree to a unanimous-consent to vote on his amendment as amended so that we would be voting on both prayer and abortion in one vote?

Mr. BAKER. As modified.

Mr. PACKWOOD. As modified, yes, but it would be one vote on the whole amendment.

Mr. HELMS. I will have to think about that, in all seriousness.

Mr. BAKER. Will the Senator from Oregon, who has the floor, yield without losing his right to the floor?

Mr. PACKWOOD. Without losing my right to the floor.

Mr. BAKER. Mr. President, let me plant another seed in the minds of the principals. I think we are not yet ready to consummate a unanimous-consent agreement on this subject, but I think we are making headway. I hope that tomorrow, shortly after we get back on this bill, the Senate would be in a position to consider a unanimous-consent request by me or by any other Senator, but the one that I would propose would be perhaps to vote on the Helms amendment in some formulation, perhaps including both prayer and abortion or some other formulation, and the remaining part of the original request, that is, if we get a time limitation on something we can agree to, that is, the vote on abortion, that no other bill or amendment dealing with abortion would be in order this session of the Senate, with the exception of the Hatch amendment to the Constitution, which I have pledged to bring up.

That is what I hope we can arrange. As I say, that is a pretty big pill to swallow for some people in one sitting, so I will not make the request at this time. I hope Members will think about that and see if we can arrange a time certain to vote on an abortion amendment, and provided then that we will also vote on a Hatch constitutional amendment, and that no other bills or amendments dealing with abortion would be in order for the remainder of this session. That is what I hope for, Mr. President.

Mr. President, I thank all Senators for yielding to me and listening to my prayer for an early Christmas.

Mr. PACKWOOD addressed the Chair.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. PACKWOOD. I reiterate what I said earlier that as far as I am concerned I plan to ask for no votes tonight, and I think the Senator from North Carolina probably has the same feeling. I cannot assure Senators that they are safe in going home, but I have no intention of asking for any votes and will be talking for several hours.

Mr. BAKER. Mr. President, I ask unanimous consent that the Senator from Oregon may yield to me without losing his right to the floor.

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

The Senate will be in order.

Will the majority leader please restate what he just said?

Mr. BAKER. Yes. I ask unanimous consent that the Senator from Oregon may yield to me without losing his right to the floor.

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

Mr. BAKER. I thank the Chair and I thank the Senator from Oregon.

Mr. PACKWOOD. Mr President, as we move into the discussion of the issue of denying to the Federal courts jurisdiction over certain cases, the argument is going to be raised on both sides as to whether or not we have the constitutional right to do so. Those who want to alter the Federal court's decision will cite a variety of cases, including that of ex parte McCardle, to indicate that this Congress has the right to deny to the district court or the court of appeals, or on occasion, for that matter, the U.S. Supreme Court, jurisdiction over issues we want to take away from them.

Others will cite the contrary. They will distinguish the McCardle case as an unusual case that does not hold what its proponents say it holds.

It is fair to say, however, that whatever we pass in Congress, if anything, limiting the jurisdiction of courts will be tested in the courts, as to whether or not it is constitutional. I think, therefore, we should ask not whether what we are attempting to pass is constitutional. That begs the question, and that is going to be tested, in any case, in court.

I think we would be wiser to ask, Is what we are attempting to pass good policy? Should this Congress be involved in taking away the jurisdiction of the Federal courts in general and the Supreme Court specifically, jurisdiction over issues, because we do not like the decisions that the courts have made? That is what the nub of this controversy is.

I should like to think that, at bottom, this Congress, as a matter of policy, before we ever got to the issue of constitutionality, would say, for the sake of all our liberties, that if we do not like Supreme Court decisions, we will try to change them in a way that our founders intended, which was a constitutional amendment, rather than attempting to take away the jurisdiction by statute, which requires only a majority vote.

I know the arguments that are made. Busing was never an issue at the time of the Constitution. School prayer was never an issue at the time of the Constitution. Abortion was never an issue at the time of the Constitution. Therefore, as our founders had no thoughts about these issues, or at least a thought that rose to the dignity of being mentioned in the Constitutional Convention and written into the Constitution, we are privileged, at a later time, to decide what they might have thought and attempt to interpret what they might have thought for us; or, we are entitled, because they said nothing about it, to attempt to overturn Supreme Court decisions interpreting the Constitution they wrote.

They will also say that the public, for example, is overwhelmingly opposed to busing, and therefore take the jurisdiction of the Federal courts over the issue of busing away from them; the public does not support busing. Or, they will come to the issue of prayer and will cite polls to show that, by a margin of 2 to 1, the public wants to reinstitute prayer in the public schools.

So those who were opposed to the court jurisdiction would say, "Take away the jurisdiction of the Supreme Court; the public supports school prayer." But then when we come to the issue of abortion, the same polls that show a majority for reinstituting school prayer show a majority who say that a woman should have a right to make a choice as to whether or not she wants an abortion, and we should not take that away from the courts. Those who will cite polls in their favor or busing or on prayer will then dismiss the polls on abortion.

Mr. President, you cannot have it both ways. You cannot say, "We will vote to take away from the court all those rights that the public, by a majority vote, decide they do not like the court's decision on, unless we do not agree with the majority of the public, in which case we will try to take away their rights, no matter what the public thinks about them."

Regardless of what public opinion may be, Mr. President, I should like to think that when it comes to the fundamental liberties of this country, we will not be passionately slipped off our feet, whether or not what we do is constitutional, that we will not be passionately swept off our feet because the popular majority under a certain circumstance happens to like or not like something.

Our founders, Mr. President, when they created the Constitution understood full well that on occasion passion and prejudice can obscure judgment. They understood very well that Presidents, legislators, and Members of Congress can easily be swept off their feet by popular movements, can bend to transitory pressures. Therefore, they created a Supreme Court and very clearly indicated, as you read the Federalist Papers and the debates of the Constitutional Convention, that they intended that Supreme Court to be the final arbitrator of what the Constitution meant and said. It is very clear that they thought if there be a conflict between laws and the Constitution, that the Constitution would govern.

Mr. President, I know the argument will be made that the Constitution says that Congress creates the inferior courts, the courts of appeals and the

Federal district courts, and determines their jurisdiction, and as we have the right to create the court as we want and to determine their jurisdiction we can if we want decide to take away part of their jurisdiction.

The statute most often cited for that proposition is the Norris-LaGuardia Act where Congress said that Federal courts could no longer issue injunctions in labor disputes.

Whether or not we have the right to do that went to the courts. The Supreme Court held that we had the right to do it. But it is important to understand that that related to just one remedy, injunctions in labor disputes.

It is important to remember that never, never in the history of this country save with the possible exception of that McCurdle case, have we ever in Congress tried to take away the fundamental liberties set forth in the Constitution and the Bill of Rights principally in the 13th, 14th, and 15th amendments that guarantee the liberties of all of our citizens.

We have never even seriously thought we had the right to do it. But thank God wisdom has been such that we have not tried to do it, whether or not we have the right to do it, because picture the situation if we can do that: We have the right to create the Federal district courts. We have the right to determine their jurisdiction. Do we have the right, therefore, to demean certain constitutional rights because we have the right to determine their jurisdiction? I will put you a situation, a particularly heinous kidnaping and murder case, Lindbergh situation, a Patty Hearst situation. Assume a suspect is caught and in the process of being taken to the police station and interrogated makes several statements to the police officers, perhaps even signs a confession that may or may not have been extorted out of him, and goes to trial. The defendant's attorneys decide not to put the defendant on the stand, as they have the right to do. Despite that the trial judge allows the admission of the quasi-confession or the statements that the defendant made to the police officers, and the jury convicts the defendant. The case is appealed through the courts and gets to the U.S. Supreme Court, and the U.S. Supreme Court reverses the conviction and sets the man free, saying that the statements made to the police officers should not have been admitted, that it violated the defendant's right against self-incrimination and because of double jeopardy the defendant cannot be tried again.

Imagine the outcry you would have in this country if the defendant were involved in a Lindbergh or a Patty Hearst kind of case. What you would have, Mr. President, is some people in Congress urging legislation to take away from the Federal courts the right to pass on cases involving self-incrimination.

Or I will put you another case, and I will wager in this Congress today there are people who wish they could do it: The press—no, let us take a better one—speech, the inflammatory statements, the barn burners of the country make and they are often not made by people who we choose to socially associate with. On occasion they defame elected officials. On occasion they say worse. On occasion they frighten us, they make statements about our forms of government. We regard them as dangerous, we say, to our liberties and so we introduce legislation to say that in certain types of cases involving speech the Federal courts shall have no jurisdiction to hear the cases.

Mr. President, I think it is unconstitutional to do that. I do not think we have the power to say that certain kinds of cases involving fundamental constitutional liberties may be taken away from the courts, but if we have the power, and again I will emphasize if any legislation like this is passed it is clearly going to court. But if we have the power it is not wise policy because the only ultimate protector any of us have, you, Mr. President, or me, or any other citizen in this country, is a court that is willing, because of its long tenure of lifetime appointment and a long tradition of reverence for the Constitution and the Bill of Rights, to stand up for the unpopular person and the unpopular opinion.

Mr. President, it is said that if the court makes wrong decisions, we should right them.

Mr. President, the history of Congress and the Presidency has had some glorious moments, moments of great tradition, great excitement, and great leadership.

But we have also had some moments of disrepute and sham, both Congress and the President.

The Alien and Sedition Acts passed in the late 1700's ironically shortly after this country was founded, prohibiting publication of material bringing the Government or the President into disrepute—clearly were unconstitutional. Fortunately, the acts had a sunset provision and they ran out before they were declared unconstitutional but they clearly would have been declared unconstitutional and Congress was so ridiculed that they did not have the gall to repass them.

Andrew Jackson in the early 1830's trying to hold together what was already starting to be a divided Nation on the issue of slavery, by Executive fiat issuing an order barring abolitionist materials from the mails so that information unsympathetic to the slave owners in the South would not be sent through the mails—clearly unconstitutional but undertaken by a great President, Andrew Jackson, in an effort he thought to prevent the Nation from rendering itself asunder and if that required a slight violation of the Constitution, so be it.

In our era, the McCarthy era of the 1950's, we were swept off our feet by the fear of communism, at a time when Congress came close to violating the constitutional rights of many citizens in this country, and did violate the constitutional rights of a few; the Watergate era, clearly an effort by the Presidency to violate the constitutional rights of our citizens with acts of search and seizure that certainly bordered on unconstitutionality, taken by an administration because, of course, they knew they were right, and when you know you are right, when God speaks to you and says, "I know you are right, I am going to tell you what to do," then, of course, it is clear that those who disagree must be wrong, and if the Constitution stands in the way of correcting the actions or the thoughts of those who are wrong, forget the Constitution a little bit.

Perhaps the worst violation, however, at least in our era, was the internment of the native-born Americans of Japanese ancestry during World War II. Interestingly, these were not immigrants. These were not aliens. There were native-born American citizens of Japanese ancestry.

Many in this body will remember the passion following Pearl Harbor, the fear of the Japanese invasion of the coast of California, Oregon, and Washington, the absolute paranoia which seized us after Pearl Harbor. Our Navy had been destroyed, although fortunately not our planes, but it was a few months after Pearl Harbor, before the battle of Midway and, indeed, we turned the tide of the war in the Pacific, but that fear, following Pearl Harbor, led us to put into camps located hundreds of miles from the Pacific coast, native-born Americans were we kept them for the duration of the war.

Interestingly, we did not put into camps native-born Americans of German or Italian ancestry on the Atlantic coast, only native-born Americans of Japanese ancestry on the Pacific coast.

Apart from the ignominius act of interning any native-born Americans, I thought it was an interesting distinction that we selected only those of Japanese ancestry, with whom we were at war, as a danger to this country.

Interestingly, because of their physical characteristics, we were worried about the terrorism or about the saboteurs, people who were clearly more physically identifiable to the police and the citizenry, if they attempted to engage in acts of sabotage, clearly

more identifiable than were those of Italian or Germany ancestry.

Mr. President, the case involving the internment of those Americans of Japanese ancestry went to the Supreme Court. Even to prove that the Supreme Court in moments of extraordinary fear can be swept off its feet, a divided Court in a close vote upheld the constitutionality of the internment. The internment was based upon the executive order of an American President celebrated by most people for his feelings toward the underdog, for this feelings toward human liberties and civil rights. The President was Franklin Roosevelt who issued the order to imprison our citizens.

Equally interesting, although it was not a case in which he was directly involved, the district attorney of Alameda County, Calif., at that time spoke in favor of the internment, and his office argued in favor of the internment, and he clearly was on record in favor of the internment. That district attorney in Alameda County, Calif., in the Oakland area, at that time was Earl Warren, the man later to become the Chief Justice of the Supreme Court of the United States, and to this day a person revered for his defense of civil liberties.

In Justice Warren's defense it can be said that in his memoirs he looks back upon the internment as a terrible mistake, one of which he was ashamed in his participation and in his views, and he recanted as best as was possible.

But he attempted to explain, not to excuse, the passions of the times, and how even he could be swept off his feet in a moment of fear at a time when, in retrospect, it was very clear that the Japanese Empire was in no position to invade the Continental United States.

So, Mr. President, we want to be wary about reactions to Supreme Court decisions. As I have indicated, once we start down the road of saying the Court may not hear cases involving, and then put in dot, dot, dot, prayer, abortion, busing, what else, whatever 51 of us in the Senate can think up and get the votes to pass, because we are mad at something or somebody or afraid of something we do not know or put out because a dissident minority does not march to the same drummer we do, let us be wary about starting in that direction.

Mr. President, the history of liberty in this country is not furthered by a compelled conformity to a particular view. Liberty is best protected by diversity, by 100 voices arguing 100 viewpoints, all with a mutual tolerance for each other's differences of opinion.

Nowhere is it more important than in the area of religion, because when the matter involves religion it somehow in all of our minds occupies a higher priority.

We can disagree whether or not radio stations ought to have 5- or 7-year licenses, and whichever way you come down on that issue does not rise to the level of a moral issue. We can disagree in good conscience about wage and price controls. We can disagree on whether or not block grants for education are good or bad things. But when it comes to the issue of religion, when we believe that God speaks to us, then we somehow feel compelled to enforce our views on others because not to do so would be immoral for us because we would be crossing our God.

We had that era in America once, very strict religious colonies, most heavily emphasized by the Puritans, who came from England to escape religious persecution in that country, because their views were different from the then established religion, the Church of England.

They were harrassed, their properties taken, the right to attend the church of their choice limited. They came to this country and imposed, in the areas where they settled, the very same doctrinaire, intolerant religion that they had left—not the same religion, different religion, but the same intolerance.

Unfortunately for them, they left England only about 20 years too soon, because at this time in the early 1600's, there was a growing dispute in England between the Catholic dynasty, the Stuarts, and the Church of England and the so-called independents or dissenters. They had a variety of different names—Presbyterians in Scotland, dissenters in England. But they are all what we would regard now to be significant religions in many areas. They were regarded then by the establishment much in the same way we might regard many of the cults, or minor, or newer religions in our country today.

The irony was that the Puritan faction gradually began to gain a certain control in Parliament. And the King, King Charles I, was having more difficulty with Parliament. And Parliament by that time had gained a quasi-control of the purse, not a full control of paying for the cost of government, but a quasi-control of the purse.

Roughly, you had this situation: The King, if there was no war and if he was frugal, could probably pay for the bulk of the civil costs of government from the crown revenues. He did not have to levy taxes to do it. The King had great land, the incomes from them would pay for the civil cost of government. The problem was the King could not levy war because his lands would not produce enough revenue.

In 1628, Parliament adjourned and it was not called again for 12 years. King Charles I attempted to govern in those 12 years without calling Parliament. And he did not want to call Parliament because it was fractious and disputing and did not like him and was being controlled more and more by the dissidents and the independents rather than the Church of England. Especially was this true in the House of Commons.

But finally, in 1640, the King had no choice, becaue the Scots were at war with the English and were beating them badly. And this, of course, was before the union that joined together the countries of Scotland and England. Beating them badly, they moved into significant positions in northern England. They were allied with the Welsh. The French, of course, forever making trouble with the English, were encouraging them, partially arming them, and England was in a desperate situation.

So the King called Parliament. Parliament, of course, while not liking the King was not enthusiastic about the Scots coming down into their country. But before they would appropriate money for the war, they wrung from the King certain concessions about the rights of Parliament and the rights of the English citizenry. The King set forth a petition saying he would grant those. The money was appropriated and the war was not won by England but a temporary armistice was arranged.

Whereupon, the King reneged on his promises. But at this stage, it was too late. The Parliament had a heavy taste of independence.

Oliver Cromwell, surely one of the most extraordinary natural leaders in history—I do not say that in the sense of a naturally good leader. The man had extraordinary elements of evil in him. But natural leader, nonetheless.

A man of middle income, certainly not born to the gentry in the sense of the lords but not born to poverty, a man who had had some slight training as a youth in the riding of horses, but no military training—none—and certainly not the kind of military training and the training in the handling of arms that the gentry and nobles had in that day.

Cromwell became the parliamentary leader in the Parliament in the early 1640's. It became very clear that there was going to be a division at last and perhaps war between the Parliament on the one hand, allied with the city of London, allied with some of the merchants against the King and the landed gentry and the nobles.

And there was a standoff for a while. As the war went on, it became clear that Cromwell, if it was going to be successfully prosecuted, could not only continue to be the leader of the Parliament but he was going to have to be the leader of the army, the Army of the Round Heads, as his group was called, because they shaved their heads. He had to be their leader be-

cause it was a fanatic religious army. Anyone could not join. Officers were elected. They prayed daily. They would pray in the middle of battle. They had that incredible zeal that comes to you when you know that God is on your side and God is against your enemies.

The King retreated to the country, set up his standards of forces a good distance from London. Cromwell became the very effective leader of the Parliament now deserted of the King forces. Only the difficulty was he was now having some difficulty with other religious groups in the Parliament who were not the Independents, not the Puritans, not the Church of England. And he was having difficulty getting the Parliament to appropriate money for his army which was called the New Model Army. Indeed, an extraordinary army it was. They used horses half the size of the great warrior horses the nobles used. They learned to charge in formation and reform and charge again and reform and charge again, which was at that time new in cavalry warfare.

So, at the same time that Cromwell was trying to train and retrain his army, he was also trying to keep his hands on the Parliament. Finally, it became clear that Parliament was simply too fractious to control.

So one day, Colonel Pride, one of Cromwell's aides, simply stood at the door of Parliament in what has become known in history as "Pride's Purge." He simply turned away all who disagreed with Cromwell and the Puritans. And, of a Parliament that at that time numbered in excess of 500 people, only 57 were left.

Cromwell finally could not entreat with the 57, and on one famous day in history he went in the Parliament and, in essence, said to them, "Be gone. You are a disgrace to God and the country." And he dismissed the Parliament and attempted to rule alone, with only the army at his side and as his strength, in a country that did not have a history of a standing army, in a country that has, as we do, a tradition of civilian control of the military. And at this stage Cromwell found himself alone. All of his former allies left him.

(Mr. MURKOWSKI assumed the chair.)

Mr. PACKWOOD. The King, who was never to be at the peak of his strength, was at the peak of his strength, and there then ensued what is known as the second civil war, the first one having been basically the fight between Parliament and the King, the second one now being the fight between Cromwell and everyone.

Winston Churchill describes it as well as it can be described in his "History of the English Speaking Peoples" when he said as follows:

The story of the second civil war is short and simple. The King, the Lords and Commons, landlords and merchants, the city and the countryside, the church, the Scottish army, the Welsh people, and the English fleet all now turned against the new model army. The army beat the lot. And at their head was Cromwell. It was the triumph of some 20,000 resolute, ruthless, disciplined, military fanatics over all that England ever wished or ever willed.

Twenty thousand in a country of 3 million. Twenty thousand zealous Puritans, a country of 3 million in which the Puritans probably never numbered over 75,000 to 100,000, imposing their will on a country with a tradition of a love of liberty as great as ours, because of their absolute conviction and willing to act on it, and they did.

Mr. President, as I have just indicated, both from the acts of this country, the Alien and Sedition Acts through Watergate, and the history of the Cromwell period, it is very clear that under certain circumstances a country can be swept off its feet. It is perfectly natural, it is perfectly understandable, and for any one of us in or out of elective office to say, "I have never lost my better judgment of the past"—if we can say this I think we are fooling ourselves or fooling others.

It is imperative that we realize that the carrying out of the will of the majority does not take great courage. It is the protection of the rights of the minority against the wishes of the majority that takes great courage.

Unfortunately for those in the vanguard of the defense of civil liberties, it is often not a defense of some properly suited, short-haired, attractive defendant. It is often the defense of a wild-eyed, woolly haired, radical-looking defendant who runs against the grain of America and we defend his rights because if his rights can be taken away procedurally, ours can, too.

I well remember speech after speech of the Senator who was my immediate predecessor in the Senate, Wayne Morse, who was dean at the University of Oregon Law School prior to this election to the Senate, and a teacher and well-known constitutional law scholar. If I heard him say once I heard him say 10 times:

Give me control of the procedures of democracy, and I will control the substance of democracy.

It is interesting to note that the effort to take away court jurisdiction in terms of whole great classes of jurisdiction over entire subjects is relatively new to this Republic.

I want to quote a memorandum from the Library of Congress by Leland Beck, one of their staffers who has done excellent work in this subject.

The memorandum is entitled: "Historical Proposals To Except Particular Cases From the Appellate Jurisdiction of the Supreme Court of the United States."

This report reviews the major historical proposals to except particular cases from the Supreme Court's appellate jurisdiction. The Constitutional premise for these bills is the Exceptions and Regulations Clause of Article III, § 2, of the Constitution. After enumerating the types of jurisdiction contemplated in the Constitution and specifying when that jurisdiction is to be trial in nature, the Constitution provides: "In all other Cases before mentioned, the Supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make."

Prior to 1956 there do not appear to have been any substantial proposals to except particular classes of cases from the Court's jurisdiction. The authority exercised by Congress was limited to the regulation of processes of review by the Court. Numerous calls were made in the early days of the Republic for the abolition of the Court's jurisdiction to review decisions of the State courts of last resort, but none of these proposals succeeded; on the contrary, there was a steady increase in the scope of both the Supreme and inferior federal courts' jurisdiction.

Beginning in 1956, numerous proposals have been introduced to except a particular specie of cases from the Court's jurisdiction. The purpose of these proposals has been to stop the Court from further elaborating particular areas of constitutional law. The proposals have included both generic rights and particular types of prospective legislative review, including: due process in subversive activities regulation, contempt of Congress, desegregation of schools, reapportionment of State legislative bodies, regulation of obscenity, prayer in public schools, abortion, gender discrimination in military conscription, and others. We will here review the proposals which have received serious Congressional attention.

The first bill to receive formidable consideration was introduced by Senator Jenner in 1957. S. 2646 proposed to except from the Court's jurisdiction "any case where there is drawn into question the validity of" five different areas of governmental regulation or activity. At the time of hearings, the bill provided:

Notwithstanding the provisions of sections 1253, 1254, 1257 of this chapter, the Supreme Court shall have no jurisdiction to review, either by appeal, writ of certiorari, or otherwise, any case where there is drawn into question the validity of—

(1) any function or practice of, or the jurisdiction of, any committee or subcommittee of the United States Congress, or any action or proceeding against a witness charged with contempt of Congress;

(2) any action, function, or practice of, or the jurisdiction of, any officer or agency of the executive branch of the Federal Government in the Administration of any program established pursuant to an Act of Congress or otherwise for the elimination from service as employees in the executive branch of individuals whose retention may impair the security of the United States Government;

(3) any statute or executive regulation of any State the general purpose of which is to control subversive activities within such State;

(4) any rule, bylaw, or regulation adopted by a school board, board of education, board of trustees, or similar body, concerning subversive activities in its teaching body; and

(5) any law, regulations of any State, or of any board of bar examiners or similar body, of any action or proceeding taken pursuant

to any such law, rule, or regulation pertaining to the admission of persons to the practice of law within such State.

Mr. President, it is very clear what fear was expressed by Senator Jenner: Communist infiltration, people working in our Government whose loyalty was suspect; funny-looking people in school who, because they did not dress the way the other teachers did or perhaps belonged to the Socialist Party instead of the Democratic or Republican Party, were suspect.

Let me reread just one of these things that Senator Jenner wanted to remove from the Court's jurisdiction.

Any statute or executive regulation of any State the general purpose of which is to control subversive activities within such State.

Subversive activities defined by whom? The State. You cannot appeal it if you are thrown out of a job, or denied your veterans benefits, because you are subversive according to the State.

Let me emphasize again, according to the State, any statute or executive regulation.

Mr. President, I hope I do not have to call to the attention of the Senate not just the kind of mischief that kind of limitation can cause or call to the attention of the Senate the kind of fundamental rights and liberties guaranteed by the Constitution that can abrogate because you will not be allowed to go to Court to test what the State wants to do.

To go on with the memorandum:

By way of correlation, the first exception was founded on the authority of a Congressional Committee regarding witnesses and the power of contempt of Congress, and was in response to the Court's decision in *Watkins* v. *United States.* Second, the bill would have removed jurisdiction to review any program to assure the loyalty of government employees, in response to the Court's decisions in *Service* v. *Dulles* and *Cole* v. *Young.* The third excision of jurisdiction centered on state "subversive activities" controls in response to, among other cases, *Pennsylvania* v. *Nelson.* A still more particular jurisdictional removal centered on rules or regulations of Boards of Education and like bodies concerning "subversive activities" by members of their teaching staff in response to the Court's decision in *Slochower* v. *Board of Higher Education.* Finally, the Jenner bill would have removed jurisdiction to review bar admissions practices and policies, a response to *Schware* v. *Board of Bar Examiners* and *Konigsberg* v. *State Bar of California.* All of these decisions were handed down during 1956 and 1957 and limited the Cold War loyalty and security programs. The bill was thus a major political response tuned to the perceived crisis of its time. The style of the bill, however, appears to be the first attempt to utilize in the strict linguistic sense the power of Congress to make "exceptions" to the Court's appellate jurisdiction.

Hearings were held on the bill and a substantially revised and more limited version was reported to the floor of the Senate. After it became apparent that the leadership would not call up the Jenner bill, proponents of the measure moved to attach it to another bill dealing with the federal courts. Both the new parent bill and the amendment, however, were laid on the table and were extinguished at adjournment sine die. Less problematic responses to another court decision were more successful.

It is interesting to see the procedure. After it became apparent that the leadership would not call up the Jenner bill, proponents of the measure moved to attach it to another bill dealing with the Federal courts. At least the Jenner bill was on the calendar. It had gotten out of committee. The amendments that we are dealing with here now are amendments that have never gotten out of committee. They have been in the Judiciary Committee. The Judiciary Committee will not send out a bill limiting—or has not—the jurisdiction of the courts to review school prayer. To date, they have found it unwise. To date, the Judiciary Committee has not sent out a bill on abortion limiting the right of courts to review that question.

The Judiciary Committee has sent out a constitutional amendment on the subject of abortion and it is on this calendar. And the majority leader (Mr. BAKER) had indicated we will have a debate on that. That, at least, is the fair way to go about amending the Constitution.

I do not want to give anybody any misimpressions. I am not going to support that constitutional amendment. But we will debate it.

(Mr. MATTINGLY assumed the chair.)

If we are going to reverse a constitutional decision of the Supreme Court, that is the way to reverse it. It is the way to reverse it as we did with the 11th amendment because prior to that amendment the Supreme Court had held that a citizen of one State could sue another State. The States did not like that. So an amendment was passed through the proper procedures, two-thirds of the House and Senate, ratified by the States, that a citizen of one State cannot sue another State.

Then we did it again with the Civil War amendments, to reverse the Dred Scott decision in the mid-1850's which said that blacks were not citizens. We did not try to overturn that by a statute. Even at the height of the passion of the Civil War, still the greatest, most devisive war that this Nation has ever been involved in, a war that left a scar on this country that is still visible today, we did not try to reverse the Dred Scott decision by legislative action in a Congress that at that time was barren of southerners.

You could have passed a bill through that Congress easily. People in that Congress realized that you do not tamper with the Constitution in moments of passion by passing a bill to overturn a Supreme Court decision, and so they did it by constitutional amendment.

We did it with the 16th amendment. The Supreme Court said we could not levy an income tax, and over the years there was some thought in Congress of trying to reverse the Supreme Court on that decision by statute, but we did not. We passed the 16th amendment which said that Congress has a right to levy an income tax.

We did it just a few years ago with the 26th amendment. Congress had passed a law lowering the voting age to 18 for Federal and State elections. The Supreme Court said that we did not have the right to lower the voting age to 18 for State elections. We could do it for Federal elections. So an amendment was proposed granting 18-year-olds the right to vote in State elections. It passed by two-thirds of the House and Senate, went to the States and was ratified by the States.

That is the constitutional way that we change decisions of the Supreme Court that we do not like.

Our founders intended very deliberately that those rights written into the Constitution would not be easily abrogated. Before we changed them, they wanted to make sure we thought about it for a long time. We debated it extensively, and we finally sent it out to the States in the form of a constitutional amendment because the rights in that Constitution were so precious that they were not to be abrogated quickly and passionately.

Let me return to the Jenner bill.

A second major attempt to remove a particular subject matter from the court's appellate jurisdiction was in response to the reapportionment decisions: Baker v. Carr and Reynolds v. Simms. H.R. 11926 was introduced in 1964 by Congressman Tuck to remove the court's appellate jurisdiction and to deprive the inferior Federal courts of trial jurisdiction in all cases relating to the apportionment of representation in State legislative bodies.

My fellow Senators, this is within the last 20 years, and it is no wonder the Court finally got into it. Earlier today I was talking to the majority leader because this case of Baker against Carr comes out of his State of Tennessee. He told me that there were two districts—Tennessee has a historic division depending upon whether you are in east or west Tennessee as to whether it has Republican or Democratic tendencies that date back to the history of the Civil War—having a population of about 1½ million people. One of the districts in the other end of the State had 57,000 people.

The Republican Party thought it was being treated unfairly in Tennessee and brought the case to court. The case went up to the Supreme Court, and the Supreme Court for the first time said, "You are right; no more are we going to have people disproportionately represented. Henceforth, it is going to be one-man, one-vote"—a principle today so accepted on its fair-

ness that we would not think of trying to overturn it, but in the heat of the moment at that time there was an effort.

Congressman Tuck's bill was referred to the House Committee on the Judiciary, but the committee gave no evidence of intention to act on the bill.

Very similar to the prayer and abortion bills we face today.

Therefore, proponents of the measure introduced a procedural resolution, which was referred to the Rules Committee and reported out, to discharge the Judiciary Committee from consideration of the bill and calendar the bill for immediate action by the full House. After an acrimonious debate, the resolution was passed and the bill was called for consideration.

Mr. BAKER. Mr. President, will the Senator yield to me without losing his right to the floor?

Mr. PACKWOOD. Without losing my right to the floor and without giving up my right to continue any speeches.

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

Mr. BAKER. Mr. President, I ask unanimous consent that the Senator may yield to me without losing his right to the floor and without the interruption counted as a second speech.

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

Mr. BAKER. Mr. President, I am prepared now to put us in morning business briefly and to resume consideration of this matter tomorrow.

(The following statements were made or submitted earlier today and are printed at this point for purposes of germaneness:)

Mr. PERCY. Mr. President, the amendments offered by the Senator from North Carolina not only address the sensitive and controversial issues of prayer in our public schools and abortion but seek through restriction of court jurisdiction to overturn decisions of the Supreme Court. These amendments raise a very serious question: Should the Congress attempt to accomplish a change in constitutional law by altering the jurisdiction of our Federal courts? I have grave reservations about such a step being within the constitutionally established powers of the Congress, and I am convinced that taking such a step would be poor public policy indeed.

In the first place, under our system of separation of powers, governmental functions are carefully allocated among the three branches. Article III states specifically that "the judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish." It is the judiciary which the founders entrusted with the responsibility to interpret the Constitution and laws passed by the Congress and to hear the cases and controversies arising under them. The Federal courts have long been a vital instrument for the vindication of constitutional rights. At times, they have provided the only bulwark of protection available from the intrusive demands of the Federal Government itself. I believe for several reasons that the attempt to strip Federal courts of jurisdiction over a class of cases offends the underlying structure of the Constitution.

First, this move is an effort by the legislative branch to remove from the judiciary a portion of that "judicial power" vested in it by article III of the Constitution. It is a direct attack on the independence of the courts, and threatens the balance and stability of the separation of powers ordained in the Constitution. Second, I believe it is an attempt to overcome the orderly amendment process set forth in article V by the founders. Third, I believe that any measure which attempts to deny prospective claimants a forum for the vindication of certain constitutional rights must be set against the portion of the Constitution which confers those rights. The provisions of the Constitution are, clearly, far more basic and fundamental than a statute which attempts, however indirectly, to deny enforcement of the rights they provide.

Advocates who have a strong desire to overturn constitutional decisions of the Supreme Court should think long and hard before adopting this approach. While there may be some temporary advantage in passing such an amendment, it would be gained at a deep cost to our system of government. The checks and balances system on which we have relied for almost two centuries would be deeply disturbed. If the Congress began to pass statutes and remove cases arising under them from Federal court jurisdiction, the existing forces of cohesion and unity in our legal system would be sorely tested; fragmentation and disintegration would surely result.

I am not the only Senator who views these court-stripping proposals with alarm. Many able and informed scholars have voiced similar warnings. I would commend to my colleagues some language from a resolution of the Board of Governors of the Illinois State Bar Association, adopted earlier this year. It quotes Mr. Robert Landis, President of the Pennsylvania Bar Association, on the same point:

Tampering with this fundamental responsibility (of the federal courts) as a political expedient to satisfy popular opposition to Supreme Court decisions is a treacherous legislative experiment. It challenges the spirit of the Constitution. Its legitimacy is suspect. Its invitation to vagrant, disparate constitutional interpretations among the high courts of the fifty states could fragment the integrity of the Constitution that has bound this nation for nearly two hundred years into a coherent legal establishment.

For these reasons, I intend to support the amendment offered by Senators BAUCUS and WEICKER to reaffirm the independence of our Nation's courts.

POSITION ON VOTE

Mr. PERCY. Mr. President, on the motion to table the Weicker amendment, I intended to vote in the negative but inadvertently voted in the affirmative not realizing it was a motion to table.

I support the Weicker amendment. My record in opposition to legislation stripping courts of their review of certain issues is clear and longstanding.

The PRESIDING OFFICER. Is the Senator from Illinois attempting to change his vote?

Mr. PERCY. No, I have not sought to change my vote.

Mr. GARN. Mr. President, I would like to take the opportunity to comment on some of the hysteria that invariably accompanies any discussion in this or the other Chamber on the subject of abortion.

To hear the proponents of abortion tell it, by voting for this amendment or for any others like it, we will be putting women in jail for having miscarriages, requiring the decision to have a baby to be between you, your husband, and your Senator, forcing somebody's religion on everyone, subverting a woman's right to control her own body; we even hear extreme references to coerced maternity. I think it's important to reassure people on these points.

The American Center for Bioethics recently completed a study of case law under the abortion statutes which were in effect for 150 years or so until 1973 to see if claims that prohibitions on abortion would result in murder charges or prison sentences had any basis in fact. It was felt that past experience would be a reliable guide, given the dependence of our legal system on precedent. This was the center's conclusion:

No evidence was found to support the proposition that women were prosecuted for undergoing or soliciting abortions. The charge that spontaneous miscarriages could result in criminal prosecutions is similarly unsupportable. *There are no documented instances of prosecution of such women for murder or any other species of homicide;* nor is there evidence that states that had provisions enabling them to prosecute women for procuring abortions ever applied those laws. . . . *In short, women were not prosecuted for abortion. Abortionists were. . . .* It is unlikely that enforcement of future criminal sanctions on abortion would deviate substantially from past performance patterns. (emphasis added).

The enactment of a statute such as the one before us would no more coerce maternity than current laws against murdering one's mother-in-law coerce son-in-lawhood. None of the measures now pending in Congress

presume to force a woman to become pregnant, to prohibit the use of contraceptives, or to otherwise regulate the kind of behavior which results in pregnancy. We all agree that these are areas in which husbands and wives should properly be in control. The fact that is so conveniently overlooked, though, is that once a woman becomes pregnant, another separate living human being is then involved which ought to have some sort of protection.

The Supreme Court entirely disregarded this fact, but that does not justify our doing so. Medical and biological science teaches unequivocally that a new life begins at conception, not at birth. After all, the remarkable thing about Louise Brown was not the circumstances of her birth, so much as the circumstances of her conception. Her beginning was most definitely not at birth, and the same is true of all of us. By no stretch of the imagination is it possible to say that the nonviable fetus at 7 or 8 months' gestation—who is eligible for abortion under Roe against Wade—is not human or alive by comparison with the newborn at 9 months' gestation.

As for the claim in the newspaper ad this week that "the decision to have a baby could be between you, your husband and your Senator"—I can see how that might apply to my wife and her Senator, but I am hard pressed to see its relevance anywhere else, especially given the strange nature of privacy as defined by the Supreme Court in the abortion situation. Privacy, according to the Court, exists between a woman and her doctor—not to mention the additional medical, administrative, and welfare personnel who may be involved. The husband or natural father is excluded from that privacy; he is, in the words of a later decision, Planned Parenthood against Danforth, 1976, only a third party. Apparently the recently discovered abortion right has become so precious that all other values must be sacrificed to preserve it, including the marital relationship, a father's right to have children and to protect them, and a parent's right to be informed about the acts of his minor children, for which he is held legally responsible anyway.

There is also the argument that any law prohibiting abortion would amount to an unconstitutional establishment of religion. Many appear to believe that the only possible reasons for opposing abortion on demand are religious, and thus invalid. It is obviously misguided to assert that the Government establishes a religion simply because it holds to a particular value which is endorsed by a religion. For example, both the right of individuals to own private property and the right of governments to collect taxes are explicitly affirmed in scriptural texts of some churches, but no one contends that for this reason laws protecting private property or providing for the collection of taxes represent an establishment of those churches. There are secular reasons, of course, for governments to do these things, and there are also definite secular arguments in favor of protecting developing human life, provided one assumes that any human life has value.

Even in Harris against McRae, in which the Court upheld the right of Congress to make decisions on public funding for abortions, the Court refused to overturn a duly enacted statute simply because it might be in or out of harmony with a particular school of thought, even when that statute represents a value judgment the Court had earlier rejected in Roe against Wade. Also relevant to the amendment at hand is the fact that the Court in that case acknowledged that the legislature is the only branch of Government able to respond to taxpayers' objections on how their tax dollars are used. "* * * (W)hen an issue involves policy choices as sensitive as those implicated (here)," the Court said, "* * * the proper forum for their resolution in a democracy is the legislature." (*Harris* v. *McRae,* 100 S.Ct. 2693 (1980)).

There are those among us who insist that the right to choose is paramount, even over a right to life. Aside from the obvious fact that the right to choose is meaningless until the right to life has been guaranteed, there must be some sort of limit on the type of behavior that can be justified by some all-encompassing right to choose. Those same prochoice advocates do not defend the right to choose the killing of seals, whales, rabbits, or puppy dogs, nor do I. Laws against this sort of behavior are not based on JAKE GARN's whims, but upon what our civilization has generally understood to be humane, civilized bulwarks against barbarism. Certainly human beings, at whatever stage of their biological development, deserve at least the same kind of protection.

One vigorous proabortionist, a Leo Pfeffer, has been quite frank about sizing up the Court's action in Roe against Wade and other cases. He said:

> The nine judges on the Supreme Court, being immune to political reprisal, since they serve for life, may be performing a significant though quite controversial function; they may be compelling the people to accept what the judges think is good for them but which they would not accept from elected legislators.

Certainly our responsibility to uphold the Constitution is no less than that of the Supreme Court. As Professor John Hart Ely has said, Roe against Wade was not constitutional law, "and gives almost no sense of an obligation to try to be." In my readings of the Constitution I have never found an all-encompassing right to abortion, nor any reference to what may or may not be done during each trimester of a pregnancy. I have always understood that it was the function of the Constitution to protect what Jefferson called those inalienable rights, first and foremost of which is life. I do not see how it can at the same time be construed to sanction the wholesale destruction of human life that is taking place in our society today at the rate of about 1.5 million lives per year. I believe it is our responsibility in Congress to respond. Abraham Lincoln said once that "If I were in Congress, and a vote should come up on a question of whether slavery should be prohibited in a new territory, in spite of that Dred Scott decision, I would vote that it should." Our response to the similar denial of basic human rights which we are now facing should be no less, and I urge the support of my colleagues for this amendment.

PERSONAL EXPLANATION OF A VOTE

Mr. SASSER. Mr. President, I was necessarily absent earlier this morning and was unable to vote on rollcall vote No. 334. Had I been present and voting, I would have voted yes on the Helms motion to table the amendment of the Senator from Connecticut (Mr. WEICKER).

ROUTINE MORNING BUSINESS

Mr. BAKER. Mr. President, I ask unanimous consent there now be a brief period for the transaction of routine morning business.

I further ask unanimous consent that when we resume consideration of the pending measure, the present holder of the floor, the Senator from Oregon, be recognized without charging it as a second speech.

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

Mr. BAKER. Now, Mr. President, I ask unanimous consent that there be a brief period for the transaction of routine morning business to extend not past 7:15 in which Senators may speak.

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

JOSEPH MATLUK CELEBRATES 87TH BIRTHDAY

Mr. SPECTER. Mr. President, I am pleased to rise today to congratulate Joseph Matluk, a resident of Pennsylvania, who will be celebrating his 87th birthday on August 22. This occasion will be used to honor Mr. Matluk as the oldest veteran member of the Ukrainian American Veterans.

Mr. Matluk was born on August 22, 1895, in western Ukraine and emigrated to the United States at the age of 18. He enlisted in the U.S. Army in 1917 and was assigned to Company B, 306th Sanitary Unit Ambulance Field Hospital in Columbia, S.C. He served until 1918 and received an honorable discharge.

Mr. Matluk is distinguished not only as the oldest member of the UAV, but also as one of the founders of the organization the Ukrainian American Veterans was founded in Philadelphia in 1948. The group is composed of men

and women of Ukrainian descent who have served in the Armed Forces of the United States. Although the UAV was not organized until after World War II, its membership includes veterans from World War I, World War II, the Korean conflict, and the Vietnam era. Mr. Matluk continues to be active in the UAV at Post No. 4 in Philadelphia.

The United States owes a great debt to all our veterans, but it is particularly heartening to learn of immigrants who, having spent only a few short years in this country, willingly enlisted in our Armed Forces when we needed them. My father was one of these people who after arriving from Russia in 1911, fought in World War I as a member of the U.S. Army. I have always been proud of my father's act of patriotism and Mr. Matluk and his family can be justifiably proud of his role in World War I and in the founding of the Ukrainian American Veterans.

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

BALANCED MONETARY POLICY ACT

Mr. MITCHELL. Mr. President, our economic problem has two parts: One is the size of current and predicted Federal deficits. The other is the recession, which keeps deficits high.

Unemployment has risen 2.7 percent since July 1981. Every percentage point increase in unemployment costs the Federal Government an estimated $30 billion in lower tax revenues and higher unemployment compensation payments. That 2.7 percent unemployment increase, alone, would account for $81 billion of the 1983 deficit if it remains unchanged for a year.

The administration is pursing an expansionary fiscal policy of higher defense spending and lowered tax revenues. But the expansion is colliding with the tight money policy the Federal Reserve is using to stifle demand and control inflation. The clash between monetary and fiscal policy has helped create the incredible rates of real, after-inflation interest which are now strangling our economy.

A more moderate fiscal policy might have accommodated a tight monetary policy without forcing interest rates to damaging levels. But the counsels of prudence did not prevail on the fiscal side.

I proposed an alternative budget which would have frozen Federal spending and delayed the third year of the tax cut as a more prudent approach to economic recovery. It would have placed us on the road to a balanced budget by 1986, with lower deficits in the meantime. Other Members of Congress offered alternatives that would also have taken a less radical, less experimental approach to the economy. No alternatives were seriously considered.

The current debate over spending and taxes focuses on half the economic picture. The half it ignores is the monetary policy underlying out spending and taxing decisions. But unless we focus on that half as well, we will continue to have an unbalanced economy.

Whether we use the Congressional Budget Office prediction of a $140 billion budget deficit in 1983, the White House prediction of $115 billion, or the New York Federal Reserve's prediction of $163 billion, all economists agree that we cannot have a strong, sustained recovery at current interest rates. And unless the economy recovers, the deficits will remain largely unaffected, no matter what we do on spending programs or tax law.

The 1981 Nobel Prize winner for economics, James Tobin, declares, "The monetary policy is the main barrier to sustained recovery." He is right.

The policy the Federal Reserve abruptly adopted in October 1979 is a major factor keeping real interest rates astronomically high. From 1946 until October 1979, the Federal Reserve moderated interest rates to allow for economic growth. Its focus on money supply targets, in effect since October 1979, allows the market to set interest rates; it has sent after-inflation interest rates soaring, gravely damaging our economy.

Real, after-inflation interest rates have averaged 6.5 percent since October 1979. In the first quarter of this year, the after-inflation, real rate of interest was running at 12 percent. In that same first quarter, businesses were going bankrupt at the rate of 35 in every working hour. We had 13,000 business failures in the first 7 months of this year.

The business community cannot stand several more years of such interest rates.

The alternative to tight money and ruinous interest rates is not a retreat from a stable, predictable monetary policy, as the administration implies. The sensible alternative is a middle ground between a policy that disregards money targets and a policy that disregards interest costs.

Such a middle ground exists in the Balanced Monetary Policy Act. This bill would direct the Federal Reserve to broaden its policy to target both interest rates and money supply. Its components are straightforward:

It would instruct the Fed to target both money supply and interest rates and to keep rates within historic norms. Historically, real, after-inflation rates have been between 1 and 4 percentage points higher than inflation.

The Fed would maintain positive real rates. If inflationary pressures resumed, the Fed would allow interest rates to rise. That would protect savers against negative interest rates—interest lower than the rate of inflation—and dampen inflationary demand.

The Fed would emphasize annual targets for both interest and money aggregates. An emphasis on annual targets woud give the Fed flexibility to respond to changing economic conditions without triggering panic when a given weekly target is not reached. Businesses and economies do not function week to week—they operate on a longer calendar, and there is no rational reason why the credit on which business is dependent should be held hostage to exaggerated reliance on the weekly ups and downs of the Fed's targets.

The Fed would be required to make progress reports twice a year to Congress on its success in reaching both money-supply and interest-rate targets.

To protect its ability to respond to rapid changes in the economy, the Fed would be required only to report to Congress in 10 days if economic conditions demanded a drastic change in policy. That would let the Fed act without restraints on its independent judgment, while retaining the important component of public notification, so those affected by a changed policy would have timely notice of the change.

The Fed's recent cuts in the Federal Funds rate it charges banks, and its efforts to increase bank reserves and make more credit available have helped ease the prime rate downward. But the real, after-inflation rate remains high.

"Real" interest is the interest earned after discounting for the effects of inflation. Real interest rates have shown much more stability over the years than actual rates or inflation rates.

High real interest rates are a restrictive factor in the economy. If inflation is running at 10 percent and interest rates are 12 percent, the cost of credit is substantially less than when inflation is running at 6 percent and interest is running at 12 percent.

We have seen the unusual phenomenon of rising real interest rates over the last 18 months. That is why, despite declines in some rates in recent weeks, the economy has not responded. Both the prime rate and the Treasury bill rate have declined since 1981, but real rates have risen, and are more of a drag on the economy now than they were at the beginning of 1981.

The basis for controlling the money supply is to restrain demand. The theory is that tight money is reflected in lower prices. But tight money does not discriminate between reducing inflationary demand and reducing output. In its practical application to our economy, it has reduced output.

And lowered output means jobs lost and businesses bankrupt.

The advocates of tight money claim that business bankruptcies today represent a weeding-out process, whereby badly managed firms and those which were overextended are failing because they deserve to, and the end result will be a so-called lean, healthy business sector. That is pernicious nonsense.

Today 50 cents of every dollar in corporate cash flow is going for debt obligations. No company can plan for future growth or make long-term capital investments in such conditions.

And as long as interest rates price houses, autos, and other major purchases out of the reach of most consumers, there will not be the demand to create a rational investment incentive either.

The 1981 tax cuts to encourage capital investment affect only half the incentives for investment. Business investments are not made just to take advantage of tax cuts. They are made to take advantage of customer demand. Our manufacturing facilities today are operating at 70 percent of capacity because of a lack of demand. Supply-side economic theory focuses on one-half of the equation without looking at the other half. Supply responds to demand, and in today's weak economy, there is little sustained demand.

When well-managed firms such as Caterpillar and Boeing face serious financial difficulties, it is evident that their problems stem from sources beyond their managements' control. A recent New York Times article examined this entire question of the "survival of the fittest," and I ask unanimous consent that the text of that article be reproduced following my remarks.

It is foolish to continue to peg our economy to a money measure which is neither fixed nor determinable. The president of the Reserve Bank of Boston, Frank Morris, recently admitted, "I have * * * concluded, most reluctantly, that we can no longer measure the money supply with any kind of precision."

A broadened focus on both money-supply targets and the cost of credit would be more in line with the realities of our economy, which uses credit interchangeably with money.

Just as supply-side theory focuses too narrowly on one economic policy factor, an obsession with fiscal policy to the exclusion of monetary policy focuses on just one-half of the national economic picture.

Tight money and high interest rates alone might, ultimately, bring down the underlying inflation rate. But tight money is a blunt policy instrument. It can correct inflation only by dealing a knockout blow to our economy.

The current rate of business bankruptcies and the numbers of unemployed workers are both evidence that these interest rates are destroying the basis for economic growth and prosperity.

Our entire economic system depends on a growing economy. Without growth, the money earned on any investment can only come at the expense of someone else in the economy. That is the fixed-size pie model of the economy. It is a model and a conception which I reject. Yet, because of the interest rates to which our economy has been subjected, for the past year and more our economy has virtually been a fixed-size pie. The larger slices that some earn in higher interest rates are coming at the expense of others whose jobs in the housing industry, the auto industry, and our other manufacturing sectors have disappeared.

We have tried the experiment of supply-side theory. It has not worked. It is time we stopped experimenting with a monetarist theory whose own most ardent advocates cannot agree on what it should be controlling.

The most responsible way to cope with the uncertainties in our economy today is to deal with those factors whose effects we can predict with some certainty. It is not difficult to predict what another 2 years of 14-percent and 15-percent interest rates will mean to our economy. We should move to moderate those rates now, rather than waiting for another untried, unproven economic theory to work its will on our only economy.

[From the New York Times, Aug. 14, 1982]

THE EROSION OF AMERICAN INDUSTRY

By Karen W. Arenson

American industry has spent the past year in a crucible, and in the process it has been purged of many wasteful practices. In fact, some management experts predict that the economy will emerge from this recession leaner, tougher and more ready to take on foreign competition.

"The whole system was getting fat and lazy and not paying attention to detail," said Chester Devenow, chairman and chief executive of the Sheller-Globe Corporation, a Toledo, Ohio, auto parts manufacturer. "Recession has been a great catharsis."

Though there is some truth in this optimistic view of the country's economic problems, it is far from the whole story. For every Chrysler that is forced to restructure its operations, becoming more efficient as a result, there are many other companies that simply will not survive at all, or will survive but in greatly weakened condition.

"All this talk of catharsis is really just twaddle," said A. J. Steigmann, an economist at the Ford Motor Company. "It's the old story of cod liver oil being good for you, when all it really does is to give you a stomach ache. All we are doing is putting a permanent crimp in the economy."

Indeed, while most economists agree that there may be some improvement in the economic efficiency of certain industries, they warn that the recession has had an insidious effect that is likely to overwhelm any potential improvement. In fact, many believe that the economic downturn, which has already driven Braniff, AM International and other big companies into bankruptcy and pushed the unemployment rate up to a staggering 9.8 percent last month, could ultimately lead to a shrunken economy and a severely strained business sector.

Recessions have certainly battered the economy before, but this one is expected to leave deeper scars because it has been both sharper and longer-lasting than most; many industries—automobiles, steel, housing and countless others—have been depressed for three years now. Moreover, the recession has come at the end of a troublesome decade that has forced business to cope with spiraling inflation, sharply higher energy prices, sky-high interest rates and devastating competition from abroad. No recession has ended with the economy facing such tough adjustment problems as the ones that now exist.

Perhaps the most worrisome consequence of the current recession is that business is scaling back spending on capital investment and research and development, both of which are the underpinnings of tomorrow's growth. Metals companies, auto makers, railroads, airlines, utilities and electrical machinery concerns have all been reining in plant and equipment outlays for some time and are expected to continue to do so. A survey by McGraw-Hill shows that business will spend only 3.9 percent more on investment projects in 1982 than last year. Adjusting for inflation, that represents a 4.5 percent decline.

Similarly, the annual percentage increase in spending on research and development has shriveled from 7.2 percent in 1980 to an estimated 3.8 percent this year, a disturbing figure for a nation that has prided itself on innovation.

"By cutting into capital investment now, we are bending our country's long-term growth trend down," said Albert T. Sommers, chief executive at the Conference Board. "A very prolonged deferral of investment will cost the country hundreds of billions of dollars in lost output, compared to what we would have had under conditions of reasonably normal growth. It will take a long time to make this up."

Corporate America is also trying to cut costs in the area of worker training, a development that Lester C. Thurow, a professor at the Massachusetts Institute of Technology, says will further hamper the economy when it emerges from recession.

"The problem with a financial crunch is that you do make cuts, but you make them wherever you can," Mr. Thurow said. "All new training stops, so we are building a very unskilled labor force, which will tend to make the economy less efficient. And it is not only technical skills that atrophy, it is also work behavior.

While an endless number of companies are cutting back on investment, others are closing their doors altogether. Dun & Bradstreet, which tracks business failures, says that bankruptcies are now at a 50-year high, with an average of 452 businesses filing for protection from their creditors each week. And the weeding-out process does not always strike at the companies that would be deemed the most marginal, an indication that the shakeout will continue for some time.

"Some fairly healthy enterprises are going bankrupt, largely because of punitive interest rates," said Robert Lekachman, a professor of economics at the Herbert H. Lehman College and Graduate Center of the City

University of New York. "The economy is not just getting lean, it is suffering from pernicious anemia."

"I'm really very amazed at the staying power of some of the more inefficient companies," said Daniel Carroll, a management consultant with offices in Chicago and Ann Arbor, Mich. Citing such examples as Allis Chalmers, International Harvester, Pullman and American Motors, he added. "So I wouldn't place too much reliance on the recession's having shaken out all the inefficiencies. Some of the less effective companies did fade away, some of those that have remained are here because they are sheltered in some way or other."

Other companies may find, through no fault of their own, that the recession has made their customers less well off, and that they therefore are buying fewer goods.

"A lot of good firms, like Boeing and Caterpillar, are taking a pounding, and will be worse off competitively after the recession than before," Mr. Thurow said, noting that these are not examples of sloppy management, but of companies that have simply watched orders dry up. Just last week, the Boeing Company reported a 49.3 percent drop in second-quarter earnings because of sharply lower deliveries to the struggling commercial airlines.

And Peter Solomon, a partner at Lehman Brothers Kuhn Loeb, is concerned that the companies that do survive the recession may find their production capabilities reduced because other companies have failed. "The fact that all the small suppliers are going out of business is the greatest threat to American business," he said. "Who are the big companies going to subcontract to when business comes back?"

How each company copes with recession, and whether the changes it makes put it in a stronger position for the future, depends in large part on the industry it is in, its financial shape, and the creativity of its management.

But even if individual companies are strengthened by cutting "fat" and "waste," the implications for the overall economy of such shrinkage—in employment, in production, in operating capacity—could be devastating. Even if the plants and people who do remain employed are more efficient, there will be vast unused resources, both plant and equipment and skilled people. Previously, they were producing something. Now they will be idle and wasted, a drag on the economy.

"If the recession comes to an end, it is not clear that there will be much recovery in terms of overall employment in the United States," warns Barry Bluestone, an economics professor at Boston College. "Companies will have moved more of their production out of this country, and will have begun to automate more rapidly. And those who do find jobs will move disproportionately into lower wage industries, leading to a lower average standard of living and a significant loss in productivity."

"All we are doing is reducing the amount of capital, when what we need is more capital and more equipment," adds Mr. Steigmann of Ford. "If the recession caused the consumer to cut spending, liberating vast amounts of saving which were used for investment, then maybe there would be a case for suggesting that the process would create something useful. But the tendency is for the volume of savings to decline," he said.

Of course, this is not the first time that the economy has experienced cutbacks in the face of a downturn. Business typically lays off workers, closes plants and reduces production to offset plunging sales and profits. And each time, when a recession ends, companies show at least a temporary surge in productivity, because sales tend to pick up faster than the number of workers.

But the productivity gains often tend to be temporary, eroding as production picks up and workers are rehired. The seriousness of this recession has led some executives, like Mr. Devenow, to vow that fat will never again be allowed to creep into their operations. But others, like Richard DeVos, a coowner of the Amway Corporation, predict that the improvements "will last until good times come again, and then business will get fat and sloppy again."

In the past, companies could look forward to an upsurge in business when recession ended, to a period of good times. But in this cycle there will be no let-up in the pressure on many businesses. For when recovery begins, American companies will still be up against tough foreign competition, companies that, in many cases, are more efficient and more technologically up-to-date than the American companies.

It is thus more critical than ever that companies be in good shape when the recession ends. But many experts are pessimistic about the prospects for American steel, automobiles and other basic industries in the next few years, despite their present efforts to cut back and become more efficient. They say the changes the recession is inducing simply have not gone deep enough, or been extensive enough, to make up for the competive disadvantages the companies already suffered before the recession started.

"It is easy enough to say that companies are sweating out all their excesses and getting down to good hard muscle," said Bela Gold, director of the research program in industrial economics at Case Western Reserve University in Cleveland. "But it catches our industry at a time when it has neglected international competition. And in a number of cases, such as automobiles and steel, the recession has not provided them with the capital input necessary to modernize."

Mr. Gold acknowledges, for example, that the auto companies have received some labor concessions, and that they have taken some steps to reduce their overhead and to improve operations. But, he says, "I'm not convinced that the industry is over the hump, because technologically their costs are still not competitive with the Japanese. Whether you compare costs per car or output per man-hour, there is still a big gap.

"There is a lot of talk of robotizing the American auto industry, but when you get the numbers, they are not very impressive," Mr. Gold contends. And he calls talk of quality improvement "a lot of chatter." "The auto industry is a very complex production machine, and there is no way you can turn that machine over inside a year," he concludes.

Mr. Gold is even more negative about the prospects for the steel industry, where capacity utilization has been running below 50 percent. "Most of our plants are not technologically competitive," he said. "And to replace those plants takes incredible amounts of money—$4 billion to $5 billion just to rebuild a mill. That takes a lot of capital these companies don't have and can't get because of their low profitability."

"The recession has emphasized the need for more far-reaching and fast adjustment," Mr. Gold said. "But it has also created an environment that makes it very difficult to move constructively."

In other industries, experts are also unwilling to predict any great improvement following the recession. Firoze Katrak, director of the natural resources group at Charles River Associates, an economic consulting firm, says the mineral industries in general, including not only steel, but also copper, aluminum, mining and refining, need more investment. But, he said, "You cannot really improve capital productivity during a recession, because you have equipment and capacity lying idle." What makes him most optimistic, he said, is labor concesions, which he believes should help productivity.

Even if recession has pushed companies to become leaner and tougher, helping individual companies, there may be negative effects for the economy as a whole.

"As a nation, we will be getting out of some businesses," said John M. Stewart, a director at McKinsey & Company, the consulting firm. "That will be particularly difficult for some individuals and for certain cities, such as Pittsburgh, Detroit, Cleveland."

It is likely that such a shift in economic activity would have occurred anyway. But speeding up the transition makes it more painful, in many ways, than if it had occurred more gradually.

"If 2,500 auto workers were to be laid off, the effect of laying off 100 a year over 25 years is very different from laying off all 2,500 at once," Mr. Stewart said. "Over 25 years," he said, "perhaps half of them would retire, leaving only 1,200 to be laid off. And if they are laid off in smaller numbers each year, there is a better chance that they will be absorbed more quickly into other industries. New industries tend to grow very slowly."

On the other hand, companies that have laid off many employees could find themselves with problems as the economy grows. "If maintaining a skilled labor force is critical to a firm's long-term performance, then wide swings in employment are likely to involve penalties," observed John Dutton, a professor of management at New York University.

There is also the issue of whether companies, whatever shape they emerge in, will have the incentive, or the imagination, to grow.

"I'm sure that Chrysler and General Motors and Ford will all come out of this period with far lower break-even points," said Mr. Carroll, the Mid-Western management consultant. "But that may not mean they will be in a better position to make money and to sustain market share and grow. They may have pared expenses, but they may not be capable of creativity and innovation, of bringing out new designs that people want."

"Another element," Mr. Carroll added, "is that some companies that have really been through the mill probably will become more risk averse, and that may mean they won't take any gambles. Growing a business does require taking some risk."

With all these negatives, economists and management experts generally are fairly pessimistic about the shape of the economy when the recession is over.

"So many people take the Dale Carnegie approach of think positive and things will be positive," said Donald Ratajczak, director of the economic forecasting project at Georgia State University. "But for Heaven's sake, they should see reality first. We will get a better-managed corporate structure, and we will see productivity improve. But

the costs are very high. It would be much better to get better management without bloodletting."

NATIONAL DEFENSE

Mr. THURMOND. Mr. President, for many years I have spoken here on the Senate floor and in many other forums in favor of our country adopting a strong defense posture so that we may deter any potential aggressor. Also, for many years I have seen the Soviet Union move toward a position of superiority in some areas of the defense arena. Unfortunately, the Soviets have been unwittingly helped, by some of our policymakers and others who adopted the philosophy of mutual assured destruction, popularly known as MAD.

Simply stated, this philosophy means that although we continue to deploy our nuclear weapons, we deliberately leave ourselves with no defense against a potential enemy nuclear attack except hitting back after being hit first. Supposedly, by remaining without defense against incoming missiles, we assure the Russians that we are not bent on a warpath. This presumably will lead the Russians to emulate us. The sheer fear of nuclear destruction on both sides, the theory implies, would prevent either side from striking first. This philosophy was the official strategy of several administrations for some time. I have spoken against it on numerous occasions, and I will continue to do so in the future.

Furthermore, this strategy has failed miserably; for although we dramatically slowed our arms and defense buildup for more than a decade, the Soviet Union has never stopped. In the early 1960's, following the Cuban missile crisis, the Russians began the biggest arms buildup known to man, and they are continuing on that course to this very day. Their attitude never softened as the proponents of MAD would have us believe will happen. Instead, the Russians proceeded to improve the accuracy of their missiles to approach a first-strike capability. Additionally, they are also moving ahead with their missile defense, air defense, and civil defense systems.

Mr. President, I am delighted to see that the current administration, under the leadership of President Reagan, is moving on a steady course to redress the dangerous imbalance with the Soviet Union. I support the President in his efforts, and I commend him. Furthermore, I urge the administration to move diligently to rebuild our strategic air defense systems, to revamp our civil defense system, and to accelerate the research and development effort of the ballistic missile defense. Defense remains an essential part of any credible deterrence not only against the Soviets, but also against any other potential aggressor.

Mr. President, a recent article on this subject by Mr. Stanton Evans in the Washington Times of August 3, 1982, briefly addressed this subject. In order to share this article with my colleagues, I ask unanimous consent that it be printed in the RECORD following my remarks.

[From the Washington Times, Aug. 3, 1982]

PURLOINED DEFENSES

(By M. Stanton Evans)

A familiar item in the annals of the obvious is Edgar Allan Poe's short story about the "Purloined Letter"—which no one noticed because it was in plain sight.

A true-life adaptation of that fable might be called "Purloined Defenses." For upward of a decade, in full view of everyone, the strategic arsenal of the United States has been progressively dismantled. This demolition has been accomplished by our own deep-thinking planners in obedience to a bizarre, incomprehensible doctrine called "mutual assured destruction"—MAD, for short.

The basic idea behind MAD is that it is a good thing not to have any strategic defenses against nuclear attack. The best way to assure the Russians that we aren't plotting a war against them, supposedly, is to leave our civilian population wide open to obliteration. This will so ease the Communists' anxieties that they will follow suit. With both sides naked to destruction, a "balance of terror" will prevail, and war will be impossible.

Although this theory has guided U.S. military policy since the 1960s, most Americans don't have any idea of its existence, or else can't bring themselves to accept its reality. As I well know from long hammering on the subject, reasonably intelligent people can't believe that something so inherently nutty could possibly be the official strategy of the United States, although it is staring them in the face.

It has been official strategy, however, and it has played a crucial role in the enfeeblement of the nation. And even though the Reagan administration has been sidestepping away from it, we are still de facto wedded to its precepts. Thanks to MAD, for instance, we have no anti-missile defenses, have phased down our air interceptor defenses and early warning system, and have no effective program of civil defense. We are devoid of protection on all these fronts because our planners have wanted to keep our cities vulnerable to enemy attack.

Unfortunately, while we have been following this masochistic policy, the Soviet Union has not done the same. It has shown no interest in MAD theory, and even took a while to catch on enough to encourage our obsession with it. There is plenty of evidence that the Russians have pushed ahead with anti-missile defenses, built up their air interceptor strength and deployed a massive array of SAM missiles, while we have been assiduously cutting back our defenses.

All of this has apparently dawned on Reagan's strategic planners, who would like to redress the huge imbalance of forces resulting from it. To date, however, repudiation of MAD had been mostly verbal, with no clear move afoot to restore our pitifully inadequate defenses. Whether such moves will actually be taken is the issue currently before the House of Representatives.

By far the most encouraging development on this front was a recent statement by Secretary of Defense Caspar Weinberger, indicating official interest in a space-based anti-missile system. Weinberger told a group of reporters the administration is actively considering the notion of deploying space defenses that could knock out Soviet ICBM's before they re-enter the earth's atmosphere and start descending toward their targets.

Weinberger's comments and other administration statements on the subject sound a great deal like the "high frontier" concept spelled out by Lt. Gen. Daniel O. Graham, former chief of the Defense Intelligence Agency. Graham has laid out a program for a multi-tiered defensive system, including non-nuclear space-based anti-missile weapons and ground-based ABM defenses of our deterrents, among other elements.

Any movement of administration policy toward Graham's position is devoutly to be wished. He has been among the most active and articulate opponents of MAD in our public debate, and his book—"Shall America Be Defended"—should be required reading for anyone remotely interested in national survival.

MESSAGES FROM THE HOUSE

At 1:09 p.m., a message from the House of Representatives, delivered by Mr. Gregory, one of its reading clerks, announced that the House agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 6530) to establish the Mount St. Helens National Volcanic Area, and for other purposes.

The message also announced that the House agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 6955) to provide for reconciliation pursuant to the first concurrent resolution on the budget for fiscal year 1983 (S. Con. Res. 92, 97th Congress).

The message further announced that the House has agreed to the following concurrent resolution, in which it requests the concurrence of the Senate:

H. Con. Res. 396. Concurrent resolution to correct technical errors in the enrollment of the bill H.R. 6955.

At 6:54 p.m., a message from the House of Representatives delivered by Mr. Gregory, announced that the House disagrees to the amendments of the Senate to the bill (H.R. 3239) to amend the Communications Act of 1934 to authorize appropriations for the administration of such act, and for other purposes; asks a conference with the Senate on the disagreeing votes of the two Houses thereon, and appoints Mr. DINGELL, Mr. WIRTH, and Mr. BROYHILL as managers of the conference on the part of the House.

The message also announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 684. An act for the relief of Ok-Boon Kang;

H.R. 1481. An act for the relief of George Herbert Weston;

H.R. 4828. An act to set aside certain surplus vessels for use in the provision of health and other humanitarian services to developing countries; and

H.R. 6732. An act to amend the International Safe Container Act.

HOUSE BILLS REFERRED

The following bills were read the first and second times by unanimous consent, and referred as indicated:

H.R. 684. An act for the relief of Ok-Boon Kang; to the Committee on the Judiciary.

H.R. 1481. An act for the relief of George Herbert Weston; to the Committee on the Judiciary.

H.R. 4828. An act to set aside certain surplus vessels for use in the provision of health and other humanitarian services to developing countries; to the Committee on Commerce, Science, and Transportation.

H.R. 6732. An act to amend the International Safe Container Act; to the Committee on Commerce, Science, and Transportation.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

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

H.R. 3517. An act to authorize the granting of permanent residence status to certain nonimmigrant aliens residing in the Virgin Islands of the United States, and for other purposes. (Rept. No. 97-529.)

By Mr. DOLE, from the Committee of Conference:

Report of the Committee of Conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 4961) to make miscellaneous changes in the tax laws, and for other purposes. (Rept. No. 97-530.)

By Mr. McCLURE, from the Committee on Energy and Natural Resources, without amendment:

S. 2569. A bill to declare certain lands in the Cumberland Island National Seashore, as wilderness, and for other purposes (with additional views). (Rept. No. 97-531.)

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. STENNIS, from the Committee on Armed Services:

Mr. STENNIS. Mr. President, from the Committee on Armed Services, I report favorably the following nominations: Maj. Gen. Max B. Bralliar, U.S. Air Force, to be Surgeon General of the Air Force; Maj. Gen. John L. Piotrowski, U.S. Air Force, to be lieutenant general; Maj. Gen. Emmett H. Walker, U.S. Army National Guard, to be Chief of the National Guard Bureau and lieutenant general; Brig. Gen. Herbert R. Temple, Jr., U.S. Army National Guard, to be major general; Lt. Gen. Roscoe Robinson, Jr., U.S. Army, to be general; Lt. Gen. Philip C. Gast, U.S. Air Force, to be reassigned in the grade of lieutenant general; Maj. Gen. Alexander M. Weyand, U.S. Army, to be reassigned to the grade of lieutenant general; Lt. Gen. LaVern E. Weber, U.S. Army, to be reassigned to the grade of lieutenant general; Vice Adm. Wesley L. McDonald, U.S. Navy, to be reassigned to the grade of admiral; and Lt. Gen. Hillman Dickinson, U.S. Army (age 56), for appointment to the grade of lieutenant general on the retired list. I ask that these names be placed on the Executive Calendar.

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

Mr. STENNIS. Mr. President, in addition, in the Navy and Naval Reserve there are 44 permanent appointments to the grade of captain and below (list begins with Michael L. Arture), in the Air National Guard there are 29 promotions to the grade of lieutenant colonel in the Reserves (list begins with Clayton B. Anderson), in the Army there are 8 appointments to the grade of colonel and below (list begins with Robert O. Porter), in the Naval Reserve there are 465 permanent promotions to the grade of captain and below (list begins with Javier A. Arzola); Capt. Truman W. Crawford, U.S. Marine Corps, for appointment to the grade of major (temporary) while serving as the Director of the Marine Corps Drum and Bugle Corps; in the Air Force there are 579 promotions to the grade of lieutenant colonel (list begins with John S. Adams, Jr.), in the Air Force Reserve and National Guard there are 114 appointments to the grade of colonel and below (list begins with Enrique Del Campo), in the Marine Corps and Marine Corps Reserve there are 630 permanent appointments to the grade of colonel and below (list begins with Robert L. Peterson), and in the Navy and Naval Reserve there are 19 permanent promotions/appointments to the grade of commander and below (list begins with Bruce P. Dyer). Since these names have already appeared in the CONGRESSIONAL RECORD and to save the expense of printing again, I ask unanimous consent that they be ordered to lie on the Secretary's desk for the information of any Senator.

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

(The nominations ordered to lie on the Secretary's desk were printed in the RECORD of August 4, August 10, August 12, and August 17, 1982, at the end of the Senate proceedings.)

By Mr. GARN, from the Committee on Banking, Housing, and Urban Affairs:

James C. Treadway, Jr., of the District of Columbia, to be a member of the Securities and Exchange Commission for the term expiring June 5, 1987.

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. GORTON (for himself, Mr. BOSCHWITZ, and Mr. RUDMAN):

S. 2851. A bill relating to compelling governmental interests; to the Committee on the Judiciary.

By Mr. HATCH (for himself, Mr. STAFFORD, Mr. PELL, and Mr. RANDOLPH):

S. 2852. A bill to amend section 439 of the Higher Education Act of 1965 to make a technical amendment relating to priority of indebtedness, to provide for the family contribution schedule for student financial assistance for academic years 1983-84, and 1984-85, and for other purposes; to the Committee on Labor and Human Resources.

By Mr. PERCY:

S. 2853. A bill to provide for the temporary duty-free treatment of imported hatters' fur, and for other purposes; to the Committee on Finance.

S. 2854. A bill for the relief of the Centralia Carillon Committee; to the Committee on Finance.

By Mr. HAYAKAWA:

S. 2855. A bill to amend the Federal Seed Act with respect to prohibitions relating to interstate commerce in seed mixtures intended for lawn and turf purposes and prohibitions relating to importation of certain seeds, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. DURENBERGER (for himself, Mr. ABDNOR, Mr. BAUCUS, Mr. BURDICK, Mr. COCHRAN, Mr. CRANSTON, Mr. DANFORTH, Mr. DOLE, Mr. FORD, Mr. HATCH, Mr. HAYAKAWA, Mr. HEINZ, Mr. HOLLINGS, Mr. JACKSON, Mrs. KASSEBAUM, Mr. LEAHY, Mr. LEVIN, Mr. LUGAR, Mr. MATHIAS, Mr. McCLURE, Mr. METZENBAUM, Mr. MURKOWSKI, Mr. PACKWOOD, Mr. QUAYLE, Mr. SARBANES, Mr. WEICKER, and Mr. ZORINSKY):

S.J. Res. 232. A joint resolution to provide for the designation of the week beginning October 1, 1982, as "National Sudden Infant Death Syndrome Awareness Week"; to the Committee on the Judiciary.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. HAYAKAWA (for himself and Mr. MOYNIHAN):

S. Res. 451. A resolution regarding asylum for Hu Na; to the Committee on the Judiciary.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. GORTON (for himself, Mr. BOSCHWITZ and Mr. RUDMAN):

S. 2851. A bill relating to compelling governmental interests; to the Committee on the Judiciary.

COMPELLING GOVERNMENTAL INTERESTS IN RELATION TO SEXUAL DISCRIMINATION

Mr. GORTON. Madam President, like many of my colleagues and a majority of Americans, I am disappointed that the equal rights amendment is not now a part of the Constitution of

the United States; and I pledge my full support to a renewed ERA effort.

The notion that equality of rights under law, regardless of sex, however, is not merely a fundamental principle which ought to be in the Constitution, it is a matter of grave economic and social consequence for millions of Americans. I am not prepared, therefore, to forego consideration of other means by which to achieve the substance of the equal rights amendment simply because we have not yet succeeded in reaching our final goal of guaranteeing that substance through a constitutional amendment. To forego such alternatives during our quest for that goal would seem to me to admit that the attainment of the substance of the equal rights amendment was something less than imperative. That is a proposition which I cannot accept.

The statutory proposal which I am introducing today, therefore, requires that classifications based on sex, both de jure and de facto, created by the United States or by any State, be subjected to the same level of judicial scrutiny as classifications based on race. At the present time, the Supreme Court will uphold a racial classification only if it is necessary to achieve a compelling governmental interest. A classification based on sex, however, will be upheld if it serves an important governmental interest and is substantially related to the achievement of that interest, a less difficult standard to meet.

I must stress that this proposal does not involve any question of court jurisdiction nor does it seek to substitute Congress view of what the equal protection clause requires for that of the Court. It is intended to be remedial only, making certain actions of the States and the Federal Government illegal, even though they are not unconstitutional. Congress can prohibit such actions by the States if it determines that such actions, while not unconstitutional, nonetheless tend to perpetuate the effects of past sex discrimination. I am convinced that the facts will support such a finding.

I have heard much discussion among my colleagues of possible statutory approaches toward providing greater rights for all persons regardless of sex. Such proposals, as far as I can determine, have all dealt with specific subjects, such as insurance and pension reform. The bill I am introducing today paints with a broader brush than these other measures in that it can be the basis for invalidating existing discriminatory statutes and preventing legislatures from enacting additional discriminatory statutes in the future. It may well be, however, that it will still be necessary for Congress to consider subject-specific legislation to complement this bill.

Due to the limited time remaining in this session, it is obvious that I am not introducing this bill with the intention of actively pursuing its passage in this Congress. Moreover, because of the somewhat unique approach taken in the bill, I cannot and do not expect an immediate response to it from those groups which have worked so diligently for the ratification of the equal rights amendment. I appreciate the fact that in the next several months these groups, as well as the Congress, must give due consideration to a variety of approaches and remedies. I hope, however, that by introducing the bill at this time it will be included in any such discussion and that I will receive sufficient feedback on it in the coming months to be able to urge its consideration by the Senate early in the 98th Congress.

I trust that those reviewing this proposal will do so with open minds and give serious thought to the utility of such a measure as a method of dealing promptly with the current denial of economic and social rights to so many Americans.

Madam President, I ask unanimous consent that the bill be printed in the RECORD.

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

S. 2851

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

PURPOSE AND FINDINGS

SEC. 1. (a) Congress finds and declares that—

(1) classifications based on sex have often resulted in individuals being relegated to an inferior legal status without regard to individual capability, worth or need; and,

(2) classifications based on sex which are not necessary to achieve a compelling governmental interest tend to perpetuate the effects of past sex discrimination; and,

(3) classifications based on sex are inherently invidious and suspect.

(b) In light of the findings contained in this section and in order to secure the equal protection of the laws for all persons regardless of sex, Congress, pursuant to the necessary and proper clause of article I of the Constitution of the United States, and pursuant to section 5 of the fourteenth amendment to the Constitution of the United States, enacts this Act.

CLASSIFICATIONS BASED ON SEX

SEC. 2. (a) Each person has the right to be free from any classification based on sex and made by the United States unless such classification is necessary to achieve a compelling interest of the United States.

(b) No State shall make a classification based on sex unless such classification is necessary to achieve a compelling interest of the State.

(c) Every person who, under color of any Federal or State law, subjects, or causes to be subjected, any citizen of the United States or any other person within the jurisdiction thereof to a classification based on sex which is not necessary to achieve a compelling governmental interest shall be liable to the person injured in an action at law, suit in equity, or other proper proceedings for redress.

RELIEF

SEC. 3. (a) Any person aggrieved by a violation of this Act may bring a civil action in the appropriate district court of the United States for such legal and equitable relief as may be appropriate: *Provided*, That, no cause of action for damagers may arise under this Act until one year after the date of enactment of this Act.

(b) The Attorney General may bring an action for declaratory or injunctive relief in any appropriate case in which the Attorney General determines that the rights of persons aggrieved under this Act will be served by bringing such action.

DEFINITIONS

SEC. 4. (a) The term "State" as used in this Act includes each of the several States, any Commonwealth or territory of the United States, and any political subdivision thereof.

(b) The term "law" as used in this Act includes any statute, ordinance, rule, regulation or the administration thereof, or any custom or usage.

(c) The term "classification based on sex" as used in this Act includes any de jure, gender-based classification and any law of the United States or of any State which has a disparate impact on individuals of different gender who are otherwise similarly situated

APPLICATION

SEC. 5. (a) If any provisions of this Act or the application of this Act to any person or circumstance is judicially determined to be invalid, the remainder of the Act or the application of such provision to other persons or circumstances shall not be affected by such determination.

(b) This Act shall supersede any inconsistent provision of Federal law.

By Mr. HATCH (for himself, Mr. STAFFORD, Mr. PELL, and Mr. RANDOLPH):

S. 2852. A bill to amend section 439 of the Higher Education Act of 1965 to make a technical amendment relating to priority of indebtedness, to provide for the family contribution schedule for student financial assistance for academic years 1983-84, and 1984-85, and for other purposes; to the Committee on Labor and Human Resources.

SALLIE MAE TECHNICAL AMENDMENTS ACT OF 1982

Mr. HATCH. Mr. President, I am pleased today to introduce a set of amendments designed to fine-tune the delivery of our Federal student grants and loans to the millions of students who benefit from them. These amendments to the Higher Education Act of 1965 have been developed through consultation with interested members of the Committee on Labor and Human Resources from both sides of the aisle, and the bill enjoys bipartisan support, as well as the cosponsorship of my distinguished colleagues, Senators STAFFORD, PELL, and RANDOLPH, whose expertise has been of great benefit in its development.

Among the most pressing issues dealt with by the bill, whose short title is the Sallie Mae Technical Amendments Act of 1982, are those involving the Student Loan Marketing Association (Sallie Mae). Last year Sallie Mae, which provides essential secondary market functions in the purchase and warehousing of guaranteed student loans, was faced with the prospect of shifting its source of funding from the Federal financing bank to the private bond market, under an agreement negotiated with the administration. In order for Sallie Mae to sell its bonds at feasible rates, it was required to obtain a clarification of the application of Federal bankruptcy law. Specifically, it was necessary for Congress to clearly give the Federal Government the status of a normal creditor, waiving any Federal priority in the event of a Sallie Mae bankruptcy or reorganization. Sallie Mae requested this measure from Congress and an appropriate provision was enacted last year as part of the Older Americans Act Amendments of 1981. This action was limited to 1 year in duration and will expire September 30, 1982.

This past January, Sallie Mae terminated its borrowings from the Federal financing bank, and it has since proceeded to raise several hundred million dollars in the private market by selling its bonds. However, unless the bankruptcy provision is extended, Sallie Mae's access to private capital which it can then plow into the student loan market will also expire at the end of September, disrupting the secondary market for student loans. This bill grants the extension for an additional 2 years.

Further, this legislation would empower the State guaranty agencies and lenders to consolidate loans on the same terms as Sallie Mae. Sallie Mae at present, under the 1980 higher education amendments, has exclusive authority for loan consolidations, but State agencies have become much more active in the interim, and there is no good reason why they should be kept out of the market in favor of a monopoly by Sallie Mae.

This bill also writes into the authorizing law, for the academic years 1983-84 and 1984-85, several provisions which have in the past been addressed on an annual basis as attachments to continuing resolutions or Supplemental Appropriations Acts. These are: The new State allocation reduction formula for campus-based aid programs sponsored by Senator RUDMAN and enacted as part of the urgent supplemental this spring; the maintenance of the maximum Pell grant award at $1,800; the decoupling of the campus-based and State student incentive grant programs from the Pell grant needs analysis; and the carryover into the current year of the preceding year's Pell grant family contribution schedule, the latter three provisions having been attached to the fiscal year 1982 continuing resolution. The Pell grant carryover provision would be extended for the 1984-85 academic year as follows: If the administration has not sent up to Congress for its approval a Pell grant family contribution schedule by April 1 of a given year to take effect for the following year as now required by law, then the current family contribution schedule, adjusted for inflation, would automatically carryover and apply during that following year as well.

This last provision would furnish a measure of stability and continuity to a process more often characterized by confusion and uncertainty. During every administration since the Pell grant program was established, the adherence to the deadline has been a problem. Often the family contribution schedule would not be issued until late summer (as this year), would prove unsatisfactory to Congress, and the resulting maneuvering and the statutory elapsing of time before the regulations took effect would cloud the picture into midwinter. Not long thereafter the administration would then propose program changes or rescissions in program funding which would again cast a pall of uncertainty over the status of the grants and would unduly hinder student aid officers from advising students about aid availability. Passage of this bill would provide automatically for the carryover of already established and agreed-upon schedules unless the administration and Congress arrive at a replacement for them. Further, under my proposal the current schedule for the guaranteed student loan program would also be carried forward for the 1983-84 academic year.

This bill contains a section replacing the current ratable reduction formula for Pell grant awards with a linear reduction. At present, if insufficient funds are appropriated to fully fund Pell grants for those who are eligible, a ratable reduction procedure completely extinguishes aid for those at the lower end of the need scale, though in the context of all college students their needs may be great. The new linear reduction procedure would replace this skewed, discontinuous formula with a more equitable one in which all students would share part of the burden, but those with larger entitlements and thus greater need, would have a smaller percentage cut than those with smaller entitlements and thus relatively lesser need, on a clear, inversely proportional basis.

Also included in these amendments is a section providing for a simplified, clear, concise disclosure to borrowers of the costs and terms of their educational loans. When applied in the unusual context of student loans (mandating the treatment of the new 5 percent guaranteed student loan origination fee as interest, for example) the Federal truth-in-lending laws greatly complicate the issuance of student loans—making them less attractive to many lenders—while providing the student with complex disclosures difficult to digest. Also, we understand that Senator HEINZ is pressing forward with a bill to exempt the student loan programs from the truth-in-lending laws. In the event he is successful, the disclosure provisions of the bill at hand will operate as a clear, useful substitute protection for borrowers.

Mr. President, it is not often that we have the opportunity to do a great good with a few brief strokes, but this is such an occasion. We commend these amendments to the Senate for its most expeditious consideration.

I ask unanimous consent that a section-by-section analysis of the bill, as well as the text of the bill itself, be included in the RECORD.

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

S. 2852

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 "Sallie Mae Technical Amendments Act of 1982".

STUDENT LOAN MARKETING ASSOCIATION

SEC. 2. The last sentence of section 439(1) of the Higher Education Act of 1965 is amended by striking out "September 30, 1982" and inserting in lieu thereof "September 30, 1984".

MAXIMUM PELL GRANT

SEC. 3. Notwithstanding section 411(a)(2) of the Higher Education Act of 1965, the maximum Pell Grant a student may receive for academic year 1983-1984 and for academic year 1984-1985 under such Act shall not exceed $1,800 or 50 percent of the cost of attendance (as defined under section 482(d) for academic year 1982-1983) at the institution at which the student is in attendance.

DECOUPLING PELL GRANT FAMILY CONTRIBUTION SCHEDULE FROM CAMPUS-BASED PROGRAMS

SEC. 4. The Secretary of Education may establish or approve separate systems of need analysis for academic year 1983-1984 and for academic year 1984-1985 for the programs authorized under subpart 2 of part A, part C, and Part E of title IV of the Higher Education Act of 1965.

PELL GRANT FAMILY CONTRIBUTION SCHEDULE FOR ACADEMIC YEAR 1983-1984

SEC. 5. (a) Except as provided in subsections (b) and (c), the family contribution schedule for academic year 1982-1983 for Pell Grants under subpart 1 of part A of title IV of the Higher Education Act of 1965 shall be the family contribution schedule for such Grants for the academic year 1983-1984.

(b) Each of the amounts allowed as an offset for family size in the family contribution schedule for academic year 1983-1984 shall be computed by increasing the comparable amount (for the same family size) in the family contribution schedule for aca-

demic year 1982-1983 by 7.3 percent, and rounding the result to the nearest $100.

(c) For purposes of subsection (a), the family contribution schedule for academic year 1982-1983 shall be modified by the Secretary of Education for use for academic year 1983-1984—

(1) to reflect the most recent and relevant data, and

(2) to comply with section 482(b)(3) of the Higher Education Act of 1965 with respect to the treatment of payments under title 38 of the United States Code.

(d) The modified family contribution schedule under this section shall be submitted not later than 15 days after the date of enactment of this Act.

PELL GRANT FAMILY CONTRIBUTION SCHEDULE FOR ACADEMIC YEAR 1984-1985

SEC. 6. (a)(1) The family contribution schedule for academic year 1984-1985 for Pell Grants under subpart 1 of part A of title IV of the Higher Education Act of 1965 shall be established by the Secretary of Education, if the Secretary publishes a proposed schedule in the Federal Register by April 1, 1983, and submits it to the President of the Senate and the Speaker of the House of Representatives not later than the time such schedule is so published.

(2) The proposed schedule shall be subject to public comment for 30 days. The Secretary shall publish and submit to the President of the Senate and the Speaker of the House of Representatives a final family contribution schedule not later than May 15, 1983, for the academic year 1984-1985.

(3) If the Secretary does not so publish and submit such schedule as required by paragraphs (1) and (2), the family contribution schedule in effect for academic year 1983-1984 shall be the family contribution for academic year 1984-1985, except as provided in subsections (c) and (d) of this section.

(b) If the Secretary publishes and submits the final family contribution schedule as required by subsection (a) such schedule shall take effect unless, on or before July 1, 1983, either House of Congress adopts a resolution of disapproval of such schedule. In such event, the Secretary shall publish a new proposed family contribution schedule in the Federal Register and submit it to the President of the Senate and the Speaker of the House of Representatives not later than 15 days after the date of the adoption of such resolution of disapproval. Such new schedule shall take into consideration such recommendations as may be made in either House of Congress in connection with such resolution. Such new schedule shall be effective (for academic year 1984-1985) on July 1, 1983, unless, prior to that date, either House of Congress adopts a resolution of disapproval of such new schedule. If the new schedule is also disapproved, the family contribution schedule in effect for academic year 1983-1984 shall be the family contribution for academic year 1984-1985, except as provided in subsections (c) and (d) of this section.

(c)(1) Each of the amounts allowed as an offset for family size in the family contribution schedule for academic year 1984-1985 shall be computed by increasing (or decreasing) the comparable amount (for the same family size) in the family contribution schedule for academic year 1983-1984 (as set by section 5(b) of this Act) by a percentage equal to the percentage increase (or decrease) in the Consumer Price Index published by the Department of Labor, and rounding the result to the nearest $100.

(2) For purposes of paragraph (1) of this subsection, the percentage increase (or decrease) in the Consumer Price Index is the change, expressed as a percent, between the arithmetic mean of the Consumer Price Index for April, May, and June of 1982 and the arithmetic mean of such Index for April, May, and June of 1983.

(d) For purposes of subsection (b), the family contribution schedule for academic year 1983-1984 shall be modified by the Secretary of Education for use for academic year 1984-1985 to reflect the most recent and relevant data.

(e) The modified family contribution schedule under this section shall be submitted not later than July 15, 1983, and shall otherwise be subject to the provisions of section 482 (a) of the Higher Education Act of 1965.

COST OF ATTENDANCE

SEC. 7. Notwithstanding any other provision of law, the cost of attendance criteria used for calcuating eligibility for and the amount of Pell Grants for academic years 1983-1984 and 1984-1985 shall be the same as those criteria in effect for academic year 1982-1983.

INFORMATION CONCERNING FAMILY SIZE OFFSET

SEC. 8. The Secretary of Education shall publish in the Federal Register the changes in amounts allowed as an offset for family size as a consequence of the requirements of section 6 (c) of this Act immediately after publication by the Secretary of Labor of the Consumer Price Index for June 1983.

GUARANTEED STUDENT LOAN FAMILY CONTRIBUTION SCHEDULE FOR THE PERIOD JULY 1, 1983 THROUGH JUNE 30, 1984

SEC. 9. (a) Except as provided in subsections (b) and (c) the family contribution schedule for the period of instruction from July 1, 1983 through June 30, 1984 for loans made, insured, or guaranteed under part B of title IV of the Higher Education Act of 1965 shall be the family contribution schedule for such loans for the period of instruction from July 1, 1982 through June 30, 1983.

(b) For purposes of subsection (a), the family contribution schedule for the period of instruction from July 1, 1982 through June 30, 1983 shall be modified by the Secretary of Education for use for the period of instruction from July 1, 1983 through June 30, 1984 to reflect the most recent and relevent data.

(c) The modified family contribution schedule under this section shall be submitted not later than March 1, 1983, and shall otherwise be subject to the provisions of section 482(a) of the Higher Education Act of 1965.

SUPPLEMENTAL EDUCATION OPPORTUNITY GRANT APPORTIONMENT FOR FISCAL YEARS 1983 AND 1984

SEC. 10. (a) Notwithstanding section 413D of the Higher Education Act of 1965, the Secretary shall apportion the sums appropriated pursuant to section 413A(b) of the Higher Education Act of 1965 for each of the fiscal years 1983 and 1984 among the States so that each State's apportionment bears the same ratio to the total amount appropriated as that State's apportionment in fiscal year 1981 bears to the total amount appropriated pursuant to section 413A(b) for the fiscal year 1981.

(b) The Secretary shall allocate sums appropriated pursuant to section 413A(b) of the Higher Education Act of 1965 for each of the fiscal years 1983 and 1984 to institutions in each State without regard to section 413D(b)(1)(B)(ii)(I) of that Act.

NATIONAL DIRECT STUDENT LOAN APPORTIONMENT FOR FISCAL YEARS 1983 AND 1984

SEC. 11. Notwithstanding section 462 of the Higher Education Act of 1965, the Secretary shall apportion the sums appropriated pursuant to section 461(b)(1) of the Higher Education Act of 1965 for each of the fiscal years 1983 and 1984, among the States so that each State's apportionment bears the same ratio to the total amount appropriated as that State's apportionment in fiscal year 1981 bears to the total amount appropriated pursuant to section 461(b)(1) for the fiscal year 1981.

LOAN REPAYMENT DISCLOSURE

SEC. 12. (a)(1) Section 433A of the Higher Education Act of 1965 is amended by inserting "(a)" after the section designation and by adding at the end thereof the following new subsection:

"(b) Each eligible lender shall enter into an agreement with the Secretary under which the eligible lender will, prior to the start of the repayment period of the student borrower on loans made, insured, or guaranteed under this part, disclose to the student borrower, clearly and conspicuously in writing, and in a form that the student may keep, the information required under this subsection. The disclosures required by this subsection shall include—

"(1) the itemization of and the total of amounts financed, calculated by adding all amounts borrowed by the student borrower under this part, and subtracting all charges, including any origination fee or insurance premium, paid by the student borrower;

"(2) the dollar cost to the student borrower of the amount borrowed;

"(3) the dollar amount of total scheduled payments, calculated by adding the amounts in clauses (1) and (2); and

"(4) the repayment schedule of the student borrower, including the number, amounts, and frequency of payments.".

(2) The second sentence of such section is amended by striking out "section" and inserting in lieu thereof "subsection".

(b)(1) Section 463A of the Higher Education Act of 1965 is amended by inserting "(a)" after the section designation and by adding at the end thereof the following new subsection:

"(b) Each institution of higher education, in order to carry out the provisions of section 463(a)(8), shall, prior to the start of the repayment period of the student borrower on loans made under this part, disclose to the student borrower, clearly and conspicuously in writing, and in a form that the student may keep, the information required under this subsection. The disclosures required by this subsection shall include—

"(1) the itemization of and the total of amounts financed, calculated by adding all amounts borrowed by the student borrower under this part, and subtracting all charges, including any origination fee or insurance premium, paid by the student borrower;

"(2) the dollar cost to the student borrower of the amount borrowed;

"(3) the dollar amount of total scheduled payments, calculated by adding the amounts in clauses (1) and (2); and

"(4) the repayment schedule of the student borrower, including the number, amounts, and frequency of payments.".

(2)(A) The first sentence of such section is amended by striking out "section 463(a)(7)" and inserting in lieu thereof "section 463(a)(8)".

(B) The second sentence of such section is amended by striking out "section" and inserting in lieu thereof "subsection".

CONSOLIDATION OF LOANS BY STATE GUARANTY AGENCIES

SEC. 13. Section 428 of the Higher Education Act of 1965 is amended by adding at the end thereof the following new subsection:

"(j) (1) Each—

"(A) State agency and nonprofit private institution or organization with which the Secretary has an agreement under subsection (b) of this section, and

"(B) eligible lender in a State described in section 435 (g) (1) (D) or (F) of this Act.

or its designated agent may, upon the request of a borrower who has received loans under this title from two or more programs or lenders, or has received any other federally insured or guaranteed student loan, and where the borrower's aggregate outstanding indebtedness is in excess of $5,000, or where the borrower's aggregate outstanding indebtedness is in excess of $7,500 from a single lender under this part, make, notwithstanding any other provision of this part limiting the maximum insured principal amount for all insured loans made to a borrower, a new loan to the borrower in an amount equal to the unpaid principal and accrued unpaid interest in the old loans. The proceeds of the new loan shall be used to discharge the liability on such old loans.

"(2) Loans made pursuant to this subsection shall be insurable by the State or nonprofit private institution or organization with which the Secretary has an agreement under section 428(b). The terms of loans made under this subsection shall be such terms as may be agreed upon by the borrower and the State agency and nonprofit private institution or organization, or eligible lender in a State described in section 435(g) (1) (D) or (F), and meet the requirements of section 427, except that (A) the ten-year maximum period referred to in section 427 (a) (2) (B) may be extended to no more than twenty years, and (B) clause (ii) of section 427 (a) (2) (B) shall not be applicable.

"(3)(A) Notwithstanding any other provision of this part, the State agency and nonprofit private institution or organization, or eligible lender in a State described in section 435(g) (1) (D) or (F), with the agreement of the borrower, may establish such repayment terms as it determines will promote the objectives of this subsection including, but not limited to, the establishment of graduated, income sensitive repayment schedules.

"(B) For any borrower who has received two or more loans under this part bearing interest at the rate of 9 per centum per annum on the unpaid principal balance of the loan and who requests a new loan under this subsection for the purpose of consolidation on a date after the date on which the Secretary has made a determination under section 427A(b), the rate of interest on such new loan shall not exceed 8 per centum per annum on the unpaid principal balance of such new loan.

"(4) The State agency and nonprofit private institution or organization, and eligible lender in a State described in section 435(g)(1)(D) or (F), shall develop a program to ensure the dissemination of information to students, lenders, and institutions of higher education regarding the loans authorized by this subsection.".

LINEAR REDUCTION OF PELL GRANTS

SEC. 14. Section 411(b)(3)(B) of the Higher Education Act of 1965 is amended to read as follows:

"(B)(i) If, for any period of any fiscal year, the funds appropriated for payments under this subpart are insufficient to satisfy fully all entitlements, as calculated under subsection (a)(2)(B)(i), the amount paid with respect to each entitlement shall be—

"(I) the full amount for any student whose expected family contribution is $200 or less, or

"(II) a percentage of that entitlement, as determined in accordance with a schedule of reductions established by the Secretary for this purpose, for any student whose expected family contribution is more than $200.

"(ii) Any schedule established by the Secretary for the purpose of division (i) of this subparagraph shall contain a single linear reduction formula in which the percentage reduction increases uniformly as the entitlement decreases, and shall provide that if an entitlement is reduced to less than $100, no payment shall be made.".

HIGHER EDUCATION SURVEY DATA

SEC. 15. The National Center for Education Statistics shall collect and publish for academic years 1982 through 1985, tuition and fees data, and room and board charges for institutions of higher education included in the Higher Education General Information Survey. The surveys required by this section shall be consistent with prior surveys of data described in this section.

SECTION-BY-SECTION ANALYSIS OF S. 2852

Sec. 2. Extends the existing federal priority in bankruptcy waiver for Sallie Mae for another two years;

Sec. 3. Maintains the Pell Grant award ceiling at $1800, for the 1983-84 and 1984-85 school years;

Sec. 4. Continues for an additional two years the decoupling of the campus based aid programs from the Pell Grant needs analysis;

Sec. 5. Carries over the 1982-83 Pell Grant family contribution schedule, adjusted for inflation, into 1983-84;

Sec. 6. Provides that the 1983-84 Pell Grant family contribution schedule (adjusted for inflation) shall also apply for 1984-85 unless the Department of Education by the existing April 1 deadline submits a new schedule which passes a prescribed review process;

Sec. 7. Carries over for academic years 1983-84 and 1984-85 the Pell Grant cost-of-attendance criteria in effect for 1982-83;

Sec. 8. Provides for the updating of Pell Grant needs analysis information immediately after the publication of the Consumer Price Index figure for June 1983;

Sec. 9. Carries over for the July 1, 1983-June 30, 1984 year the Guaranteed Student Loan family contribution schedule for the preceding year;

Sec. 10. Extends the current proportional reduction formula for Supplemental Education Opportunity Grant allocations to fiscal years 1983 and 1984;

Sec. 11. Extends the current proportional reduction formula for National Direct Student Loan allocations to fiscal years 1983 and 1984;

Sec. 12. Provides for simplified, clarified disclosure to borrowers of the cost and terms of their educational loans;

Sec. 13. Empowers state guaranty agencies and eligible lenders to consolidate federally insured student loans on the same basis as Sallie Mae;

Sec. 14. Substitutes for the old ratable reduction formula for Pell Grant awards a new linearly proportional reduction;

Sec. 15. Directs the National Center for Education Statistics to continue the collection and publication of certain data on higher education tuition and expenses for academic years 1982 through 1985.

Mr. STAFFORD. Mr. President, I am introducing today, with my colleagues Senators HATCH, PELL, and RANDOLPH, emergency legislation which will remove a serious impediment to the availability of student loans.

This legislation would extend, for 2 years, a provision of law enacted last year which would give all creditors an equal claim on the assets of the Student Loan Marketing Association (Sallie Mae) if Sallie Mae were to enter into an involuntary liquidation or reorganization under the Bankruptcy Act. Prior to the adoption of this provision, which expires on September 30 of this year, the Federal Government had first priority access to Sallie Mae's assets in the event of an involuntary liquidation or reorganization. This provision establishes that the Federal Government would have equal access as a creditor to Sallie Mae's assets in this event.

In 1974 to 1981, Sallie Mae, which is a federally established private warehouse facility and secondary market for guaranteed student loans and which holds approximately $6 billion in student loan assets, was able to finance its operations through borrowing from the Federal Financing Bank (FFB), an arm of the U.S. Treasury. In 1981, as part of a general policy to limit off-budget borrowing by Government-sponsored private corporations such as Sallie Mae, the Treasury and Sallie Mae reached an agreement that Sallie Mae's draw on the FFB would end on September 30, 1982, or after Sallie Mae has borrowed $5 billion, whichever came first. Sallie Mae reached the $5 billion limit in January of this year, and must now borrow on the open market to finance its operations and provide liquidity to lenders in the GSL program.

If the equal priority provision, which expires on September 30, is not extended, it is highly doubtful that Sallie Mae will be able to market its bond issues, as prospective bond holders would stand behind the Federal Government in the unlikely event of a Sallie Mae bankruptcy, and would thus not buy Sallie Mae issues. The inability of Sallie Mae to finance its activities in the public capital markets would have serious repercussions for the student loan programs. The legislation which we are introducing today would allow Sallie Mae to enter these markets for the next 2 years while the Congress continues to provide oversight of its activities.

Mr. President, this bill will also provide certain technical corrections in the higher education programs, consistent with policies adopted in the

continuing resolution of appropriations for fiscal year 1982. Principally, it would provide that if the Secretary of Education does not comply with the procedures in the Higher Education Act requiring him to submit a family contribution schedule for Pell grants to Congress by April 1, the previous year's schedule would remain in place. This year, the administration failed to conform with the law in submitting on time to Congress a family contribution schedule for the 1983-84 academic year, and this has resulted in extreme disruption and uncertainty for families trying to plan the financing of higher education for their children. It is therefore necessary to fix the terms and content of the family contribution schedule for the 1983-84 academic year, and if the Department of Education again fails to prescribe a schedule in a timely and lawful manner, for academic year 1984-85.

Mr. President, I hope that we can act on this legislation at the earliest possible moment, so that the student aid programs can proceed smoothly, and so that students and their families—and those who provide student aid—can plan their financing for the coming academic years.

Mr. PELL. Mr. President, I am pleased to join the chairman of the Subcommittee on Education, Arts, and Humanities and Senators HATCH and RANDOLPH in cosponsoring this important piece of legislation. Passage of this bill would result in significant improvements in two areas involving Federal student aid.

First, passage of the bill would give the Student Loan Marketing Association (Sallie Mae) a 2-year extension of its exemption under the Bankruptcy Act. This extension is vitally important if Sallie Mae is to continue to be able to market its bonds in the private sector.

In addition, we seek, in this legislation, to give State loan guarantee agencies the ability to consolidate different types of student loans. At present, this authority extends only to Sallie Mae. We believe it important that the State agencies also have this authority, which we hope they will use to assist individuals who may have several Federal loans, as well as several different types of Federal loans. Those people may currently be making several loan payments, which we believe might best be consolidated into a single loan and a single loan payment.

Second, this legislation would also put an end to the delays, uncertainty, and confusion that has marked the issuing of a family contribution schedule for the Pell grant program in both this and the past administration.

This year the administration was more than 4 months late in submitting a proposed family contribution schedule to the Congress. When one was finally proposed, it was based on an appropriation of only $1.4 billion for Pell grants. That figure assumes a 40-percent reduction in Pell grant funds, and the removal of more than 700,000 students from participation in this important program.

Even worse, however, is the fact that the proposed schedule was based on an appropriation figure that the Congress had rejected when it passed the fiscal 1983 budget resolution. That resolution actually contained a $110 million increase in Pell grants, from $2.279 billion for fiscal 1982 to $2.4 billion for fiscal 1983.

In essence, the legislation we are submitting today would negate the family contribution schedule submitted by the administration and lock in the one that is currently in effect for the 1982-83 academic year, updated.

For the 1984-85 academic year, the Secretary of Education would be required to submit a proposed family contribution schedule by April 1 of next year. If the Secretary failed to do so, then the 1983-84 schedule, updated, would become the 1984-85 schedule.

If the Secretary submits a proposed schedule by the April 1 deadline and it is disapproved by either House of Congress, the Secretary would have 15 days in which to submit a revised schedule. If that schedule is disapproved, then the schedule in effect for 1983-84, updated, would become the schedule for 1984-85.

Mr. President, these changes make a great deal of sense and would immeasurably improve the smooth and timely functioning of important Federal student aid programs. I ask my colleagues to give this legislation very serious consideration, and urge them to join us in supporting this bill.

By Mr. PERCY:

S. 2853. A bill to provide for the temporary duty-free treatment of imported hatters' fur, and for other purposes; to the Committee on Finance.

HATTERS' FUR TARIFF ACT OF 1982

Mr. PERCY. Mr. President, I am today introducing legislation that would relieve an inequity in our tariff laws.

The legislation I am introducing would temporarily suspend—through 1985—the 15-percent rate of duty on imported hatters' fur. Hatters' fur is imported under tariff item 186.20. The anomaly in this case is that there are virtually no domestic sources of this material and our American hatters must pay a high tariff on their raw material, thereby making the final product more expensive.

On the other side of the ledger, however, are imported hats, which use the same raw materials but do not have to pay the additional 15-percent duty charge. More finished products using the same furs come into the country at a duty not exceeding 5.3 percent ad valorem. Other hat shells come into the country duty-free, in cases where they are manufactured in GSP/designated countries.

Mr. President, this is a classic case of how our tariff laws can lead to the export of jobs. The 15-percent tariff on raw material discriminates against manufacture of hatters' fur in this country. At a time when there is a great deal of support in Congress for stimulating value-added manufacturing, this tariff runs just in the opposite direction, counter to our goals.

An identical bill has been introduced in the House by my good friend from Illinois, Representative ED DERWINSKI. This unfair tariff was brought to our attention by Stratton Hats, Inc. of Bellwood, Ill. The company is one of the few hat manufacturers left in the United States, with a major manufacturing facility also located in Winchester, Tenn.

I commend this legislation to the Finance Committee and hope they will act expeditiously on it. The administration has already recorded their views on the House legislation—H.R. 5386—and have no objection to passage of the proposal.

By Mr. PERCY:

S. 2854. A bill for the relief of the Centralia Carillon Committee; to the Committee on Finance.

RELIEF OF THE CENTRALIA CARILLON COMMITTEE

Mr. PERCY. Mr. President, I am today introducing legislation that would allow for the duty-free entry of carillon bells from France.

No U.S. foundries make these particular carillon bells and I understand that nonprofit groups that purchase these beautiful musical instruments are traditionally relieved of the duty through legislation such as I am introducing today.

Mr. President, suspension of duty on these carillon bells would be a tremendous help to the nonprofit Centralia Carillon Committee of Centralia, Ill. I would like to ask unanimous consent that excerpts from the letter sent me by Karel Keldermans, carillonneur for the Centralia carillon, be included in the RECORD at the close of my remarks. Mr. Keldermans' letter amply describes the community's wishes in this regard. I urge my colleagues on the Finance Committee to act quickly on this legislation so that the bells can enter the United States as planned this fall.

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

June 29, 1982.

Hon. CHARLES H. PERCY,
East Monroe,
Springfield, Ill.

DEAR SENATOR PERCY: As the carillon consultant for the Centralia Carillon Committee of Centralia, Illinois I have been requested to write to you, on behalf of this

non-profit committee, because we have recently purchased a carillon in France. This carillon will be imported to this country sometime in the autumn of 1982. Because this is a large four-octave instrument, the import duties could be quite expensive. The total weight involved—including all support beams and mechanism—might be as high as 100,000 pounds. The value of this instrument is at least 1¾ million dollars.

The reason for this correspondence is to request that you sponsor a resolution to waive the import duties for this musical instrument. There are two reasons for waiving the import duties:

(1) The carillon is a musical instrument capable of being played with as much expression as a piano; Therefore, it should not be imported as metal;

(2) There are no large bellfounders in the United States capable of producing a carillon. Hence, no U.S. jobs are lost due to importation. The United States imports at least two carillons a year from either England, The Netherlands, or France.

It is customary for states which are to receive carillons to have their senators sponsor a resolution and arrange with the Department of the Treasury to have import duties waived. For example, St. Thomas Church at Whitemarsh, Pennsylvania purchased a carillon in 1974; through its Congressional representative, import duties were waived. Covington, Kentucky did the same in 1978. Over the past 10 years, every carillon imported to this country has had import duties waived. The Centralia Carillon Committee would be most appreciative if you were able to assist us in doing the same.

I have been in contact with the French bellfoundry of Pierre Paccard (Paccard Fonderie de Cloches in Annecy) and have been informed that they will ship from Le Harve to Chicago via St. Lawrence Seaway. Because this will be a large undertaking, coordination of all aspects of this project is crucial.

By Mr. HAYAKAWA:

S. 2855. A bill to amend the Federal Seed Act with respect to prohibitions relating to interstate commerce in seed mixtures intended for lawn and turf purposes and prohibitions relating to importation of certain seeds, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

MODERNIZING THE FEDERAL SEED ACT

Mr. HAYAKAWA. Mr. President, the bill I am introducing today has two purposes. First, it will assist the Animal and Plant Health Inspection Service, U.S. Department of Agriculture, in carrying out its new responsibilities in administering title III of the Federal Seed Act (FSA). Second, it repeals certain sections of the Federal Seed Act having to do with the labeling of lawn seed which has become obsolete because of advances in seed technology and marketing.

Mr. President, the proposed budget of the U.S. Department of Agriculture for fiscal year 1983 calls for closing four regional seed laboratories which are now under the supervision of the Agricultural Marketing Service (AMS). One of the primary functions of these laboratories is to provide technical backup in regulating the import of seed. Seed imported into the United States is governed by title III of the Federal Seed Act.

The regional labs interact with the Federal Seed Standardization Laboratory, located at Beltsville, Md., to provide technical support for the Federal regulation of the sale of seed in interstate commerce. These activities will be consolidated at Beltsville. It is anticipated that cooperative agreements or other arrangements will be made with a number of State seed laboratories to assist in carrying out the activities formerly provided by the regional laboratories in administering these provisions of the Federal Seed Act.

Concurrent with the closing of the laboratories, the responsibility for administration of title III of the act will be transferred to the USDA Animal and Plant Health Inspection Service (APHIS). This is a logical move, because APHIS is now responsible, under separate legislation, for administration of the Federal Noxious Weed Act and the phytosanitary regulations governing imported seed. In order to carry out its new responsibilities, APHIS will use the facilities of the regional seed laboratory at North Brunswick, N.J.

In light of the transfer of responsibilities to a different agency and a reduction in personnel and facilities, it would be appropriate to review requirements of the act to see if the new workload placed on APHIS could be reduced. This should be done without sacrificing the necessary safeguards to agriculture as a whole, the seed industry, and the consumer of seed.

The requirements to inspect imported seed for noxious weed seeds and the staining of alfalfa and red clover seed would continue. That section of the act which pertains to the pure live seed and weed seeds would be repealed. The pure live seed requirement places the heaviest load on the laboratories and there is currently no domonstrated need for carrying out the work. The purity and germination qualities of the seed are established prior to the shipment and the problem of seed falling below mutually agreed standards can be settled between the parties. Once the seed enters interstate commerce, it must meet all standards required for the sale of domestic seeds established under the Federal Seed Act and appropriate State seed laws.

The requirement to determine if the seed contains more than 2 per centum by weight of weed seed is no longer valid. These seeds, as opposed to noxious weeds, are common in most parts of the world. In many cases, they are used as agriculture or vegetable seeds or are recognized as seeds of ornamentals. During fiscal year 1980, 61 million pounds of agricultural and vegetable seeds, valued at $40 million, were imported—about 1 percent of the seed used in the United States. Of 9,000 lots offered for importation, 257 were refused admission based on preliminary tests and 195 of these were subsequently admitted after being brought into compliance with the act. Only two of these were refused because they failed to meet the weed seed requirements.

Mr. President, the second purpose in amending the Federal Seed Act will eliminate conflicts between Federal and State seed laws and will provide flexibility to the Secretary of Agriculture in administering the act.

The act specifies that certain grasses be classified as "fine textured" or "coarse kinds" and a list of the two categories is provided in the regulations. The development of new improved varieties of grass seed has blurred the distinction between the two lists. It has come to a point where it is impossible, from a legal standpoint, to differentiate between the two kinds. It is a very slow and difficult process to change the lists in the regulations as new varieties are developed and even more difficult to classify a new variety of grass into one of the categories.

The Association of American Seed Control Officials, made up of State representatives, has recommended elimination of the requirement to label according to these distinctions and has made the change in the "Recommended Uniform State Seed Laws." Several States have adopted this labeling change in their seed laws; others are only waiting for the Federal Seed Act to be changed in order to change their laws.

In an attempt to conform to two different sets of laws, a seedsman selling seeds in one of these States could be in violation of either the State or Federal law or both. A member of the seed industry selling seeds on a national level finds it difficult, if not impossible, as well as expensive to attempt to label his seeds in a different manner in the 50 States.

The second immediate need for changes in the FSA pertaining to lawn seed mixtures is to correct the labeling requirement to allow that only the month and year of the oldest germination test be required. Since the test must be completed within a 5-month period of the date of sale, listing only the oldest germination test date would automatically cover those varieties within the mixture which had been tested at a later date. There is a great deal of information required on a small package of seed and, since this is a control measure and does not afford the consumer additional protection, it would save time and money in printing the label and make it easier for the

consumer to understand the information that is helpful.

There is also a need to provide the Secretary of Agriculture with authority to extend the 5-month period between the test date and date of sale when he finds that, under ordinary conditions of handling, that certain kinds of seed will maintain its germination qualities over a longer period of time.

Therefore, I hope the Senate will adopt this bill, which, while maintaining the high standards of excellence of seeds planted in the United States, makes needed changes to respond to budget reductions and removes the conflict between State and Federal seed laws.

By Mr. DURENBERGER (for himself, Mr. ABDNOR, Mr. BAUCUS, Mr. BURDICK, Mr. COCHRAN, Mr. CRANSTON, Mr. DANFORTH, Mr. DOLE, Mr. FORD, Mr. HATCH, Mr. HAYAKAWA, Mr. HEINZ, Mr. HOLLINGS, Mr. JACKSON, Mrs. KASSEBAUM, Mr. LEAHY, Mr. LEVIN, Mr. LUGAR, Mr. MATHIAS, Mr. MCCLURE, Mr. METZENBAUM, Mr. MURKOWSKI, Mr. PACKWOOD, Mr. QUAYLE, Mr. SARBANES, Mr. WEICKER, and Mr. ZORINSKY):

S.J. Res. 232. Joint resolution to provide for the designation of the week beginning October 1, 1982, as "National Sudden Infant Death Syndrome Awareness Week"; to the Committee on the Judiciary.

NATIONAL SUDDEN INFANT DEATH SYNDROME AWARENESS WEEK

● Mr. DURENBERGER. Mr. President, each day, some 20 infants in the United States succumb while asleep to the sudden infant death syndrome (SIDS), which is commonly known as "crib death." There is no warning, and no reason to expect that any particular baby will die. But 7,000 of them do die each year in this country—7,000 apparently normal and healthy infants between the ages of 1 week and 1 year.

Little is known about this mysterious syndrome. It appears to be as old as recorded history, and it strikes every ethnic group, every social class, every economic stratum, every region of the world.

The death of any child is a senseless tragedy which can totally disrupt the lives of parents and siblings. But a SIDS death often results in unique and particularly traumatic problems for the families of victims. Because SIDS is not well understood, and because it is not well known among the general public, the families of SIDS victims can often find themselves suspected of child abuse or neglect. Even when an autopsy results in a formal finding of SIDS as the cause of death, friends, neighbors, and relatives often remain confused and parents often suffer from feelings of guilt. This added anguish can be helped with counseling where needed, but it can be avoided if more people are aware of SIDS in the first place. It was for this reason that Congress passed legislation in 1974 to provide for counseling projects and medical protocols in SIDS cases.

But SIDS cuts a wider swath. Because it is not well understood, it can cause panic among parents of any young children. Recently, for example, a brief news item concerning a possible link between SIDS and certain innoculations—a link which was disproved—caused many parents to insist that their children not be innoculated. More horrifying, a number of unscrupulous people have been known to capitalize on the ignorance about SIDS to peddle quackery.

Substantial progress has been made in the investigation of SIDS in the past few years. It is possible that we may soon be able to identify infants who appear particularly susceptible to this pernicious killer. Once identified, they can be closely monitored so that resuscitation is undertaken as soon as needed. But diagnosis and prevention remain only distant goals, and research must be supported with contributions.

In other words, there is a clear need for more awareness of the sudden infant death syndrome. A greater awareness by the public can help the parents of victims to avoid added anguish. Just as important, it can prevent panic among other parents. Finally, it can stimulate the contributions needed for further research.

That is why I have introduced this resolution designating the first week of October as "National SIDS Awareness Week." It is why so many other Senators have cosponsored this resolution. And it is why I hope for its speedy passage and its implementation.●

● Mr. QUAYLE. Mr. President, I rise to join my colleague, Mr. DURENBERGER, as he introduces this joint resolution to declare the week of October 1, 1982, as "National Sudden Infant Death Awareness Week."

Twenty times a day in this country a lifeless infant is found. These babies are normal, healthy infants that are found dead in their cribs by their families. One cannot imagine the grief and heartache these crib deaths bring into a family, nor the guilt or the prosecution.

Because these crib deaths are not well known, many families of sudden infant death victims are suspected of child abuse. In one case, three siblings were removed from the grieving parents by child protection authorities within hours of the death of the new baby. With more public awareness, these needless tragedies can be avoided.

I support this joint resolution because it will bring public attention not only to the problem, but to the progress that is being made, particularly in the development of monitoring for susceptible children. Infants who have had near-misses can be monitored through their first year of life, when the danger of another episode appears to subside.

I commend the Senator from Minnesota for his interest in this problem, and join him in support of this joint resolution.●

ADDITIONAL COSPONSORS

S. 1650

At the request of Mr. HELMS, the name of the Senator from Delaware (Mr. ROTH) was added as a cosponsor of S. 1650, a bill to amend the Omnibus Crime Control and Safe Streets Act of 1968 to extend coverage under provisions of that act relating to benefits to survivors of certain public safety officers who died in the performance of duty.

S. 1969

At the request of Mr. PRYOR, the name of the Senator from Oklahoma (Mr. NICKLES) was added as a cosponsor of S. 1969, a bill to prohibit the use of appropriations for the payment of certain lobbying costs.

S. 2247

At the request of Mr. RIEGLE, his name was added as a cosponsor of S. 2247, a bill to amend the tariff schedules of the United States to permit the duty-free entry of certain footwear for use in the Special Olympics program.

S. 2300

At the request of Mr. FORD, the name of the Senator from Tennessee (Mr. SASSER) was added as a cosponsor of S. 2300, a bill to establish domestic content requirements for motor vehicles sold in the United States, and for other purposes.

S. 2419

At the request of Mr. DECONCINI, the name of the Senator from North Dakota (Mr. ANDREWS) was added as a cosponsor of S. 2419, a bill to amend title 28, United States Code, regarding venue, and for other purposes.

S. 2617

At the request of Mr. HEINZ, the name of the Senator from West Virginia (Mr. RANDOLPH) was added as a cosponsor of S. 2617, a bill to amend the Age Discrimination in Employment Act of 1967 to eliminate mandatory retirement and other forms of age discrimination in employment.

S. 2619

At the request of Mr. TSONGAS, the names of the Senator from Hawaii (Mr. INOUYE), the Senator from Connecticut (Mr. WEICKER), the Senator from Pennsylvania (Mr. HEINZ), and the Senator from California (Mr.

CRANSTON) were added as cosponsors of S. 2619, a bill to amend the Energy Security Act to extend the financing authority of the Synthetic Fuels Corporation to include projects for district heating and cooling and for municipal waste energy recovery, and for other purposes.

S. 2776

At the request of Mr. RIEGLE, the name of the Senator from Rhode Island (Mr. PELL) was added as a cosponsor of S. 2776, a bill to provide that disability benefits under title II of the Social Security Act may not be terminated without evidence of medical improvement, to limit the number of periodic reviews, and to provide that benefits continue to be paid through a determination by an administrative judge.

S. 2784

At the request of Mr. DECONCINI, the names of the Senator from Illinois (Mr. PERCY), the Senator from Indiana (Mr. LUGAR), and the Senator from Wisconsin (Mr. KASTEN) were added as cosponsors of S. 2784, a bill to clarify the application of the antitrust laws to professional team sports leagues, to protect the public interest in maintaining the stability of professional team sports leagues, and for other purposes.

SENATE JOINT RESOLUTION 178

At the request of Mr. HATCH, the name of the Senator from Vermont (Mr. LEAHY) was added as a cosponsor of Senate Joint Resolution 178, a joint resolution to authorize and request the President to proclaim the second week in April as "National Medical Laboratory Week."

SENATE JOINT RESOLUTION 220

At the request of Mr. PRYOR, the names of the Senator from Pennsylvania (Mr. HEINZ), the Senator from Texas (Mr. TOWER), the Senator from Idaho (Mr. SYMMS), and the Senator from Alabama (Mr. HEFLIN) were added as cosponsors of Senate Joint Resolution 220, a joint resolution to authorize the erection of a memorial on public grounds in the District of Columbia to honor and commemorate members of the Armed Forces of the United States who served in the Korean war.

SENATE JOINT RESOLUTION 225

At the request of Mr. EAGLETON, the names of the Senator from Rhode Island (Mr. PELL), the Senator from Arkansas (Mr. BUMPERS), the Senator from South Dakota (Mr. ABDNOR), and the Senator from Arizona (Mr. DECONCINI) were added as cosponsors of Senate Joint Resolution 225, a joint resolution to provide for the designation of the week beginning on November 21, 1982, as "National Alzheimer's Disease Week."

SENATE CONCURRENT RESOLUTION 61

At the request of Mr. MATTINGLY, the name of the Senator from Massachusetts (Mr. KENNEDY) was added as a cosponsor of Senate Concurrent Resolution 61, a concurrent resolution to direct the Commissioner of Social Security and the Secretary of Health and Human Resources to conduct a study on steps which might be taken to correct the social security benefit disparity known as the notch problems.

SENATE RESOLUTION 367

At the request of Mrs. HAWKINS, the names of the Senator from Illinois (Mr. PERCY), and the Senator from Rhode Island (Mr. PELL) were added as cosponsors of Senate Resolution 367, a resolution expressing the sense of the Senate with respect to recognition of the Red Shield of David of the Magen David Adom by the International Committee on the Red Cross.

SENATE RESOLUTION 451—RESOLUTION RELATING TO ASYLUM FOR HU NA

Mr. HAYAKAWA submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 451

Resolved, The Senate reaffirms its commitment to the historical role of the United States as a place of sanctuary, and

The Senate urges the Administration to carefully consider this historical role as it deliberates the case of Hu Na, a citizen of the People's Republic of China who has requested asylum in the United States.

ASYLUM FOR HU NA

Mr. HAYAKAWA. Mr. President, I am sending to the desk a resolution urging the administration to consider carefully the historical role of the United States as it deliberates the case of Hu Na, a citizen of the Peoples' Republic of China who has requested asylum in the United States.

Miss Hu, one of the Republic of China's most gifted tennis players, defected last month during an international tennis tournament in California. Her country has asked that she be returned and suggested that cultural exchange programs will suffer if the United States does not accede.

While I recognize the importance of preserving and improving our relations with the Peoples' Republic of China, I am deeply concerned that the United States not succumb to political pressure by compromising one of its most cherished practices, that of granting sanctuary to the deserving.

Whether Miss Hu is deserving is a question to be answered by the Immigration and Naturalization Service in consultation with the Department of State. The resolution that Senator MOYNIHAN and I offer today will not inerfere with that decisionmaking process, but it will emphasize that it should be made free of outside pressures. Miss Hu should be granted the same concern that was given Martina Navratilova, Wimbledon champion and native of Czechoslovakia, who was granted asylum in 1975.

I urge my colleagues to express their support for the historical role of the United States a place of sanctuary to the deserving by cosponsoring this resolution.

Thank you, Mr. President.

AMENDMENTS SUBMITTED FOR PRINTING

TEMPORARY INCREASE IN THE PUBLIC DEBT LIMIT

AMENDMENT NO. 2036

(Ordered to be printed and to lie on the table.)

Mr. GOLDWATER submitted an amendment intended to be proposed by him to the joint resolution (H.J. Res. 520) to provide for a temporary increase in the public debt limit.

SENSE OF THE SENATE RELATIVE TO TREATIES

Mr. GOLDWATER. Mr. President, the amendment is noncontroversial. It reaffirms the constitutional role of the Senate in making formal treaties or statutes and in changing or repealing those laws.

It states the sense of the Senate only and does not require House or Presidential action.

The provision does not enter into the controversy over whether two-thirds of the Senate or a simple majority is required to terminate a treaty. It does not address the issue of whether the House has any role in treaty termination. It avoids any argument about executive agreements and only applies to formal treaties. The above questions are left open for interpretation by each individual Senator as he or she sees fit.

An immediate reason for the provision is to remind Peking and the State Department that a joint communique does not amend or replace the Taiwan Relations Act. President Reagan cannot object to this purpose since he publicly insists he has not changed the Taiwan Relations Act in any way and will faithfully comply with it.

Passage of the amendment will be a needed boost for morale in Taiwan.

AMENDMENT NO. 2037

(Ordered to be printed and to lie on the table.)

Mr. SCHMITT submitted an amendment intended to be proposed by him to the joint resolution (H.J. Res. 520), supra.

EXTENDING UNEMPLOYMENT BENEFITS

● Mr. SCHMITT. Mr. President, I intend to offer an amendment to the debt limit bill which would extend unemployment compensation for up to 10 weeks for workers who have exhausted regular benefits.

This amendment is identical to the provisions contained in the conference report on the tax bill recently agreed

to by the House and Senate conferees. The amendment offers Members an opportunity to extend needed unemployment benefits independent of the tax bill conference report that will soon come before this body.

The reasons for extending unemployment benefits for an additional 10 weeks are well known; the issue has already been debated and agreed to by the Senate. Unemployment is at 9.8 percent, a postwar high. Pockets of unemployment exist in various areas of the country where the number of workers seeking jobs is as much as 30 to 40 percent of the work force. Many of these workers are close to exhausting their unemployment benefits. While it now appears that the economy is "turning around," the extension of these benefits will give unemployed workers and their families additional time as new jobs are created.

There is no certainty that the tax bill agreed to by the House-Senate conferees will be enacted into law. The debt limit bill on the other hand will be signed by the President in the very near future. There is no reason why we should hold hostage the extension of unemployment benefits to the passage of the tax bill. This amendment will insure that these extended benefits become available to unemployed workers at the earliest opportunity.

I ask unanimous consent that the text of the amendment be reprinted in full in the RECORD.

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

At the end of the Joint Resolution add the following new title:

TITLE II—FEDERAL SUPPLEMENTAL COMPENSATION PROGRAM

SHORT TITLE

SEC. 201. This title may be cited as the "Federal Supplemental compensation Act of 1982".

FEDERAL-STATE AGREEMENTS

SEC. 202. (a) Any State which desires to do so may enter into and participate in an agreement with the Secretary of Labor (hereinafter in this title referred to as the "Secretary") under this title. Any State which is a party to an agreement under this title may, upon providing thirty days' written notice to the Secretary, terminate such agreement.

(b) Any such agreement shall provide that the State agency of the State will make payments of Federal supplemental compensation—

(1) to individuals who—

(A) have exhausted all rights to regular compensation under the State law;

(B) have no rights to compensation (including both regular compensation and extended compensation) with respect to a week under such law or any other State unemployment compensation law or to compensation under any other Federal law (and is not paid or entitled to be paid any additional compensation under any such State or Federal law); and

(c) are not receiving compensation with respect to such week under the unemployment compensation law of Canada;

(2) for any week of unemployment which begins in the individual's period of eligibility.

except that no payment of Federal supplemental compensation shall be made to any individual for any week of unemployment which begins more than two years after the end of the benefit year for which he exhausted his rights to regular compensation.

(c) For purposes of subsection (b)(1)(A), an individual shall be deemed to have exhaused his rights to regular compensation under a State law when—

(1) no payments of regular compensation can be made under such law because such individual has received all regular compensation available to him based on employment or wages during his base period; or

(2) his rights to such compensation have been terminated by reason of the expiration of the benefit year with respect to which such rights existed.

(d) For purposes of any agreement under this title—

(1) the amount of the Federal supplemental compensation which shall be payable to any individual for any week of total unemployement shall be equal to the amount of the regular compensation (including dependents' allowances) payable to him during his benefit year under the State law for a week of total unemployment; and

(2) the terms and conditions of the State law which apply to claims for extended compensation and to the payment thereof shall apply to claims for Federal supplemental compensation and the payment thereof; except where inconsistent with the provisions of this title or with the regulations of the Secretary promulgated to carry out this title.

Solely for purposes of paragraph (2), the amendment made by section 2404(a) of the Omnibus Budget Reconciliation Act of 1981 shall be deemed to be in effect for all weeks beginning on or after September 12, 1982.

(e)(1) Any agreement under this title with a State shall provide that the State will establish, for each eligible individual who files an application for Federal supplemental compensation, a Federal supplemental compensation account with respect to such individuals's benefit year.

(2)(A) Except as otherwise provided in this paragraph, the amount established in such account for any individual shall be equal to the lesser of—

(i) 50 per centum of the total amount of regular compensation (including dependents' allowances) payable to him with respect to the benefit year (as determined under the State law) on the basis of which he most recently received regular compensation; or

(ii) 6 times his average weekly benefit amount (as determined for purposes of section 202(b)(1)(C) of the Federal-State Extended Unemployment Compensation Act of 1970) for his benefit year.

(B) If an extended benefit period was in effect under the Federal-State Extended Unemployment Compensation Act of 1970 in a State for any week which begins on or after June 1, 1982, and before the week for which the compensation is paid, subparagraph (A) shall be applied with respect to such State by substituting "10" for "6" in clause (ii) thereof.

(C)(i) In the case of any State not described in subparagraph (B), subparagraph (A) shall be applied, only with respect to weeks during a high unemployment period, by substituting "8" for "6" in clause (ii) thereof.

(ii) For purposes of clause (i), the term "high unemployment period" means, with respect to any State, the period—

(I) which begins with the third week after the first week in which the rate of insured unemployment in the State for the period consisting of such week and the immediately preceding 12 weeks equals or exceeds 3.5 percent, and

(II) which ends with the third week after the first week in which the rate of insured unemployment in the State for the period consisting of such week and the immediately preceding 12 weeks is less than 3.5 percent;

except that no high unemployment period shall last for a period of less than 4 weeks.

(iii) For purposes of clause (ii), the rate of insured unemployment for any period shall be determined in the same manner as determined for purposes of section 203 of the Federal-State Extended Unemployment Compensation Act of 1970.

(f) (1) No Federal supplemental compensation shall be payable to any individual under an agreement entered into under this title for any week beginning before whichever of the following is the later:

(A) the week following the week in which such agreement is entered into; or

(B) September 12, 1982.

(2) No Federal supplemental compensation shall be payable to any individual under an agreement entered into under this title for any week beginning after March 31, 1983.

PAYMENTS TO STATES HAVING AGREEMENTS FOR THE PAYMENT OF FEDERAL SUPPLEMENTAL COMPENSATION

SEC. 203. (a) There shall be paid to each State which has entered into an agreement under this title an amount equal to 100 per centum of the Federal supplemental compensation paid to individuals by such State pursuant to such agreement.

(b) No payment shall be made to any State under this section in respect of compensation to the extent the State is entitled to reimbursement in respect of such compensation under the provisions of any Federal law other than this title or chapter 85 of title 5, United States Code. A State shall not be entitled to any reimbursement under such chapter 85 in respect of any compensation to the extent the State is entitled to reimbursement under this title in respect of such compensation.

(c) Sums payable to any State by reason of such State's having an agreement under this title shall be payable, either in advance or by way of reimbursement (as may be determined by the Secretary), in such amounts as the Secretary estimates the State will be entitled to receive under this title for each calendar month, reduced or increased, as the case may be, by any amount by which the Secretary finds that his estimates for any prior calendar month were greater or less than the amounts which should have been paid to the State. Such estimates may be made on the basis of such statistical sampling, or other method as may be agreed upon by the Secretary and the State agency of the State involved.

FINANCING PROVISIONS

SEC. 204. (a)(1) Funds in the extended unemployment compensation account (as established by section 905 of the Social Security Act) of the Unemployment Trust Fund shall be used for the making of payments to States having agreements entered into under this title.

(2) The Secretary shall from time to time certify to the Secretary of the Treasury for payment to each State the sums payable to such State under this title. The Secretary of the Treasury, prior to audit or settlement by the General Accounting Office, shall make payments to the State in accordance with such certification, by transfers from the extended unemployment compensation account (as established by section 905 of the Social Security Act) to the account of such state in the Unemployment Trust Fund.

(b) There are hereby authorized to be appropriated, without fiscal year limitation, to the extended unemployment compensation account, such sums as may be necessary to carry out the purposes of this title. Amounts appropriated pursuant to the preceding sentence shall not be required to be repaid.

(c) There are hereby authorized to be appropriated from the general fund of the Treasury, without fiscal year limitation, to the employment security administration account in the Unemployment Trust Fund such funds as may be necessary for purposes of assisting States (as provided in title III of the Social Security Act) in meeting the costs of administration of agreements under this title.

DEFINITIONS

SEC. 205. For purposes of this title—

(1) the terms "compensation", "regular compensation", "extended compensation", "base period", "benefit year", "State", "State agency", "State law", and "week" shall have the meanings assigned to them under section 205 of the Federal-State Extended Unemployment Compensation Act of 1970; and

(2) the term "period of eligibility" means, with respect to any individual, any week which begins on or after September 12, 1982, and begins before April 1, 1983; except that an individual shall not have a period of eligibility unless—

(A) his benefit year ends on or after June 1, 1982, or

(B) such individual was entitled to extended compensation for a week which begins on or after June 1, 1982.

FRAUD AND OVERPAYMENTS

SEC. 206. (a)(1) If an individual knowingly has made, or caused to be made by another, a false statement or representation of a material fact, or knowingly has failed, or caused another to fail, to disclose a material fact, and as a result of such false statement or representation or of such nondisclosure such individual has received an amount of Federal supplemental compensation under this title to which he was not entitled, such individual—

(A) shall be ineligible for further Federal supplemental compensation under this title in accordance with the provisions of the applicable State unemployment compensation law relating to fraud in connection with a claim for unemployment compensation; and

(B) shall be subject to prosecution under section 1001 of title 18, United States Code.

(2)(A) In the case of individuals who have received amounts of Federal supplemental compensation under this title to which they were not entitled, the State is authorized to require such individuals to repay the amounts of such Federal supplemental compensation to the State agency, except that the State agency may waive such repayment if it determines that—

(i) the payment of such Federal supplemental compensation was without fault on the part of any such individual, and

(ii) such repayment would be contrary to equity and good conscience.

(B) The State agency may recover the amount to be repaid, or any part thereof, by deductions from any Federal supplemental compensation payable to such individual under this title or from any unemployment compensation payable to such individual under any Federal unemployment compensation law administered by the State agency or under any other Federal law administered by the State agency which provides for the payment of any assistance or allowance with respect to any week of unemployment, during the three-year period after the date such individuals received the payment of the Federal supplemental compensation to which they were not entitled, except that no single deduction may exceed 50 per centum of the weekly benefit amount from which such deduction is made.

(c) No repayment shall be required, and no deduction shall be made, until a determination has been made, notice thereof and an opportunity for a fair hearing has been given to the individual, and the determination has become final.

(3) Any determination by a State agency under paragraph (1) or (2) shall be subject to review in the same manner and to the same extent as determinations under the State unemployment compensation law, and only in that manner and to that extent.●

AMENDMENT NO. 2038

(Ordered to be printed.)

Mr. HELMS proposed an amendment to the joint resolution (H.J. Res. 520) supra.

AMENDMENT NO. 2039

(Ordered to be printed.)

Mr. WEICKER proposed an amendment to the joint resolution (H.J. Res. 520) supra.

AMENDMENT NO. 2040

(Ordered to be printed.)

Mr. BAUCUS proposed an amendment to the joint resolution (H.J. Res. 520) supra.

AUTHORITY FOR COMMITTEES TO MEET

SUBCOMMITTEE ON LABOR

Mr. BAKER. Mr. President, I ask unanimous consent that the Subcommittee on Labor, of the Committee on Labor and Human Resources, be authorized to meet during the session of the Senate on Wednesday, August 18, at 9:30 a.m., to hold a hearing on S. 2617, Prohibition of Mandatory Retirement and Employment Rights Act.

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

COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY

Mr. BAKER. Mr. President, I ask unanimous consent that the Committee on Agriculture, Nutrition, and Forestry be authorized to meet during the session of the Senate on Tuesday, August 17, at 10 a.m., to consider the nominations of Wilmer Mizell to be Assistant Secretary of Government Affairs for the USDA, and Leonard Fouts and Tom Carothers to be members of the Farm Credit Board of the Farm Credit Administration.

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

Mr. BAKER. Mr. President, I ask unanimous consent that the Committee on Agriculture, Nutrition, and Forestry be authorized to meet during the session of the Senate on Wednesday, August 18, at 10 a.m., to mark up S. 2245, S. 2620, and S. 2621, bills relating to the reauthorization of the Federal Insecticide, Fungicide, and Rodenticide Act.

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

COMMITTEE ON FOREIGN RELATIONS

Mr. BAKER. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Tuesday, August 17, at 2 p.m., to hold an oversight hearing on the United States policy toward China and Taiwan.

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

SUBCOMMITTEE ON FEDERAL EXPENDITURES, RESEARCH, AND RULES

Mr. BAKER. Mr. President, I ask unanimous consent that the Subcommittee on Federal Expenditures, Research, and Rules, of the Committee on Governmental Affairs, be authorized to meet during the session of the Senate on Wednesday, August 18, at 9:30 a.m., to consider S. 1782, the Small Business Contract Payment and Procedures Act.

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

COMMITTEE ON THE JUDICIARY

Mr. BAKER. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet during the session of the Senate on Tuesday, August 17, 1982, in order to consider and act on the following committee business:

UNITED STATES CIRCUIT COURT JUDGE

Judge Harry W. Wellford, of Tennessee, to be U.S. circuit judge for the Sixth Circuit Court of Appeals.

UNITED STATES DISTRICT COURT JUDGES

Mr. William M. Acker, Jr., of Alabama, to be U.S. district judge for the northern district of Alabama.

Mr. Bruce Selya, of Rhode Island, to be U.S. district judge for the district of Rhode Island.

COMMISSION ON CIVIL RIGHTS

Prof. Robert A. Destro, of Wisconsin, to be a member of the Commission on Civil Rights.

Rev. Constantine N. Dombalis, of Virginia, to be a member of the Commission on Civil Rights.

Dr. Guadalupe Quintanilla, of Texas, to be a member of the Commission on Civil Rights.

UNITED STATES MARSHALS

Mr. Clinton T. Peoples, of Texas, to be U.S. marshal for the northern district of Texas.

Mr. Charles L. Dunahue, of Colorado, to be U.S. marshal for the district of Colorado.

BILLS

An amendment in the nature of a substitute for S. 2420—the Omnibus Victims Protection Act of 1983.

H.R. 4476—The reauthorization for the Administrative Conference of the United States.

(Note. Any of the above nominations or bills which are successfully processed as a result of the poll being presently circulated, will be stricken from the agenda.)

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

COMMITTEE ON FINANCE

Mr. BAKER. Mr. President, I ask unanimous consent that the Finance Committee be authorized to meet during the session of the Senate on Wednesday, August 18, to hold a hearing on Social Security Disability Insurance.

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

COMMITTEE ON THE JUDICIARY

Mr. BAKER. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet during the session of the Senate on Wednesday, August 18, 1982, in order to receive testimony concerning Senate Joint Resolution 199, a proposed constitutional amendment relating to voluntary school prayer and to consider the following nominations:

WITNESS LIST

Congressman Stephen L. Neal,
5th District,
State of North Carolina.
Hon. Edward C. Schmults,
Deputy Attorney General,
U.S. Department of Justice,
Washington, D.C.
Dr. M. G. Robertson,
President,
Christian Broadcast Network, Inc.,
Virginia Beach, Va.
Mr. Willard H. McGuire,
President,
National Education Association,
Washington, D.C.

PANELISTS

Hon. James Corman,
Representing Americans United for Separation of Church and State,
Silver Spring, Md.
George Bushnell, Esq.,
Representing the General Assembly of the United Presbyterian Church,
New York, N.Y.
Hon. John Buchanan,
Representing People for the American Way,
Washington, D.C.
Mr. George Ogle,
Program Director,
General Board of Church and Society of the United Methodist Church,
Washington, D.C.

U.S. DISTRICT COURT JUDGES

Mr. Thomas F. Hogan, of Maryland, to be U.S. District Judge for the District of Columbia.

Mr. Ross T. Roberts, of Missouri, to be U.S. District Judge for the western district of Missouri.

U.S. COURT OF CLAIMS

Alex Kozinski, of the District of Columbia, to be a Judge of the U.S. Court of Claims.

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

COMMITTEE ON GOVERNMENTAL AFFAIRS

Mr. BAKER. Mr. President, I ask unanimous consent that the Committee on Governmental Affairs be authorized to meet during the session of the Senate on Thursday, August 19, at 10 a.m. to hold a hearing to consider S. 2629, Budget Reform Act.

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

SUBCOMMITTEE ON TRANSPORTATION

Mr. BAKER. Mr. President, I ask unanimous consent that the Subcommittee on Transportation of the Committee on Environment and Public Works be authorized to meet during the session of the Senate on Wednesday, August 18, at 10 a.m., to hold a hearing on highway cost allocation and revenue issues.

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

SUBCOMMITTEE ON PUBLIC LANDS AND RESERVED WATER

Mr. BAKER. Mr. President, I ask unanimous consent that the Subcommittee on Public Lands and Reserved Water, of the Committee on Energy and Natural Resources, be authorized to meet during the session of the Senate on Wednesday, August 18, at 2 p.m., to consider S. 2118, a bill to designate certain national forest system lands in the State of Wyoming for inclusion in the National Wilderness Preservation System, to release other forest lands for multiple use management, to withdraw designated wilderness areas in Wyoming from minerals activity, and for other purposes.

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

ADDITIONAL STATEMENTS

IMMIGRATION REFORM

● Mr. KENNEDY. Mr. President, following yesterday's vote by the Senate on S. 2222, "The Immigration Reform and Control Act," the U.S. Catholic Conference issued a statement expressing its deep reservations over the bill and opposition to key provisions in it.

As Senators know, I share many of those concerns—which I stated when I voted in opposition to the bill.

Had the Senate accepted my amendments to restore the existing second preference immigration category, the fifth preference for unmarried brothers and sisters of U.S. citizens, and taken immediate relatives out of the annual ceiling—we would not be hearing widespread concerns over the erosion of the family reunification goals of our Nation's immigration laws contained in the bill.

The U.S. Catholic Conference states the issue well: "We view with utter dismay the erosion of the family reunification foundation of our system of selecting immigrants."

I also commend the Conference for pointing out that the limitations on the legalization program contained in the bill are simply "putting off to another day the time when the problem will ultimately be resolved even for those who may now qualify" for amnesty. As the Conference statement concludes, "Surely the head and heart of America can do more."

Mr. President, I ask that the text of the statement issued by the U.S. Catholic Conference be printed in the RECORD.

The statement follows:

STATEMENT ISSUED BY THE U.S. CATHOLIC CONFERENCE

The United States Catholic Conference has been following closely the debate in the Senate on the Immigration Reform and Control Bill, S. 2222. We are heartened by the Senate's action in defeating by a substantial margin Senator Huddleston's amendment designed to subtract the number of refugees admitted to the U.S. from the total authorized number of regular immigrants admitted the following year. This would result in every refugee and asylee admitted blocking the admission of a regular immigrant the following year.

However, we view other Senate changes in the bill with grave concern. We deplore adoption of the Grassley amendment on undocumented aliens which sets the residency date for acquisition of permanent resident status back to 1977 and the date for temporary resident status back to 1980. Congress has a unique opportunity to act forthrightly and effectively in putting the issue of undocumented aliens behind us. By prolonging the periods of adjustment and permanent residence we are only putting off to another day the time when the problem will ultimately be resolved even for those who may qualify. As for those disqualified simply by date of residence—and their number may indeed be large—the government is still saddled with the insurmountable burden of apprehending and expelling them, while the undocumented themselves face continued exploitation by unscrupulous employers. Surely the head and heart of America can do more.

We view with utter dismay the erosion of the family reunification foundation of our system of selecting immigrants. As the bill stands, the immediate relatives of U.S. citizens are included under the annual numerical ceilings; the families of permanent resident aliens are weakened by the disqualification for relative preference of audit unmarried sons and daughters; no provision is made for brothers and sisters of U.S. citizens; and many family units are divided by the imposition of the 1980 cutoff date for temporary residence. It is essential that the principle of family reunification be retained in our immigration laws.

We now look forward to the deliberations in the House of Representatives. We encourage Congress to continue to give conscientious consideration to these very complex issues. It is our continued hope that they will be resolved in a manner which reflects justice, compassion, and humanitarian concern.—Msgr. Daniel C. Hoye, General Secretary, United States Catholic Conference.●

ARMS CONTROL

● Mr. HART. Mr. President, on April 18, Congressman MORRIS UDALL spoke to the people of Tuscon, Ariz., on an issue of transcendent importance; war and peace in the nuclear age. He did so from a highly personal perspective, as the grandson of a Mormon pioneer who settled in the Arizona wilderness of the 1870's. He underscored for his audience the dramatic nature of the changes that have taken place in American society and throughout the world in the 100 years since his grandfather's migration. He reviews, with special insight, the scope of the scientific and technological revolution that has touched us all and brought both unparalled material well-being and the capacity to destroy ourselves through nuclear annihilation.

In the second half of his address, Congressman UDALL outlines a straightforward and achievable program to arrest the ruinious nuclear arms competition between the United States and the Soviet Union. With clarity, conviction, and precision, he first describes the dimensions of the task confronting us and then offers a number of practical steps that would enable us to reassert control over our own destinies. It is a powerful and moving address. I highly commend it to my Senate colleagues.

I submit for the RECORD Congressman UDALL's April 18 address to the citizens of Tuscon, "The View From Ground Zero."

The address follows:

ADDRESS OF CONGRESSMAN MORRIS K. UDALL

In the 1870s, more than a hundred years ago, my grandfather, a Mormon pioneer, came south from Utah to build a small town where I was born. I was in high school before he died and got to know him. In those simpler times, the U.S. government or people in other countries had little impact on how Americans lived. Government delivered the mail, gave you a patent to your farm, maybe got into a war now and then, but didn't touch you or your family. And families in Northern Arizona those days didn't really have to worry about any kind of attack or death at the hands of outside forces. The biggest guns ever built were mounted on ships and had a range of maybe 12 miles.

Protected by two oceans and some mountain ranges, my grandfather's generation, and mine, were safe. But times have drastically changed and mankind now faces threats to its very existence that were unthinkable even 40 years ago.

It took us 150 years in this country to go from an agrarian society with 90 percent of our people on farms, to the world's first and greatest technological power. We have worshiped technology and science in our country and we have developed, over those decades, a basic reliance on technology and science and at least one basic attitude: if the scientists can do something, we are wise to build it and adopt it. There might be flaws or side effects here, or some errors there, but they would be worked out.

Basically, we were well off to deploy whatever technology the scientists could build. This was, then, a good policy which enabled us to build the railroads, the steam engines, the automobile, the electric light, the chemicals that made life better and our farms more productive and our manufactured goods the standard of excellence.

But in the last 40 years, all that has changed. Chemicals cause cancer and nuclear tests produce deadly waste, toxic chemical wastes brought birth defects at Love Canal and other places. In Virginia, the James River was poisoned for years from discharging Kepone, an exceedingly dangerous chemical, into its waters. Fish died and lakes are rendered lifeless by acid rain. We hear talk from our scientists about the ozone layer and other problems about which not enough is known.

So we are beginning to learn that sometimes we ought to go a little bit slow, take another look at a new technology or process. Things we can technically do, we maybe won't do for awhile until we're a little more sure. Cancer is an epidemic in this country. We need more testing of new chemicals used in our food. We decided, wisely, not to build a supersonic transport.

About 35 years ago, we suddenly saw the great promise of nuclear fission and fusion, the power of the sun. This great gift would not only give us weapons of immense destructiveness that could bring an American peace to the world, but it promised "power for the people," cheap electricity for the whole world, and progress and economic growth and technology for all the nations of the world.

And now the bright promise of nuclear is in trouble on both fronts. Serious questions now are posed whether nuclear electricity is cheap, safe or whether we can dispose of the wastes that last for thousands of years.

The other arm if the dilemma—the nuclear arms race, which for the first time in the history of this planet seriously threatens the capacity to eliminate, not just some "enemies," but the entire human race.

And so the issue here is life itself. If we have arrived at the point where we can conceive of destroying our species, can we break out and talk about the human race and conceive a plan to save it?

We must.

If we do not, most surely we could see the day in our lifetime when the living shall envy the dead.

As Albert Einstein once said, "The unleashed power of the atom has changed everything save our modes of thinking. And we thus drift toward unparalleled catastrophe . . . a new type of thinking is essential if mankind is to survive. . . ."

In the last year or so, there has burst out a wave of concern here in America. Our people know the way we are heading. They recognize the dangers threatening this country and the whole planet. They know that by the end of this century, unless we act, six nations having nuclear weapons will be replaced with maybe 20 na' ıs. I'm not going to sleep very comfortably knowing that nuclear war is a telephone call away from people like Idi Amin, the Ayatollah, Qadhafi, or another Hitler. We must begin to talk seriously and immediately about proliferation and join with the Soviets and other major powers to slow it down and stop it in its tracks. Unstable rulers and terrorist groups simply must not get their hands on nuclear bombs.

Today, unlike my grandfather's time, someone you never heard of, sitting in a building 8,000 miles away, can set in motion events that could destroy this city and all the hopes and dreams for all civilization. And it could be over in less than a couple of hours.

The world has changed drastically. As Albert Einstein said the week he died, we must "appeal, as human beings, to human beings." He was right. We got ourselves into this dilemma and maybe we can get ourselves out. But there is no perfect choice, for all the options have dangers. There is no foolproof course. We run risks if we go for a mutual freeze and risks if we do not. But let us be willing to be strong and forceful and to find the road where the risks are least. I propose that we proceed now on several levels, all at once.

First, we should get our President and our leaders back to the bargaining table with the Soviets. This Administration shot down SALT II, negotiated earlier by President Ford and Henry Kissinger, and later by President Carter, meeting with Secretary Brezhnev. We are still observing, and the Soviets are still observing, the warhead and launcher limits in the SALT II agreement.

It makes no sense to talk about putting off negotiations with the Soviets until we have built more weapons and produced more systems, and raced ahead with the nuclear arms buildup which will give us even more of a lead in categories than we have now. The old idea of bargaining chips for strategic arms limitation talks has never worked and it won't work today. No country will build a multi-billion dollar missile for the purpose of dismantling it.

I propose we stop kidding ourselves and our allies and the world with this careless talk about "limited nuclear war." There can be no limits. It simply won't happen that the Soviets will take our Omaha, and at 9 o'clock, we'll strike back and destroy Leningrad, and at 10, they'll drop a couple on Detroit, and then we'll all go to lunch at the Doubletree and talk about what we'll do next. We will not find the answer in another year, or just the right moment, or just the right buildup, or just the right deployment of some new weapon, or even just one more bargaining chip. The time to negotiate is now, and the Administration has let us all down.

Secondly, we must move at once to limit the risks of an accidental war. We've come too close too many times these last 30 years. On one famous occasion, our radar mistook the rising moon for missiles coming in from the Soviet Union. We must improve the Hot Line and immediate communications systems. And we should adopt right now the plan first advanced by Senator Henry Jackson, calling for the establishment of a joint U.S.-Soviet military command post. Two such posts ought to be set up, one in Moscow and one in Washington, with Soviet and American military personnel operating from both. The Presidential Hot Line is just not reliable enough anymore. Instant communication between military leaders could avert a nuclear mistake.

And I would call right now for an end to this dangerous nonsense of our government specifically refusing to rule out a first strike. It may have made sense in the early days of NATO. But not now. Yes, there are risks, and yes, the Soviets cannot always be trusted.

But we ought to call their bluff on this offer and join them now in a mutual pledge that neither side will use nuclear weapons first. We don't fool anybody with this—not our own people, not our NATO allies, and certainly not the Soviets. This ancient doctrine may have been right when first adopted, on the theory that the Soviets had

NATO badly outmatched in conventional arms, and that the only way the U.S. could protect our European allies would be to promise, in the event of a conventional Soviet attack, to use our nuclear weapons against invading Soviet forces. But what we now are saying to the Soviets is, we want you to believe that we will rain down American nuclear missiles on the Soviet cities in order to protect the West Germans and the other NATO countries from a conventional Russian attack. But we're saying to the American people at the same time, "Look, we don't really mean it, and you shouldn't worry about it because it won't happen." It's just cheap deterrence, we say. This is a tremendously destabilizing posture to take and I join with the four leaders from various recent Administrations who said the other day, that this is a dangerous and outmoded policy.

A recent poll showed that 72% of the American people want a freeze on more nuclear weapons, and they want it right now. Not the unilateral freeze or unilateral disarmament, but a negotiated, verifiable freeze with the Soviets against deploying or building any new intercontinental missile systems. I agree.

In the meantime, I would call for and support the strongest emphasis on an armed forces equipped with the very best conventional arms, and my voting record reflects that support.

I think the American people are coming to an understanding that times really have changed and that we must change.

And perhaps it is coming to pass, as President Eisenhower once put it, that someday the American people will stand up and demand peace.

If this is coming to pass, I suspect that American women are showing us the way. We had no Gold Star Fathers during World War II, but Gold Star Mothers. Women bear a special pain in wartime. Women have always been the special custodians of the family values, the children, of peace and the gentler aspects of civilization, and the bank of genes that keeps us going. If it were left to mothers in the world, I suspect we would have no wars.

Women and men rarely have different levels of support for politicians. Ronald Reagan ought to be worried about a 12-point gap between the support he gets from men and the support he gets from women. I think the difference relates to war, to nuclear questions, and to doubts and concerns about his Administration.

Yes, I'm concerned about the Russian buildup. I do not condone it. It is real, dangerous, alarming and I'm critical of it. We must not ignore it and we must be concerned by it.

But I also believe it has been exaggerated. The Joint Chiefs of Staff were asked last year, one by one, if they would trade across the board for what the Russians have. Would the Chief of Staff of the Air Force trade ours for theirs? His answer was no. Would the Chief of Staff of our army trade for theirs? His answer was no. Would the Chief of Naval Operations trade our navy for theirs? His answer was no.

We must remember that when we see the estimates of Soviet strength, that a good bit of their buildup is deployed along the 3,500 mile border with China.

In 1945, we had two nuclear bombs.

Today, we have 12,000 nuclear warheads.

How much is enough?

The recent Israeli assault on the Iraqi nuclear facility reminds me of a conversation I had not long ago. The Chinese, if you talk to their leaders, are paranoid in their fear of the Soviets, and vice-versa. This mutual fear dominates any dialogue. After the big breakup between China and the Russians, the Soviets began to worry about eventual nuclear capacity on the part of the Chinese. The Chinese were building a huge new complex in a remote part of Western China. As the Soviet skyplanes and intelligence operators told the Soviets, the Chinese were beginning to get enriched uranium and plutonium and soon, they would be ready to make nuclear weapons. An old CIA agent who isn't around anymore told me that we had echoes of a great debate that took place in the Kremlin over several years. He said the Russians came close—very close—to an attack on the Chinese nuclear facilities, to take them out early, like Israel and Iraq. My informant told me that by the end of three or four years the Russian intelligence service showed that the Chinese had, or were about to build, something in the range of 300 to 400 nuclear weapons. Not very sophisticated, but nuclear weapons all the same. And the Chinese had the planes and the rockets, also of a primitive design, probably capable of hitting Soviet targets, including Moscow.

At that point, and after more debate, the Soviets decided against an attack.

I read into that story, a lesson: you don't need 9,000 or 40,000 or 68,000 nuclear warheads to deter a country, even a superpower. A credible arsenal of a few hundred will deter and beyond that, you're not getting much additional security and you may even be getting less.

The Russians already have enough of a stockpile to put 140 nuclear warheads each in every one of our 50 states. In Arizona, we can portion it out even more. Consider that every county could have 14 nuclear bombs arriving. Fourteen Hiroshimas in Pima County alone—only these devices are several hundred times the power of the bombs dropped on Japan.

And so I think the American people have to ask this Administration why we're not talking to the Soviets now. I'm not a fan of Richard Nixon, as some might suspect, nor do I think Henry Kissinger is one of the world's most humble people, but I say to both of these men that at least you knew you had to go to the Russians and start talking about nuclear arms. And they did, and on that matter, I think history will treat them kindly.

Candidate Ronald Reagan said that he would begin to negotiate soon. Shortly before his election, Reagan said in a televised address, "As President, I will make immediate preparation for negotiations on a SALT III treaty." Despite that pledge, those preparations continue to drag on and nothing significant has been done.

Today, we ought to ask our President: how long does it take? When will we go to the bargaining table? And when will our government not be so busy with the arms race that we can talk about ending it?

Last November, as this amazing outpouring of concern arose in our land, the President made a good start on missile talks when he proposed so-called "Zero Option" in which the Soviet Union would remove their land-based intermediate range missiles from Europe in exchange for cancellation of NATO's planned deployment of Pershing II missiles. The President's November speech was a good speech and a good start, but it was only a beginning, and a single speech will not even begin to do this job.

Let me make one other serious and important suggestion. We ought to stop treating the citizens of the Soviet Union as some kind of subhuman species, that is, people who don't care about wiping out 100 million of their people if they can get 105 million of ours. If, in your view, a particular group of people are really subhuman, then you would really needn't treat them in human terms. And I find too often that people involved in this nuclear debate talk about the Soviets in those stereotyped and dangerous terms—the mad Russian general who can't wait to blow up San Francisco, even though he and his family and his country may be vaporized in the next exchange.

I've had the interesting experience of knowing one of the best Russian diplomats over the years. His wife is a lovely, remarkable woman. I was swapping political stories with some guests one night and started to tell a mother-in-law joke. And I said, to the lady, "Are there mother-in-law jokes in the Soviet Union?"

She replied with a smile, "It is universal."

And so it is all universal.

Lyndon Johnson found the way to get through to Kosygin at the Glassboro summit—it was talking about his children. And Kosygin talked about his children, and his grandchildren. Jimmy Carter's efforts to Camp David with Begin and Sadat kept flying apart on crucial points. But President Carter kept talking about the children and the grandchildren and about their families. Somehow, the talks kept going.

We're all sharing this planet together and we have to work together. And we have to treat each other as people. Neither side can give ultimatums to the other. We have American leaders who talk as though we could say to the Soviets, "We're going to be number one, and you are going to be inferior in all of this arms race, and if you don't accept this, we'll simply build nuclear warheads until you do accept it." We wouldn't accept that kind of ultimatum and I don't think we can ask our adversaries to accept it.

Nixon and Kissinger used to talk of the importance of a "web of relationships," and they were right. We need all kinds of commercial and cultural relationships between the Soviet Union and the United States. We ought to explore proposals on all levels and on people-to-people basis, where we can. On the commercial front, surely we can sell grain and non-sensitive technology that they'll get from other countries anyway. I don't oppose grain sales. And I'd love to see the Soviets begin to get accustomed to good old American steaks and Colonel Sanders fried chicken. A Pepsi Generation is better than no generation at all.

Until the Afghanistan invasion, we cooperated with the Soviets in athletics. We've had joint space missions, exchanges of ballet and drama companies and a whole lot of other things. We need to build more bridges of understanding. And I want to propose one more such step today. It is a small step, but an important one that might harness the idealism and enthusiasm of the young people in the Soviet Union and in the United States.

In my time, I think one of the most exciting programs was the Peace Corps, launched by President Kennedy. The idea that people, largely young people, could break through the barriers of culture and poverty and really help people in other parts of this planet was, and still is, a noble idea.

I propose a Sense of Congress Resolution, which I intend to draft and introduce,

launching a new U.S.-Soviet Youth Exchange for Peace program. It could be patterned partly on the very successful Friends Program that brings hundreds of young people, potential future leaders of high school age, from foreign countries here for a year to live with American families and attend our schools. I propose that our government be authorized to establish an exchange of 2,000 young Russian and American citizens between the ages of 15 and 19, each year, who would visit each other's country to study, work and live and get to know each other as people. I would require that each country attempt to have at least half of these students be relatives of the political, cultural, commercial and civic leadership of each nation.

Would this program prevent World War III? It might at least be a factor that could lead to a better understanding of each other.

Eventually, I think we'd build up in a generation from now, leaders on both sides of the Iron Curtain who would understand each other as people.

We would have Russians and Americans who literally could speak the other's language, who might de-escalate the crazy rhetoric and dangerous situation that exists today.

In President Kennedy's time, a young Peace Corps volunteer named David Crozier, who died overseas, had written a note to his parents. By the time they received it, he was killed in an airplane crash. But he wrote, "Should it come to it, I had rather give my life trying to help someone than to have to give my life looking down a gun barrel at them."

Finally, I want to offer some advice to our President Reagan.

Mr. President, you stand before history with an opportunity that few human beings have had. You can really go down in history as the peacemaker of your time. It takes courage. It took an Anwar Sadat breaking through decades of hostility and terrorism to go to Jerusalem and talk peace. It took Prime Minister Begin and President Carter to make a breakthrough at Camp David.

You will pay a price. You will be criticized. But you have the credentials of a veteran conservative and a Cold Warrior. But you can do for your country what perhaps another leader might not. I urge you to make this your number one order of business. I think the American people are ready to tell the Soviets, we want to talk now. Not next year or a year from now, but right now in the year 1982. I think they're saying that we're going to find ways to stop this mad stockpiling of numbers of new inhumane weapons which helps bring on talk of chemical and bacteriological warfare.

Take the lead, Mr. President. I think the American people will support you.

John Kennedy, in his campaign of 1960, said something worth remembering on this day. "Mankind," he said, "now holds in its hands the power to eliminate all forms of human poverty or to eliminate all forms of human life."●

FIFTY YEARS OF SERVING NEW MEXICO'S VETERANS

● Mr. SCHMITT. Mr. President, I rise today to pay tribute to the 50th anniversary of the Albuquerque Veterans' Administration Medical Center.

The doors of the new VA hospital opened August 22, 1932, with 262 beds and 250 employees, including 8 physicians. Built to harmonize with the New Mexico scene, the facility followed the native American design of Taos Pueblo, with tile-paved patios and walks, deep porches, and huge vigas—logs—protruding from exterior walls. Because of the dry, sunny climate, the hospital was planned primarily for care of tuberculosis patients, many of whom had moved to New Mexico for treatment.

Support for a veterans' facility in Albuquerque came from the American Legion auxiliary, the Veterans of Foreign Wars, other veterans' groups, and especially from the War Memorial Mothers Association, which donated the land. The facility was built and equipped on 515 acres of mesa at a cost of $1,250,000. The surgical suits and its equipment were comparable with the best in any big-city general hospital in the Nation.

In World War II over 400 acres of grounds were leased to the War Department. Later this land was donated to the Air Force, the highway department, and the city. Rattlesnakes were a problem during construction of a 267-bed TB wing in 1949, and in the harvesting of one cucumber crop planted by resident nurses. From 1948 to 1966 the hospital was affiliated with the University of Colorado Medical School.

By the late 1950's the use of chemotherapeutic agents to treat TB allowed these patients to recover faster and become outpatients. By 1970, only one TB ward of 12 beds remained.

Since 1966, a mutually beneficial affiliation of the medical center with the University of New Mexico School of Medicine, now under the direction of Dean Leonard M. Napolitano, has resulted in expanded specialty services to veterans and the attraction to the VA staff of physicians of national stature.

A new ambulatory care building was added in 1976. In 1980 the education building was dedicated, coinciding with the celebration of the 50th anniversary of the Veterans' Administration.

Today the Albuquerque VA Medical Center serves the entire State of New Mexico with a veteran population of 214,000 and six counties in southwest Texas, with referrals for hospitalization from Arizona and Texas. The center provides care for almost 9,000 inpatients and over 111,000 outpatients annually. The average length of stay has been reduced from 35 days in 1965 to 14 days at present. Employees now number 1,131, including 74 physicians—one-half of whom are part time, and 330 members of nursing service. The annual operating cost has grown from $850,000 in 1932 to $40 million in 1982. Hospital beds number 404, with an additional 47 in the nursing home care unit.

Specialized services now offered include the following:

Cardiology, geriatrics, hematology, oncology, pulmonary diseases, hemodialysis, rheumatology, neurology, neurophthalmology, nuclear medicine, audiology, speech pathology, thoracic, and cardiovascular surgery, urology, orthopedic surgery, neurosurgery, ophthalmology and plastic surgery; 24-hour, 365-day X-ray services; every possible form of prosthetics assistance for disabled veterans, and rehabilitation medicine under a physiatrist's direction; laboratory using automated testing systems and computers; hospital based home care; critical care units; a 40-bed inpatient psychiatry program, a 25-bed inpatient alcoholism program, a mental hygiene clinic, and a psychiatric day treatment center; a behavioral medicine program, neuropsychological assessment and counseling, consultation services by psychologists, family therapy; a sophisticated medical equipment repair section.

Over 550 regularly scheduled volunteers contribute significant time and services to patient care.

The medical research program, begun in 1956, coordinates about 100 separate research projects totaling $1 million. Research results have been published in thousands of articles in leading scientific journals. Some discoveries made at the Albuquerque center have been widely adopted in other VA medical centers and elsewhere.

The Cooperative Studies Program Central Research Pharmacy Coordinating Center, an extension of the VA Central Office in Washington, coordinates pharmaceutical research studies involving many VA medical centers.

The combination of research of national and international recognition, continuing improvement of the facilities and equipment necessary for sophisticated primary through tertiary care, and the ability of the educational program to attract outstanding physicians in training have all combined to attract a group of physicians to the Albuquerque VA Medical Center who are able to provide the highest quality of care.

The center is identified as one of the 10 VA medical centers in greatest need of replacement or major modernization. A new clinical services/bed building, now being planned for completion by 1986, will correct most of the critical deficiencies. The spacious grounds on a raise overlooking the 10,000-foot Sandia Mountains, with landscaped lawns, pine groves, and rose gardens beside covered walkways, continue to create a peaceful healing setting enjoyed by patients and their families.

The center's professional competence and high quality of care are well known throughout the VA system. The services provided have established

the center as a major health resource in New Mexico. The 50th anniversary of the Albuquerque VA Medical Center is therefore a commemoration of a half-century of steadfast and devoted care given by qualified, concerned, forward-looking staff whose primary interest is the highest level of patient care achievable; of service rendered by volunteers and service organizations; and of productive affiliations with the schools of medicine and the surrounding health care organizations.

Special recognition should be given to the past directors, R. R. Gibson, D. K. Dalager, Paul Eisele, C. M. Kurtz, and P. N. Schmoll; and to the present director, Joseph E. Birmingham, who has served in various VA medical centers during the past 36 years, and as director of the Albuquerque VA Medical Center since 1975.

In the words of Mr. Birmingham, "This is also a time to renew our commitment to provide the best possible care and treatment to those who have given so much of themselves to insure the freedom we enjoy today."

Mr. President, New Mexico is proud of its veterans and their service to the country's defense. We are equally proud of the institution which provides primary medical care to New Mexico's veterans.●

RALPH L. MATTHEWS

● Mr. PRYOR. Mr. President, recently a distinguished Arkansan named Ralph Matthews died in his hometown, Jonesboro. Ark. All of us who grew up during the distinguished leadership of Senator John L. McClellan knew Ralph Matthews as a dedicated, responsible, and sensible administrative assistant. He served Senator McClellan for many years. In fact, he was a model of the kind of administrative assistant any office on Capitol Hill would be fortunate to have—as both an administrator and a friend to all. I personally remember many occasions when I called upon Senator McClellan and Ralph Matthews, and I was always greeted as a friend.

Ralph Matthews served as president of the Association of Administrative Assistants in the Senate. He was a leader in his own right. And when I describe him as sensible, I mean that he knew how to get things done in a bewildering Federal Government. He could get them done efficiently and well. And he never took himself so seriously that a sense of self-importance would get in his way.

Mr. President, I want the many friends and colleagues of Ralph Matthews to read a eulogy delivered by the Reverend Emil Williams, pastor of First Baptist Church in Jonesboro. I ask that it be printed in the RECORD at this point.

RALPH L. MATTHEWS

(A Eulogy delivered by Emil Williams, Pastor, First Baptist Church Jonesboro, Ark.)

Your loved one, my friend, and a part of this community, a part of our lives, a part of our experience together in so many ways: Ralph Matthews. We have come to this time to mark his passing and to share with you in the experience of loss, as well as the experience of worship-and claim together that God is for us in this hour.

"Bless the Lord, O my soul; and with all my being, Praise his holy name. Praise the Lord, O my soul, and do not forget how kind he is. He forgives all my sins; and heals all my diseases. He saves me from destruction; he blesses me with love and mercy; he fills my life with good things; so that my youth is renewed like the eagles.

"The Lord is merciful and loving, slow to become angry and full of constant love. He does not keep on rebuking; he is not angry forever; he does not punish us as we deserve or repay us for our sins and wrongs. As high the sky is above the earth, so great is his love for those who have reverence for him.

"As far as the east is from the west, so far does he remove our sins from us. As kind as a father is to his children, so kind is the Lord to those who honor him. He knows what we are made of, he remembers that we are dust. As for us, our life is like grass, we grow and flourish like a wild flower, then the wind blows on it and it is gone and no one sees it again, but for those who honor the Lord, his love lasts forever, and his goodness endures for all generations. And so, bless the Lord, O my soul; and all that is within me, bless his holy name."

Join us as we pray: Our Father, we are met together today to join hands and hearts, for we have all lost one who is dear to us in friendship, love, and family. We know that he has been taken unto thyself. We know that he belonged and belongs to thee, and we thank thee for the God who loves him and loves him now. Bless our time together here in reflection and memory and affirmation and praise—that a man's memory might be honored and that God himself might be lifted up and blessed and praised. In the name of Jesus our Lord, we pray. Amen.

To be sure, no man's life can be summed up in a few brief moments, and that is not our purpose to try to sum up a man's life. Nor can we in any sense do justice to the feeling that you have, for as varied numbers of persons as this congregation is, just as surely are there your own unique and deeply personal feelings at this time. I would only try to reflect with you about memories and about affirmation of faith.

Share memories with me for a moment. Some of them I cannot share with you because, quite honestly, they go back beyond my time and understanding and knowing of Ralph Matthews. But in a real sense, I can share even those, too, because I know you—and I know his family, and I know his friends. And I have known them for a number of years. Out of that experience, I believe I can share even those memories where I was not personally involved.

Memories of service, yes, even to country. Service to Country—Ralph knew his job and worked at it. He did it well. He was an expert at what he did. He often joked about that. He often joked that he never enjoyed work of any kind, but that was his way of laughing at himself.

I believe he enjoyed it very much, for it was his service, and he did it well. He rendered service through an important time and life of our country. His public service should be marked—we should remember it.

Memory of Friendship. There are some of you here today, who for a number of years had almost daily conversation with him. So I do not need to tell you of friendship. You know that. He cherished his friends as you cherished his friendship. There had been many years spent away from this place he loved so much, but homefolk were dear to him and I shared that friendship with him, too, as you did.

I think there was no more interesting and stimulating conversation I ever enjoyed with anyone, never any more than with Ralph Matthews. I found him to be a person of deep concern. It was not just shallow friendship, but friendship moved at a deep level with him.

We will remember his gentle humor. And I say both terms because both of them are important. There are many who are gentle who lack his particular insight to life that gave it a note of humor, even in the midst of somber occasions. It is very difficult even now for us not to remember the twinkling in his eye and the hearty laughter at the foibles of mankind. But it was always gentle humor. He had learned to laugh at almost every experience of life, but what I remember most is this: his humor was always gentle. It was never cruel and was just as often directed at himself as it was at others. He learned to laugh, even about the disabilities of his sickness over these last years, and particularly through these last few months. The ability not to take oneself too serious is one of the great gifts of life. It's a transforming experience in the midst of those things that can overwhelm us. Ralph had that gift, and we will remember that with fondness; and I share that memory with you, because there is a sense of confidence that must be in the life of a person who is able to do this. The confident person can laugh at himself, laugh at others, laugh at the weaknesses of mankind.

A memory of these last years. He told me a little more than a week ago that he loved these sixteen years, here in this community, the time of his retirement more than any period in his life. Members of his family and you who are his dear friends should remember that, with some gratitude, with some fondness: the fact that you were part of a very, very important and cherished period of a man's life, that he loved this more than any other time. That you are part of that should be something very special to you. That meant time to be with you, time to be at home, time to be with friends and again in the community that he cherished.

I believe that we could write the summary of his life in terms of great loves. Love for his family—everyone of you. Your own welfare and well being were his constant concern. Love for his family and for the church. In many ways, because of his years away, it was the church here of his childhood. Not many days ago he told me, as renovation was taking place in our building, that he was in one of the first groups to be baptised in the building when it was finished. He joked about the baptistry where he was baptised, now being lost. But he came to love his church of the present day, too. No man was more interested in what the church was doing about the building. I never had more questions asked about remodeling, renovation, the choir, the program, and what we were doing. Never had anyone shown more interest in where we are now and where we are about to go in the

years ahead than he did. But the church was more than a building. It was the people, and he loved them. And for this town, this community, this place of his childhood, this place where he came back.

But, I'd also mention a love that we should not pass by lightly: A love for his country. He believed in the system. He was part of the experience of many who were great and near great as well as seeing the lives of the despot, the criminal during that particular period of our nation's history when he was part of the Senate Committee. He came in close contact with many of these. Some of the most interesting conversations that I had with him relate to this time. He never lost faith in the democratic system, in our country, in this government.

He never became cynical as some have done about the whole process. He was positive and he would always tell of the good men that he knew who were in politics, who were in government, where he interpreted this public service as a way of service in the country that he loved. He believed in it.

But now of faith. Some of that he shared with me about his faith is so personal and so sacred, that even now it is not the time to share. But it was so good. It had to do in part with the way he faced his illness, that he knew where the circumstances of life were going. He knew that well. He was always honest with himself about that. He did not ask for those circumstances to be changed. He rather asked for courage to face the circumstances, and that over and over. Beneath it all, you see, was a personal relationship, not just some vague notion about some vaguely defined God. But what he confessed was a personal faith in the Lord Jesus Christ. From his own heart, from his own mouth was the confession made over and over that the Lord Jesus Christ, God's own Son, was his Savior and his Lord. More and more that became the most important reality of his life.

I think then that we could say with Paul, "I know whom I have believed, and I am persuaded that He is able to keep that which I have committed unto Him against that day."

I think the words are appropriate in this last moment from Paul's Second Letter to Timothy: "As for me, the hour is come for me to be offered up. The time is here for me to leave this life. I have done my best in the race. I have run the full distance. I have kept the faith and now there is waiting for me the prize of victory awarded for a righteous life. The prize which the Lord, the righteous judge will give me on that day. And not only to me, but to all those who wait with love for Him to appear."

"Bless the Lord, O my soul and all that is within me, bless his holy name."

Dear Father, we thank thee that we have had the privilege of friendship with this man. And of sharing life's experiences with him. We thank thee that he is part of the family of faith, the household of faith. We thank thee that he is your child. For all that he has meant to us, we give you thanks. And now we hold before you for your personal care and keeping the inner circle of this family who have lost one who is so precious to them. Give them your strength and help even as they remember one whom they love. Will you steady and strengthen their lives for the days ahead. Through Jesus Christ our Lord we pray. Amen.●

WHY CONSERVATIVES SHOULD OPPOSE CLINCH RIVER

● Mr. HUMPHREY. Mr. President, I call my colleagues' attention to a recent article by Milton Copulos of the Heritage Foundation concerning the Clinch River breeder reactor. While I happen to take exception to Mr. Copulos' characterization of our majority leader, Senator BAKER, I nevertheless think the article is instructive for its economic analysis of this "technological turkey."

If Members of this body ever ask themselves why the financial markets and the general public remain unconvinced of Congress ability to control Federal spending, I would urge them to read Mr. Copulos' article very carefully.

I ask that the full text of the article be inserted in the RECORD.

The article referred to follows:

BREEDER BOONDOGGLE MOVES AHEAD

(By Milton Copulos)

George Washington Plunkett, the legendary political boss of New York's Tammany Hall, once justifed his participation in a number of pork-barrel public-works projects by saying "I seen my opportunities and I took 'em." While the nature of pork-barrel politics has changed somewhat since Plunkett's day—politicians do not tend to frown on their colleagues' enriching themselves at the public's expense—the projects remain a fixture of the political arena. The only difference today is that it is the politician's constituents, rather than the politician himself, who reap the benefits. Although many of these boondoggles are being trimmed as Congress struggles to come to grips with a budget deficit that has soared past the $100-billion mark, at least one has managed to withstand the budget slashing onslaught: the Clinch River breeder reactor.

The continued funding of Clinch River is a testimony to the arm-twisting log-rolling, and plain old political horse-trading skills of Senate Majority Leader Howard Baker (R.-Tenn.). His effort that would make Plunkett proud. Clinch River's price tag has ballooned from $669 million to over $3.3 billion, with more cost overruns in sight.

Originally scheduled to go into service in 1979, it has yet to see a spadeful of earth turned. Worst yet, many nuclear experts believe the technology it represents will be out of date by the time the reactor is finished. Still, Baker has managed to keep the project alive. An article in the August Reader's Digest, "Senator Baker's Costly Technological Turkey," outlines just how Baker has managed to pull off this bit of pork-barrel legerdemain.

Characterizing the episode as ". . . a graphic reminder that raw political power and a vocal constituency are more important to a project's survival than economic merit is," Ernie Beazely chronicles the history of the U.S. breeder reactor program, and the way Clinch River grew out of proportion to its actual worth. When first proposed, the author notes, America thought it would face a uranium shortage by the end of this century. At the time, there were expectations that more than 1,000 conventional light water reactors would be in operation by the year 2000, and that natural reserves of uranium would quickly be exhausted. Under such circumstances, the appeal of the breeder reactor, which produces more nuclear fuel than it consumes, is obvious. With this kind of technology, scientists believed, the world would at last have a virtually limitless source of energy. As a result, in 1969, the Atomic Energy Commission decided that it would be a good idea to try to demonstrate the feasibility of the breeder reactor through building an actual operating unit; and Clinch River was born.

Congress approved the Clinch River breeder in 1970. Under the original scheme, the electric utility industry would put up $257 million of its estimated $699 million cost, and the federal government would contribute the balance. It was just about that time, however, that a budding anti-nuclear movement began to cast a shadow over the future of the entire nuclear industry.

Because the fuel the breeder reactor produces, plutonium, is essentially the same material used to make nuclear weapons, anti-nukes quickly tied the breeder to the issue of nuclear proliferation. Although this is actually nonsense—the plutonium used in making bombs must be very nearly pure, and plutonium from a breeder would have to undergo further processing in a highly sophisticated reprocessing plant in order to be upgraded to weapons-grade material—it became part of the conventional wisdom.

At about the same time, slowing growth in the demand for electricity lessened the need for new power plants of all types, and regulatory delays in nuclear power plant construction in particular pushed their cost beyond the financial capabilities of many utility companies. The net result was to cause a series of downward revisions in the number of nuclear power plants planned over the next two decades, and along with it a corresponding decline in the amount of nuclear fuel that would be needed. Now, only about 170 reactors are expected to be in operation by the end of the century, and domestic uranium supplies are more than adequate to provide for their fuel needs for the intermediate term.

While the decline in demand for electricity was undermining the need for a breeder, and opposition from anti-nukes was delaying its completion, other nations were moving rapidly ahead to develop their own breeder reactor technology.

Even they, however, are finding that the cost is considerably above what had been expected, and, as a result, the technology is not quite as attractive as they once believed. To a large degree the breeder has become something of a technological status symbol. Though $3.3 billion seems a bit much to spend for status.

All these facts are known to Congress, so one might ask why Clinch River is still around. The answer lies in another fact, a political one: Howard Baker is the majority leader. Few legislators are willing to jeopardize their pet legislation by opposing his. Too bad; because as Beazley says, "This is not the United States of Tennessee."●

ARNOLD BERNER: THE FRIEND OF THE FARMER

● Mr. PRYOR. Mr. President, in every society, there are those who follow a crowd and those who lead it. The leaders are the ones who make things happen for other people. While such people receive widespread recognition on a national basis, their local contributions often go unnoticed.

Fortunately, this is not the case with Arnold A. Berner of Little Rock, Ark. Arnold Berner has given 30 years to numerous and tireless efforts on behalf of his State, the Arkansas farmer, and agricultural development. He is my friend and a friend of all Arkansans.

A native of Benton County, Mr. Berner was reared on a poultry and dairy farm and graduated from the University of Arkansas with a degree in agriculture. His leadership was first evident when he served 4 years as a World War II Navy pilot. After the war, he began his long and distinguished career in agriculture as an assistant county agent with the Agricultural Extension Service.

It was in 1953 that Arnold Berner joined the Arkansas Farm Bureau, where he became its executive vice president and witnessed its phenomenal growth. Under his leadership, the organization grew from fewer than 35,000 family members to more than 100,000. At the same time, it became one of the State's most influential lobbying groups. Today the Farm Bureau in Arkansas reflects Arnold Berner's character, his sense of fair play, his professional dedication, and his honest straightforwardness.

On August 27 of this year, the friends of Arnold Berner are gathering to express their thanks for the service he has given over the years. It is with great respect to him and to his wife Lois, as well as his family, that I mark the date of his retirement. I know that he will continue to give his time, experience, and enthusiasm to those he has helped so much in the past.

Arnold Berner, Mr. President, has been a credit to all the people, organizations, and activities he has touched. I wish him the best during his retirement. And on behalf of all Arkansans I am proud to stand before the Senate and say that he has truly given more than he has taken.●

PHONY BILLBOARD REFORM

● Mr. STAFFORD. Mr. President, I would like to bring to the attention of my colleagues several articles that have recently appeared in newspapers around the Nation dealing with the subject of highway beautification.

During the first session of this Congress, I, with several of my colleagues, introduced S. 1548, which is designed to repeal the Federal Highway Beautification Act and to return responsibility for billboard control to the several States.

I took this action reluctantly, because I supported the original purposes of the Highway Beautification Act of 1965, and I continue to support those purposes. However, I have come to the conclusion that the act has been completely subverted by amendments in recent years—amendments advocated by the billboard lobby.

The result is that the Federal law can more appropriately be called the Billboard Compensation and Protection Act these days. It is probably beyond repair and it is better that we return the program to the States rather than to continue the current Federal program.

My proposal would return to the States the ability to use their local police powers and zoning laws to control billboards by providing for amortization. This form of just compensation previously available to State and local governments in certain cases was prohibited by 1978 amendments to the Federal Highway Beautification Act, at the request of the billboard lobby.

That billboard lobby threatens to strike again.

Legislation to reauthorize the Federal-aid highway program, reported originally as H.R. 6211 by the House Public Works and Transportation Committee and more recently as H.R. 6965, contains a provision that would further amend the Highway Beautification Act.

This amendment purports to return the program to the States.

It does no such thing, however. All it returns to the States is the responsibility to pay 100 percent of the cost of any sign removed. Under existing law, the Federal Government pays 75 percent of the cost when—and, if—a sign is removed.

The House provision does not provide any Federal funds, but it would require the States to pay cash compensation for any sign removed, even if the sign is removed for reasons other than the Highway Beautification Act.

And, not only does the House provision intend to protect billboards from traditional State and local laws, it also seeks to provide loopholes so that new signs can be erected.

In addition, if trees or shrubs should impair the viewing of the billboard, the House provision seeks to have the trees or shrubs removed—or else cash payment would have to be made for the sign.

That is not returning the program to the States.

That is the billboard lobby's dream come true.

I ask that the newspaper articles on highway beautification be printed in the RECORD at this time.

The articles follow:

[From the Atlanta Constitution, July 26, 1982]

"BILLBOARD BIGGIES" HEAD TO D.C.

(By Bob Ingle)

A little-noticed portion of the federal Surface Transportation Act of 1982 not only guts the Highway Beautification Act, but perverts the law to the extent that its purpose becomes protection of the powerful billboard industry it was designed to control.

Georgia has three representatives on the House Committee on Public Works that reported the bill out: Billy Lee Evans of the 8th District, Newt Gingrich of the 6th and Elliott Levitas of the 4th.

Evans declined to return several phone calls. Levitas said he couldn't remember anything about it, and Gingrich showed an amazing ignorance of the bill's contents.

He said its aim was to get the federal government out of billboard regulation. When asked why the committee didn't discuss a new law to accomplish that rather than changing the existing law in ways to please and protect the billboard biggies, the congressman from Carrollton was short on answers.

The proposed legislation—called Section 121—changes the wording of the purpose of the 1965 beautification act in a significant way. The original says billboards on interstates and primary roads should be controlled "to protect the public investment in such highways, to promote the safety and recreational value of public travel and to preserve natural beauty."

Compare that to the new version, which aims to "protect the public investment in highways, to preserve communications through the outdoor medium and to promote natural beauty in scenic areas."

Out goes safety and recreational value, in goes protection of billboards.

Instead of preserving natural beauty all over the country, this act would "promote natural beauty 'in scenic areas.'" How about those areas that have not been designated scenic by the states but have intrinsic scenic value? We all know of nice little places like that.

The proposed changes further require payment of cash compensation for "the substantial impairment of the customary use or maintenance of signs." That means if trees block the view of billboards, the trees must be cut or the state has to pay for the signs, no matter how old the signs are, which is significant since billboards pay for themselves and turn profits after a very few years.

Unfortunately, however, the bill provides no funds to pay the compensation it requires, so the financial burdens on the states increase. Incidentally, federal funding for all parts of the beautification act expire Sept. 30.

That could end the program to purchase and remove non-conforming signs—billboards that don't meet current sign requirements but were legal when erected. It would be tough to find a state that could afford to pay for the removal of non-conforming signs without federal aid. That's exactly what the billboard interests are banking on.

The $11 billion bill, which deals with a great many other items, such as mass transportation, was based on the hope that the Reagan administration was going to support a 5-cent gasoline tax. It didn't, so the bill never made it to the House floor.

However, there must be a 1982 transportation bill. In Washington, they say no matter what else is included, the billboard lobby's baby, Section 121, will be a part of any skeleton bill passed.

You folks might let Gingrich, Levitas and Evans know how you feel about changing the purpose of the beautification act. You ought to tell Georgia's senators and other representatives, too. Remember, they're all up for re-election.

Don't make the mistake of thinking it will go away by itself. Billboard people think they should be above regulation. They

fought the Georgia Department of Transportation for the right to cut trees in front of their signs, and lost, because citizens told the DOT "no."

Billboard interests then called on friends in the state Senate and House to rush through proposed legislation to make an end run around the DOT and the public—and got by with it in the Senate. Luckily, the Georgia House had the good sense to kill it.

Now the fight to give billboard blight special privileges has gone to Washington, where special interests will win unless enough people who'd rather see countryside than cigarette ads speak up.

[From the Washington Post, Aug. 10, 1982]

LOBBY THREATENS U.S. ROLE IN HIGHWAY BILLBOARD ACT

(By Howie Kurtz)

Last January, Vernon Clark, chief lobbyist for the nation's largest billboard companies, produced a proposal to repeal most of the Highway Beautification Act, which has forced the removal of more than 100,000 roadway signs.

For years, the $650 million-a-year billboard industry has been nibbling away at the edges of the act, reducing its impact one chunk at a time. Clark's proposal would devour it in a final gulp by having Congress return federal control of the billboards to the states. Clark's idea is that the act's goal should be "to preserve communications through the outdoor medium."

As Clark made his rounds on Capitol Hill, he gave copies of the industry's proposed three-page amendment to several legislative supporters, including a staff member who works for Rep. James J. Howard (D-N.J.), chairman of the House Public Works and Transportation Committee.

In May, when Howard's committee took up a $16 billion transportation bill, the New Jersey congressman inserted Clark's billboard amendment with only a few minor changes. Howard's panel approved the amendment by voice vote without a word of debate.

The committee is scheduled to reconsider the bill today for additional spending cuts, but the billboard provision is expected to reach the House floor by September. So far, it has been a lobbyist's dream: a bill that is passing through the congressional maze almost exactly as it was written by an industry group.

Under Clark's leadership, the billboard industry has mounted a sophisticated lobbying campaign that includes drafting legislation, hours of personal discussions with committee members, and a steady flow of campaign contributions and speaking invitations to conventions in pleasant locales.

Over the past four years, Clark's group, the Outdoor Advertising Association of America (OAAA), has paid $20,500 in speaking fees to 10 members of the House Public Works and Transportation Committee.

The group also has paid $19,000 in honoraria to eight members of the Senate Environment and Public Works Committee during that period, while handing out $20,780 in campaign contributions to five members of the Senate committee and 34 members of the House committee.

Unlike other special interest groups with broad agendas, the OAAA has just one major goal, getting rid of a law that has plagued its members since the days of the Great Society.

The Highway Beautification Act was adopted in 1965 after Lady Bird Johnson mounted a nationwide campaign to clean up the countryside. The law banned new billboards within 660 feet of interstate and other major federal aid highways in noncommercial areas, and it provided money to compensate billboard owners for the removal of existing signs near these roadways. The industry's amendment would require the states to keep making the compensation payments.

"Vern Clark basically drafted the language and gave it to the [committee] staff," said one House committee staff worker. "We just made a minor technical change. They knew what they could get away with."

A Republican congressional aide added that "Clark hound-dogged Jim Howard for many months on this one."

Howard declined to be interviewed, but his press secretary, Nancy Blades, said that "the billboard issue was not viewed as a life-and-death issue. This is one area where the federal government simply can't afford the money. The feeling was the states could handle it better."

Howard's aide on the committee said the staff made several important revisions in the proposal, with the help of a lawyer for the OAAA. An examination of the industry draft shows that it is nearly identical to the House committee amendment, except for a handful of minor changes.

The industry version says: "The Congress hereby finds and declares that it is in the public interest to deregulate federal controls over the location of outdoor advertising signs . . ." The House committee version says: "The Congress hereby finds and declares that it is in the public interest to deregulate *to the maximum extent practicable* federal controls over outdoor advertising signs . . ."

When billboards are removed, Clark's amendment requires "the payment of just compensation . . . for any such sign, display or device lawfully erected under state law. . . ." The Public Works Committee bill calls for "the payment of just compensation . . . for any outdoor advertising sign, display or device lawfully erected under state law. . . ." The House committee version adds only that such payments also are required for "the substantial impairment" of signs, meaning that the state must cut down any trees that block the sign's view or compensate the owner.

Clark's proposal makes an exception for signs "advertising the distribution by nonprofit organizations of free coffee to individuals traveling on the Interstate system." The Public Works Committee bill is identical, right to the definition of "free coffee."

Clark and the billboard group refuse to discuss the measure. "We've got a firm corporate policy of not talking to the press," said Richard R. Roberts, OAAA's vice president. "That's all I want to say."

Sen. Robert T. Stafford (R-Vt.), chairman of the Senate Public Works Committee, said he was "not very happy" at suggestions that the billboard industry had drafted the House committee provision. Without any federal funds, he said, "the practical reality is the states aren't going to take the signs down."

Stafford added: "The billboard lobby has been very successful in supporting a number of people running for reelection and providing them with honoraria for speeches. I think it's probably helped them some."

Shortly after Clark distributed his amendment in January, for example, the outdoor advertisers paid for several members of Congress—including Howard and his staff aide, Clyde Woodle—to fly to their annual convention in Palm Springs, Calif.

This gave the industry a chance to discuss the issue with legislators in the relaxed atmosphere of the Canyon Hotel Racquet and Golf Resort. It is legal under congressional rules for business groups to pay for such trips.

The OAAA also paid honoraria or expenses for House Ways and Means Chairman Dan Rostenkowski (D-Ill.); Sen. Steven Symms (R-Idaho), chairman of the Senate Public Works subcommittee on transportation, and the counsel for Sen. Jennings Randolph (W.Va.). . . .

Since 1979, Clark's group has given $4,000 in honoraria to Howard (along with $3,400 in compaign contributions); $4,000 to Rep. John Breaux (D-La.), and $4,000 to Rep. Bud Shuster of Pennsylvania, the ranking Republican on the transportation subcommittee. On the Senate committee, Senate Majority Leader Howard H. Baker Jr. (R-Tenn.) has received $7,000 and Randolph $3,500.

Howard said through a spokesman that the amendment has nothing to do with these speaking invitations. At the Palm Springs convention, he said, "we listened to the concerns of businessmen, but we did not sit down and draft bills. There's very little lobbying that goes on."

Some House committee members, such as Shuster, said the amendment would eliminate needless federal regulations. Others, such as Breaux, said they knew little about the measure. A spokesman for Breaux said: "I don't think he has any knowledge of this. His involvement with public transportation is almost nil."

The original law provided $160 million a year to compensate owners whose signs were removed by the states. In 1978, however, Clark's group pushed through an amendment that extended these payments to every sign taken down, including those not covered by the federal law. This nearly doubled the government's liability to $1 billion for about 200,000 billboards.

But Congress voted only $500,000 for sign removal this year, and most states simply have stopped taking down signs. Clark' proposed amendment requires that states still make these fixed payments for removing billboards, but cuts out the federal money. It also says that any state that doesn't mount a billboard program could lose 10 percent of its federal transportation funds, but each governor has only to certify that his state is in compliance.

Clark has been asking more reluctant members of the Senate committee to accept the measure in a House-Senate conference, but opponents say that Congress should not dectate the terms of compensation if the issue is left to the states.

Frank Shafroth, counsel of the National League of Cities, said Clark and two aides had pressured his members at a recent convention to drop their opposition to the measure.

"I've never seen lobbying like that," he said. "We were kind of stunned. We aren't used to that kind of pressure. Vern has done a hell of a job."

[From the Des Moines (Iowa) Sunday Register, July 25, 1982]

WHY ALL THOSE BILLBOARDS STILL LINE THE HIGHWAYS

(By Daniel R. Mandelker)

In 1965, Congress adopted a Highway Beautification Act intended to control bill-

boards along major federal highways. Billboards are not allowed within 660 feet of the highway and may not be visible from the highway in rural areas. The act has a number of exceptions, including for certain directional signs. It is not a total ban on billboards, but a fair attempt to unclutter the roadsides.

Anyone who has traveled knows that the act hasn't worked as well as was expected. Highway billboards are everywhere in most states. Many are non-conforming. The billboards are located in places where the act does not allow them, but were there when the act was adopted. Congress expected those signs to be removed, but large numbers still remain. Now an amendment to the act being considered by Congress will make the non-conformity problem worse.

Congress legislated that compensation should be paid for removing non-conforming billboards, with 75 percent of the cost to be paid by the federal government. Appropriations for this purpose have been erratic and insufficient, however, Meanwhile, the signs that remain enjoy a monopoly. They do not comply with the law, but the law prevents any competing signs from being erected.

Many municipalities and counties found another way to remove non-conforming billboards. They adopted amortization programs under which non-conforming billboards can remain until their value had been amortized over a period of years. No compensation is paid, because the billboard company has suffered no loss. Practically all state courts have upheld amortization as a constitutional use of the police power. This technique is no different from the amortization of capital assets by taxpayers which is allowed under the income-tax laws.

Municipalities and counties were at first allowed to remove non-conforming billboards along federal highways through the amortization technique. Congress prohibited them from using amortization in a 1978 amendment to the act that slipped through without hearings. The amendment was an improper federal interference with state and local legislative authority.

Since 1978, Congress has not appropriated enough money to meet the federal share of removal cost, and counties and municipalities have not had the resources to pay compensation. By some estimates, the 1978 amendment raised the cost of removing nonconforming billboards to possible $1 billion, depending on how long their removal takes.

In 1980, the U.S. Department of Transportation appointed a National Advisory Committee on Outdoor Advertising to study the non-conforming billboard and other problems with the Highway Beautification Act. The committee recommended that the billboard-control program be turned back to the states and their local governments except for Interstate highways. A user tax would be levied on signs on these highways, the proceeds to be used to remove nonconforming billboards. No commercial billboards would then be allowed along Interstates. To provide motorists with necessary information, the states would develop alternative information systems, including information signs at interchanges and off-highway information centers. Some states already have these sytems.

The committee's recommendations would concentrate federal attention on the federal Interstate highways used by interstate travelers. Highways carrying state and local traffic would be deregulated and placed under state and local control. Local governments could once more use the amortization technique, where it is constitutional, to remove non-conforming billboards. A majority of the committee believed that these recommendations would lead to an effective billboard-control program.

Members of the billboard industry who served on the advisory committee opposed these recommendations. They knew that compensation would not be available to remove non-conforming billboards. They opposed amortization because they knew that it would be an effective alternative.

Now the billboard industry has sponsored amendments to the Highway Beautification Act that distort the committee's majority recommendations. The amendments provide for passing billboard control to the states but keep the compensation requirement. The amortization technique may not be used. These amendments, if adopted, are likely to preserve indefinitely the monopoly position of non-conforming billboards now on the highways. Federal controls are removed on all highways, but the states and their local governments may not use the only effective technique available to them to eliminate non-conforming billboards.

Anyone who cares about the scenic beauty of America's highways should urge congressmen and senators to oppose the 1982 amendments. States and their local governments should be free to use any constitutionally acceptable technique, including amortization, to clear highways of the non-conforming billboards that do not belong there. Congress should be urged to adopt the committee's majority recommendations.

SIGN SITUATION IN IOWA

Daniel Mandelker's article on this page shows how Congress has gutted the federal Highway Beautification Act. The evidence is all to visible in Iowa.

According to a "ballpark" estimate by the Iowa Department of Transportation, the federal act, as implemented by a 1972 state law, has accounted for the removal of 30,000 to 35,000 non-conforming billboards and other advertising signs from Interstate and U.S. primary highways in Iowa, but another approximately 12,000 signs that don't meet the federal standards remain.

Along Interstates, 480 large billboards that are at or beyond the 660-foot minimum-setback distance are non-conforming because they are in rural areas. Yet, because they existed before the effective date of the state law, special permits were issued letting them stay up until Iowa gets the federal and state money needed to acquire them and take them down.

Along federal primary roads, according to a count reported in September 1981, 678 non-conforming signs, mostly billboards, are being allowed to stand under permits until federal acquisition money is available. Congress has required these signs' removal, but has not given Iowa enough money to do it. An estimated 11,000 non-conforming billboards and smaller signs along primary roads for which permits were not obtained are being inventoried by DOT, and the agency eventually will seek their removal.

Mandelker points out that pending amendments in Congress would transfer billboard regulation to the states, but would prevent them from using the amortization technique for removal, in which sign owners are given years to take them down without compensation. Such amendments would make a bad situation worse and sound the death knell for billboard control.

SELECTIVE SERVICE AMENDMENT AND EDUCATIONAL BENEFITS

● Mr. HAYAKAWA. Mr. President, yesterday we passed the conference report on the Defense authorization bill. Included in the conference report is an amendment I offered which insures that Federal tax dollars provided under title IV of the Higher Education Act of 1965 will only be utilized by individuals willing to comply with the law and register with the Selective Service System.

The compromise reached between the Senate and House versions is a good one. Every student applying for financial aid under title IV will file a statement of compliance with the Selective Service registration requirement. If this requirement is not met, students will be notified and given ample time to comply before being denied financial aid. I am eminently pleased with the compromise and believe it will be a very workable law.

The rights and privileges of citizenship must be accompanied by the responsibilities of citizenship. Along with the freedoms that we all enjoy in this society goes the responsibility of protecting and contributing to the Nation which makes these freedoms possible. Students who will not accept their obligations to their country have no right to ask the Government to finance their education. Young men refusing to register do not seem to realize that the benefits we enjoy as Americans come with some obligations to our country—one of the obligations is registering with the Selective Service System.

Federally funded education aid is not a right, it is a privilege that comes with living in an opulent and generous country. Anyone who is unwilling to accept his obligations to his country has no right to ask the Government to finance his education.●

EXPERT SUPPORT FOR SENATE JOINT RESOLUTION 224

● Mr. KENNEDY. Mr. President, on July 30, Senator MATHIAS and I, along with 30 other Senators, introduced Senate Joint Resolution 224, a joint resolution to prevent nuclear testing. An identical resolution was introduced in the House of Representatives by Congressmen MARKEY, BEDELL, and LEACH. The joint resolution was a response to the unfortunate and ill-advised decision by the Reagan administration to abandon the comprehensive test ban negotiations and defer ratification of the Threshold Test Ban and Peaceful Nuclear Explosions Treaties. The Kennedy-Mathias resolution calls upon the Reagan administration to resume the comprehensive test ban negotiations and to submit the other two

treaties for Senate consent to ratification.

At the time we introduced it, several distinguished leaders in the field of national security endorsed the resolution. I am pleased to announce that former Secretary of Defense Harold Brown has recently added his endorsement and conveyed his strong support for the resolution:

A verifiable, comprehensive nuclear test ban has, until now, been a goal of every U.S. President beginning with President Eisenhower, because it would improve U.S. national security. We should ratify the agreements already made on the Threshold Test Ban and on Peaceful Nuclear Explosions, and we should negotiate for as comprehensive a ban as can be adequately verified. I support the joint resolution.

Mr. President, those who have endorsed the Kennedy-Mathias resolution have served as high-level advisers on defense and arms control to Presidents over the last two decades. To them, the Reagan administration's decision to abandon the comprehensive test ban negotiations represents a reversal of the policy followed by the past six administrations, both Republican and Democratic, and is contrary to our best national interests. Several of the endorsers are former Directors of the Arms Control and Disarmament Agency (ACDA) and chief arms control negotiators, and now serve on the Committee for National Security, a nonpartisan national leadership group formed in 1980 to promote debate on the nature of national security and how best to strengthen it. Under the auspices of the committee and the leadership of its Chairman, Paul C. Warnke, they have issued a joint statement that:

We cannot support President Reagan's decision on the comprehensive test ban treaty.

Those signing the statement include:

Ralphe Earle II, 1979-80 ACDA Director.

Adrian S. Fisher, 1967-68 Chief, Negotiator, Nuclear Non-Proliferation Treaty.

William C. Foster, 1962-69 ACDA Director.

Gerard C. Smith, 1969-72 Director.

Paul C. Warnke, 1977-78 ACDA Director.

Herbert F. York, 1979-80 Negotiator, Comprehensive Test Ban Treaty.

Mr. President. I hope that the Senate will give serious consideration to this statement, which reflects the strong national support that a comprehensive test ban has received for the past two decades. I request that it be printed in full in the RECORD.

The statement follows:

WE CANNOT SUPPORT PRESIDENT REAGAN'S DECISION ON THE COMPREHENSIVE NUCLEAR TEST BAN TREATY—A STATEMENT FROM FORMER ACDA DIRECTORS AND CHIEF NEGOTIATORS

WASHINGTON, D.C.—As former Directors of the United States Arms Control and Disarmament Agency (ACDA) and Chief Negotiators, we cannot support President Reagan's decision to defer negotiations on the Comprehensive Nuclear Test Ban Treaty. A draft treaty, which would prohibit all nuclear explosive testing for military or other purposes, has already been largely negotiated and awaits only the political will in the three negotiating states (the U.S., U.S.S.R., and Great Britain) for completion.

The President's decision undercuts a national security objective set by President Eisenhower and pursued by every Administration since—namely, to seek an end to all nuclear test explosions. Achieving that goal would moderate the superpower arms race, set an example to nations aspiring to join the weapons club, and make it harder for them to develop nuclear weapons. On the other hand, this Administration's departure from an established policy serving the best interests of the United States and the world community:

Diminishes substantially the prospects for ending the arms race with its risks of nuclear war, a proclaimed objective of the President's Agenda for Peace;

Increases the risk of the proliferation of nuclear weapons and is flatly inconsistent with provisions of the Limited Test Ban Treaty and with Article VI of the Non-Proliferation Treaty;

Casts doubt upon the sincerity of the United States in the Strategic Arms Reduction Talks (START) and in other arms control negotiations; and

Perpetuates the possibility of health and environmental hazards arising from the accidental venting of underground nuclear tests.

The Administration has chosen to mask its determination to continue weapons testing by alleging that renegotiation of the verification provisions of the unratified US-Soviet Threshold Test Ban Treaty and the Peaceful Nuclear Explosions Treaty must precede a comprehensive test ban agreement.

The draft Comprehensive Test Ban Treaty contains agreement on the basic means of effectively verifying treaty compliance, including untamperable seismic stations and on-site inspection procedures. Thus, there is no longer a substantial problem of adequate verification.

The Administration's deferral of CTB negotiations confirms the impression that it is seeking nuclear advantage by developing destabilizing, war-fighting weapons rather than seeking to end the arms race with its drift toward nuclear war. This decision can only foster the technological drive that fuels the arms race.●

A WARNING IN THE WIND

● Mr. ABDNOR. Mr. President, with much pride, I would like to share the following remarks with my colleagues in the Senate. They were written by one of South Dakota's great citizens and attorneys, Horace R. Jackson. Mr. Jackson has had a career full of accomplishments and this month he begins his 50th year of law practice in South Dakota.

I commend Horace and his wife, Dorothy, for the contributions they have made to their fellow citizens. Through their exemplary lifestyles, the lives of those around them have been made richer and fuller.

Mr. Jackson's remarks were an introduction to the 1982 "Agriculture Symposium," volume 27 of the South Dakota Law Review. He provides for all of us food for thought in regard to the increasing amount of government intervention in our lives.

Many of my rural State colleagues share my love for the land and the fine stewards who till that land. All of us can learn a lesson by reading this article, which I ask to have printed in the RECORD.

The article follows:

INTRODUCTION: HORACE R. JACKSON

"And therefore, never send to know for whom the bell tolls. It tolls for thee."

In these words, John Donne, near 400 years ago, told his parishioners that the church funeral bell signaled not alone the death of one individual, but that all are mortal and in one death we are all diminished.

The content of this introduction is to warn the agriculturalist that the avalanche of environmental legislation and regulations which has inundated the manufacturer, other business concerns, cities and other public entities, is designed and purposed eventually to reach and impose vast effects upon agricultural operations.

Environmentalist pressures will apply not only to the "big corporations", the manufacturers, the miners, the processors, but as well to the agriculturalist who will be subjected to steadily increasing compulsory regulation in the use of his land, and will suffer steady and substantial erosion of his property rights. The ends sought may be praiseworthy, but his is the burden of bearing the cost in time, effort, money and the diminution of his ownership of the land. The bell of bureaucratic regulation also tolls for the agriculturalist.

The initial difficulty in writing an introduction to this issue of the review, devoted as it is to agriculture, is what to call the person concerned. "Farmer" is probably suitable east of the 100th Meridian, while "rancher" comfortably fits the western two-thirds of our country. The resulting "farmer/rancher", however, is awkward on the tongue. "Producer of food and fiber" is the outrageous bureaucratic product of those who for the most part have never produced either. I settle, for want of a better, on "agriculturalist", a slightly elitist term, but at least inclusive of those involved.

Geographical identification is not easier. South Dakota extends from an annual 30 inch rainfall belt at the southeast, with a consequent corn, soybean, hog and cattle feeding economy, to a 14 inch belt northwest, where cow-calf and sheep operations are the primary concern.

THE THREAT TO LAND OWNERSHIP

This introductory article for the Law Review is concerned with the looming threat to the independence of agriculture as a way of life and as a basic source of our national economic and social well-being.

The triggering incident lay in a disturbing article not long since by Tom Wicker, usually writing as a political pundit, from the New York Times News Service, that great newspaper which seems too often to believe the rest of the United States exists for the benefit of the eastern seaboard and the people of New York specifically. The article draws attention to the fact more and more farmland is being converted from pasture to crop, particularly marginal land, because cereals are more profitable. Wicker states his

thesis: "The resulting increase in row crops that produce good profit but bad soil effects is a major cause of severe and increasing land erosion . . . it's a case of plant now, pay later."

Wicker's particular conclusion is to urge no tillage farming. Although a well-known and widely used farming method for a generation or more, to Wicker it seems to come as a new gospel of preservation: "In one test (in Mississippi) . . . erosion was cut from 17.5 metric tons per hectare to about 1.8 tons". Then comes the real thrust of the article: "To push farmers into acceptance of no tillage and other soil conserving practices, the states need tough compliance laws . . ."

This equating of the farmer with other claimed rapists of our land—the home builder, the miner, the spreading of manufacturing plants in the rural areas, raises some disturbing recollections of other reading I have encountered that accepts the thesis everyone must be forced into a pattern of action for the supposed good of the rest of us, whoever is left as the rest of us if everyone in economic pursuits is to be straitjacketed.

Most surely, the enforcement of economic conduct by law means the usual horde of bureaucratic enforcers and the final result of regulation for regulation's sake.

This introduction by no means opposes conservation. I know of no sensible person today who opposes conservation and few who fail conscientiously to practice it in their several pursuits.

The absolute beauty of the spreading and endless fields of corn and soybeans is forever captured by Grant Wood; the love of a host of painters for the far flung prairies of the west; the tidy farm and ranch steads; all attest the devotion of the agriculturalist to his environment.

I am, however, deeply concerned with the overwhelming itch, pressed most strongly by elitist individuals and organizations among us, to compel, to force, regimentation as a way of life.

This campaign, and I call it that deliberately, was not perceived as a great threat so long as the target was treated as that abstraction, the "big corporation".

But concomitantly and silently, the ground work in publicity and legislation alike, was laid for the assault on the agriculturalist. It has to be remembered, agriculturalists own and operate most of our land, but the people who compose that group are an increasingly small minority of our population and, like most minorities, however vocal and well organized, lack clout when the chips are down.

II. THE STATUTORY BASIS

The initial statutory basis for the compulsion of the agriculturalist has long since been made a part of Federal Law by the 1972 amendments to the Federal Water Pollution Control Act (33 USC §§ 1251-1376). The mid 1980's was set as the target date for the "total elimination of pollutant discharges to water".

". . . the discharge of any pollutant by any person shall be unlawful . . ." 33 USC § 1251. (Except as in compliance with certain provisions of the Act.)

This sweeping prohibition made any pollution unlawful; relief required some positive relaxation under other sections of the law. The accused polluter stood guilty unless he could bring himself within an exception. The law thus neatly shifted the burden of proof from the regulator to the regulated.

". . . the term 'pollutant' means . . . an agricultural waste discharged into water . . ." 33 USC § 1362(6).

Location away from a running stream does not necessarily confer immunity. "Navigable waters" are defined as "waters of the United States"—a broad enough term certainly. Decisional law has held that "waters of the United States" is to be extended to the ultimate reach of the Constitution. Regulations have extended the term further to include "wetlands" which are:

"Those areas that are inundated or saturated by surface or ground waters at a frequency and duration sufficient to support and, that under normal circumstances, do support a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas." 33 CFR 323.2C

It has been held by at least one Federal Court that wetlands are included within the definition of navigable waters. *U.S.* v. *Weisman*, 49 F.Supp. 1331.

Given the definition of "pollutant" as "agricultural waste" and the creeping but apparently limitless extension of "water" to the furtheest reaches of a dry draw, it seems a fair conclusion that the long reach of the bureaucracy is substantially without limit so far as the agriculturalist is concerned. So far, it has been contained only by available resources of men and money.

Lack of attention to the agriculturalist's operations has not been for lack of pressure from the environmentalists.

Professor N. William Hines in Volume 19, Number 3, Summer 1974 of the South Dakota Law Review authored the article, "Farmers, Feedlots and Federalism: The Impact of the 1972 Federal Water Pollution and Control Act Amendments on Agriculture".

Professor Hines has cast his lot with extreme environmentalists. He has castigated the environmental enforcement agencies for the failure to force the same rigid controls on small feedlots as are presently imposed by regulation on feedlots large enough to handle at least a thousand cattle and corresponding unit numbers of other meat animals. Further castigation was visited for failing to structure and enforce compulsory controls on "non-point", or field wide "pollution", including the absolute control of natural erosion (pages 564-565).

The ultimate goal could only be to compel the agriculturalist to find a cure for the unfortunate fact that all animals vent waste.

The agriculturalist should not delude himself that the failure so far to compel prevention of any erosion or pollution from his pastures and fields stems from any tenderness of the bureaucracy. When an agency of the United States can seriously propose to a Court that a daily fine amounting to nearly $3.50 for every man, woman and child in a small South Dakota city should be imposed on that city for failing to preserve inviolate a minute noisome swamp, tenderness for the citizen is not really apparent.

III. THE EFFORT TO ALTER BASIC ATTITUDE

Not alone has the total elimination of animal waste been a steadily pursued goal of the environmentalists over the past decade. Concomitant has been a well planned program for compulsory controls of the farmer's operation and the diminution of his ownership of his property.

The erosion of the concept of private property has been an ongoing, if somewhat stealthy, process for most of a generation, particularly popular when it is someone else's property right, in this case the agriculturalist, through the compulsion of the agriculturalist to bear the entire burden of creating an antiseptic and aesthetical rural aspect for the pleasure of the urban majority.

Professor Hines' philosophy is summed up:

"Until some kind of compulsory soil erosion controls are instituted, little hope can be offered for significant reduction in these (non-point source) pollutant (pages 564-565).

". . . the current national concern for improving land use management, may eventually alter basic attitudes toward the sanctity of private land and create a political environment favorable to requiring needed soil conservation methods . . ." (pages 565-566).

The "alternation of basic attitudes toward the sanctity of private land" has been the subject of a steady campaign, albeit without total success yet, on the part of what bears every indication of constituting an environmentalist elite.

The Environmental Law Institute in its January, 1980 Report. The First Decade, sums up the campaign to date:

"The concept of comprehensive federal and state land use regulation failed to gain strong public support during the 1970's, and most efforts to enact enabling legislation were blocked by vocal opposition."

The identification of its publication as the First Decade, gives adequate notice the campaign is not abandoned.

Chairman of the Board of the Institute is David Sive, credited with substantial leadership in the twenty-year legal battle that prevented Commonwealth Edison's development of the Storm King Stored Energy Plan on the Hudson River above New York City. Lack of that development was a substantial cause of the extreme blackout suffered by New York City July 13, 1977. It is also clear the eastern seaboard is not done with energy shortages as a result of the relentless environmentalist resistance to all energy construction. William Tucker: Environmentalists and the Leisure Class. Harper's Magazine, Volume 255, #1531, December, 1977.

The Harper's article is beside a detailed analysis of the environmentalist methodology in creating "alteration of basic attitudes . . ."

Not only is the environmentalist waging of this unceasing campaign to "alter basic attitudes" on the part of the environmentalists. The bureaucracy supposedly most interested in the welfare of the agriculturalist seems also to have abandoned his cause.

The United States Department of Agriculture, which most of us think of as devoted to the protection and advancement of agricultural interests, has, in its most public aspect, apparently turned away from agriculture and toward the metropolitan consumer.

The Department almost seems now to lead the hue and cry to dragoon the agriculturalist willy-nilly into the service of the urban majority and on that majority's own terms. Not enough is it for the agriculturalist to feed the country and to place in world commerce enough surplus to furnish the only sizable offset to our catastrophically adverse balance of trade; the agriculturalist is now to be coerced into the service of the urban dweller's concept of aesthetically pleasing countryside. Consider the record of the Yearbook of Agriculture, the showcase of the Department over the past 30 years.

For a decade and a half after 1950, the Yearbooks obviously are oriented to improving the capability and efficiency of agricultural operations; 1951—Crops In Peace and

War; 1952—Insects; 1953—Plant Diseases; 1954—Marketing; 1955—Water (Irrigation); 1956—Animal Diseases; 1957—Soils; 1958—Land; 1959—Food; 1961—Seeds; 1962—After A Hundred Years; 1963—A Place To Live; 1964—The Farmer And His World.

The last 15 years tell a totally different story; 1965—Consumers All; 1966—Protecting Our Food; 1967—Outdoors USA; 1968—Science For Better Living; 1969—Food For Us All; 1970—Contours Of Change; 1971—A Good Life For More People; 1972—Landscape For Living; 1973—Handbook For The Home; 1974—Shoppers Guide; 1975—That We May Eat; 1976—The Face Of Rural America (a picture book); 1977—Gardening For Food And Fun; 1978—Living On A Few Acres; 1979—Children.

The titles reflect the right angle turn in orientation. It is inconceivable that technological advances in increasing the capability of the agriculturalist or the benefits to him of collating useful information in those respects was exhausted by 1965, and the Department thenceforth was occupying itself with "made" work in the absence of topics of legitimate concern to agriculturalists. The Department simply moved to the city where the votes are and the winds of change swirl more fiercely.

Not in the vast bureaucracy of the Department of Agriculture will the agriculturalist find assistance in the preservation of his status.

That the American agriculturalist feeds the world is testified to in every newspaper and magazine.

The unceasing assault on his capability to do this continues, however, unabated.

"People in modern societies usually assume that their own kind of mechanized agriculture is the most efficient known. But if the question is asked whether mechanized producers are really extracting from the soil a greater number of calories of food in proportion to the calories of energy they expand, the answer is no . . . In short, present day agriculture is much less efficient than traditional irrigation methods among others, in this century . . . The primary advantage of mechanized agriculture is that it requires the participation of fewer farmers, but for that, the price paid in machines, fossil fuels, and other expenditures of energy is enormous . . . The boast of industrialized society that they have decreased the workload is valid only in comparison with the exploitation of labor that existed in the early decades of the industrial revolution . . ." Natural History, Volume 89, #9, September, 1980, "The Web of Hunger", Peter Farb and George Armelagos.

". . . In considering the findings of our survey, it is necessary to keep in mind that those who filled in the questionnaire are highly educated and relatively affluent and that the largest percentage of them are in professional, educational, or social service occupations . . . We found that greater percentages of young people . . . and women of all ages working in professional, educational, and social service jobs and earning modest incomes tended to take positions that challenged the status quo . . . Both samples strongly disagreed with the idea that plants and animals exist primarily for human use and enjoyment, and both were fairly evenly divided on whether our ecological problems can be solved by existing American political and economic systems . . . Of all the activist movements described in the 1980 forms, the environmental movement claimed the most followers . . ." The survey referred to in the text showed that 75% in 1970 and almost 50% in 1980 disagreed with the proposition that private property owners should be able to use their property according to current laws. Natural History, Volume 90, No. 1, January, 1981, "The Ecology Movement After Ten Years", Betty Radcliffe and Luther P. Gerlach.

". . . our river banks stand literally at the cutting edge of our nation's consumptive economy. This, I think, is true of many 'marginal' places—is true, in fact, of many places that are not marginal. In its conscientiousness, ours is an upland society; the ruin of watersheds and what that involves is little considered. And so the land is heavily taxed to subsidize an 'affluence' that consists, in reality, of health and goods stolen from the unborn . . ." Smithsonian, Volume 11, No. 5, August, 1980, Wendell Berry, "Abundant Reward of Reclaiming a 'Marginal' Farm".

Examples could be multiplied almost without end; it would, however, extend an Introduction unduly to persist in this documentation of the continued deprecatory attitudinizing toward the agriculturalist, beset as he is with the problem of producing enough food to support this country and to furnish the surplus that has saved and continues to save a good share of the world from rank starvation.●

ACID RAIN CONTROL PROGRAM

● Mr. HUDDLESTON. Mr. President, I am deeply concerned by the acid rain control program approved by the Senate Environment and Public Works Committee, and urge my colleagues to give long and careful consideration to the impacts it would have on consumers of electricity, employment in coal mining communities, and this country's efforts to end our dependence on imported oil.

The committee has approved acid rain provisions requiring an 8-million ton reduction in sulfur emissions in a 12-year period in a 31-State region, and requiring that new powerplants offset new emissions with further reductions at existing plants. This offset provision could bring the required reduction to over 12 million tons.

By some estimates, Kentucky alone would have to absorb 7 percent of the total reductions being called for. Ironically, by these same estimates, New York and all of the New England States, the States with the acid rain problem, would have to bear only about 3 percent of the total reduction.

The Kentucky Department of Energy has examined the impact this would have in our State, and has reached devastating conclusions. While their analysis is based on earlier versions of the acid rain control program, it is their view that the impacts of the final provisions will not vary significantly.

It is their estimate that our utilities in Kentucky would largely comply with the reduction requirements by retrofitting existing plants for flue gas desulfurization. The capital costs for Kentucky for this compliance strategy would be $1.2 to $1.6 billion, with annual costs of nearly $1 billion. These costs would have to be paid by our utility ratepayers.

Other States, particularly those with little or no coal industry, are likely to comply by lowest cost alternatives. Massive fuel switching to very low sulfur coals, fuel oil, and gas could lead to large market losses for Kentucky coals. The Kentucky Department of Energy estimates that of the 150 million tons produced by Kentucky in 1980, 27 to 94 million tons of out-of-State markets could be lost as utilities comply with the emission reductions proposed.

The bottom line for my State is devastating. The department found that these market losses could result in the loss of up to 33,000 mining jobs; 33,000 additional jobs from mining-induced employment; $1.3 billion in annual personal income; and $2.8 billion in annual coal sales.

New coal markets would be extremely limited, with the possible consequence that we would see no new coal-fired electric generating plants; no synthetic fuels industry and very limited prospects for future industrial growth in Kentucky and similarly affected States.

I expect there are those who would quarrel with those figures—some, in fact, would argue that they will turn out to be higher. But, even by the most conservative estimates, the impacts of this acid rain control program would be enormous.

These kinds of burdens should not be imposed on coal or any other industry—on Kentucky or any other State—unless it can be shown beyond a reasonable doubt that they will yield beneficial results worth their price.

Mr. President, there is considerably more than a reasonable doubt. The pace of research on acid rain has increased, and appropriately so. With that increased attention on the problem, we are seeing more and more major new findings that raise serious questions about current and past theories about the causes and effects of acid rain.

The fact is that the causes of acid rain have not been established.

The debate over long range transport versus local sources has not been resolved.

And, a multitude of other questions surround the appropriateness and effectiveness of the proposed control strategy.

Until we have some more answers, we run the risk of implementing a multibillion-dollar program that will not achieve the desired result of significantly reducing the acidity in rainfall.

I will have a lot more to say on this subject as action on the committee's proposal progresses. I intend to do everything I possibly can to insure that this acid rain provision approved by

the Senate Environment and Public Works Committee does not become law.

Acid rain is not something we can just ignore, and I do not propose that we ignore it. I fully support the legislation introduced by Senator ROBERT BYRD to accelerate the existing Federal acid rain research, and will be looking at the possibilities for establishing an acid rain mitigation program. I will, however, continue to resist efforts to impose expensive acid rain control programs until we know more about what we are doing.●

ADDITIONAL UNEMPLOYMENT COMPENSATION RELIEF

● Mr. DOLE. Mr. President, in the view of the Senator from Kansas, the addition of Federal supplemental unemployment compensation benefit program to the conference report of H.R. 4961 was a needed and compassionate change to the legislation. The program agreed to by the conferees will provide, beginning on September 12, additional unemployment benefits to a estimated 2 million workers who have exhausted their benefits under existing unemployment compensation programs. Under the program, either 10, 8, or 6 weeks of additional benefits will be provided to each worker depending of the severity of the unemployment in the State. Every State in the United States will be eligible to participate in the supplemental benefit program.

Mr. President, this is a good program that will provide welcome relief to millions of persons who are suffering from long-term unemployment. It was designed to be implemented quickly and to reach unemployed workers all across the country. Frankly, this program is not the only way to provide additional unemployment relief. We explored a number of other proposals for relief over an extended period of discussion with the House conferees, with representatives of organized labor, and the Department of Labor. On balance, all parties concerned felt the program agreed upon would be the most effective and equitable.

The program agreed to by the conferees will cost about $2 billion in fiscal year 1983 for 6½ months of additional benefits. This is obviously an expensive program. It will take 3 years for the change in the threshold level for taxing unemployment benefits to pay for the additional unemployment benefits. We have to realize there are fiscal restraints on any good program and this Senator believes we reached those limits with this very substantial supplemental benefit program. As far as the Senator from Kansas is concerned, this is the only major change in unemployment compensation this year. We will, of course, want to review the effectiveness of and continued need for the program next spring.●

BESSIE BEATS THE BUREAUCRATS

● Mr. SYMMS. Mr. President, several weeks ago, the Idaho Press-Tribune published an incredible story concerning the difficulties an elderly constituent was having with the Social Security Administration and my efforts to help her. I was able to help her because the editor of that paper, Rick Coffman, originally called her plight to the attention of my office in Boise.

Because the news media so often focuses on the negative, emphasizing problems without offering solutions, it has many critics. And I have been among them. But there are times—and this is one of them—when the media deserves credit for helping to find a constructive solution.

Rick Coffman could have written a good "bad news" story in his paper the first time he heard about it. But instead, he helped us solve the problem and, as a result, produced a better story with a "good news" ending.

I commend Mr. Coffman for this example of enterprising and constructive journalism, and I ask unanimous consent that this fascinating article in his paper about Bessie's successful battle with the bureaucrats be inserted in the RECORD.

The article follows:

BESSIE BATTLES BUREAUCRACY—NAMPA WOMAN SEES LUCKY RAFFLE TICKET WIND UP AS THREAT TO LIVELIHOOD

(By J. E. Vail)

Bessie Dewey, a Nampa senior citizen who makes do on a small monthly Supplemental Security Income check from the Federal Government, thought she was lucky to win $100 worth of groceries in a recent school carnival raffle.

She doesn't think so now—not after becoming entangeled in a bureaucratic snafu that threatened to deduct $160 from her income in repayment for an "overpayment."

Dewey's problems began when she reported her "winnings"—a $100 gift certificate redeemable for groceries—to the Social Security Administration as required by law.

I'm honest, so I reported the $100 to the Social Security office," Dewey said. "Then I got a letter from the Caldwell office saying I had been overpaid and that I would have $160 deducted from my checks.

"Now, I thought they might take out the $100, but not $160." she said. "There's nothing fair about that."

U.S. Sen. STEVE SYMMS, whose Boise office staff has been working with Dewey on the case, agreed.

"This doesn't make sense," SYMMS said. "There should be no problem at all.

"I think a wrong button got punched on a computer somewhere," he said. "I don't know that that's what happened, but it could have.

"In defense of the Social Security Administration, most cases don't have this kind of problem and the case worker could have misunderstood what was going on," he said.

According to Craig Thomas, a Caldwell SEA claims representative what did happen was that the Nampa woman had the bad luck of being "caught" in a transition period.

When Dewey reported the raffle winnings, the SSA was in the process of changing the way it computes overpayments, a change ordered by Congress, Thomas said.

Under the new regulations, checks are adjusted for overpayments monthly, based on the income received two months prior.

In other words, if a person receiving SSI checks earns extra income and reports it in July, an adjustment will be made in the September check, Thomas said.

Under the old regulations, that adjustment would have been made on a quarterly basis.

But when Dewey reported her raffle winnings, the SSA was in a transition period between the old and the new computation methods. During this three-month period—April, May and June—check amounts were based on April income.

When Dewey told the SSA she had received extra income in April, the transition period rules, in effect, turned that, one-time, $100 bonus into a three-month, $300 increase in income.

That, in turn, translated into a $160 "overpayment" in April and May and a monthly check reduction of $80 beginning in July. That reduction presumably would have lasted until September when July's income would have been used to recalculate her monthly check amount.

All told, her $100 gain could have turned into a $320 loss—the $160 "overpayment" and another $160 in July and August montly reductions.

No wonder Dewey said she'd been under "a lot of pressure."

"I bought five raffle tickets for one dollar and look what I got in return," she said.

Dewey didn't sit idly by and watch almost a third of her monthly income disappear in this bureacratic SNAFU, though. Instead, she wrote to the SSA in Baltimore.

"I wrote them directly and told them there's nothing right about this and that I couldn't understand why I would have to pay $160," she said. "I wanted an explantion and I haven't heard from them yet."

Even though she hasn't heard from the SSA directly, Dewey's problem has been resolved—no money has been deducted from her checks and the repayment of her overpayment has been waived. She even received her July cost of living increase right on time.

Why? Because by writing to the SSA, she put another set of the agency's rules to work for her this time—her letter activated the agency's appeals process. And that resulted in a favorable ruling.

If Dewey did anything wrong, Thomas said it was writing to Baltimore rather than going to the local SSA office. Her letter was forwarded from Baltimore to Caldwell where the decision to waive her "overpayment" repayment and leave the amount of her monthly checks was made by another claims representative.●

WORLD PEACE

Mr. ARMSTRONG. Mr. President, Walter Berns, resident scholar at the American Enterprise Institute, has raised some very thoughtful and interesting questions about proposals to establish a national peace academy. What interests me most about his

recent article (published in the Wall Street Journal, August 2, 1982) is not the peace academy alone, but to the larger issue of how to foster the cause of world peace. I ask unanimous consent that this interesting essay be printed in the RECORD.

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

CONGRESS IS SAYING, GIVE PEACE A GRANT

(By Walter Berns)

The fears of a nuclear holocaust, so long suppressed because the event is too horrible to contemplate, have finally become a prominent element in our political discourse, official and unofficial. Politicians now speak openly of the prospect that our children will be incinerated. At a public meeting earlier this year, for instance, Sen. Paul Tsongas (D. Mass.), pointing to his eight-year old daughter whom he had brought along as a kind of prop, added a nasty note by accusing President Reagan of being indifferent to this awful prospect.

First in the New Yorker (surrounded by the wry cartoons and the ads offering deluxe hotel accommodations), and then in a best-selling book, Jonathan Schell calls upon "the people of the earth to do whatever (is) necessary to save humanity from extinction by nuclear arms." As Congressman Paul Simon (D. Ill.) said the other day, "for the past few months, the people have been telling us, 'let's do something for peace.'"

What has largely escaped attention is that Congress is about to respond to this concern by establishing a U.S. Academy of Peace and Conflict Resolution. The academy would have an international student body and faculty, peace seminars, peace conferences, peace symposia, peace prizes disarmament talks (or talk), even a graduate program leading to a Master of Arts in Peace or a Master of Arts in Conflict Resolution. More to the point, there will be federal grants, lots of grants: research grants, conference grants, travel grants and graduate as well as post-doctoral fellowships. It is this grant-making authority especially that has lips smacking in certain academic circles.

LESS THAN COST OF BOMBER

The House and Senate bills (identical in an esssential respect) call for initial funding of $21 million, which, as many supporters are eager to point out, is much less than the cost of a single B-1 bomber. It may be relevent to point out, however, that the initial funding for the National Endowment for the Arts was $2.5 million; within 15 years it was receiving—and giving away the larger part of—$155 million annually.

The idea of a peace academy has been around for many years, but it began to bear fruit only in 1976 with the founding of the National Peace Academy Campaign, a private organization claiming some 30,000 members, including Ed Asner, Paul Newman, Archbishop Hunthausen (Seattle's Catholic "Peace" bishop) and politicians and professors.

With the support of some 40 national organizations (including the American Psychological Association, the American Sociological Association, the American Association of Retired Persons, the U.S. Catholic Conference, the House of Bishops of the Episcopal Church and the Women's International League for Peace and Freedom), the campaign succeeded in getting Congress to fund a presidential commission to study proposals for a peace academy. Chaired by Sen. Spark Matsunaga (D. Hawaii), the commission delivered its initial report to President Carter in September 1980. The bills pending in Congress derive from its final report delivered last November.

The stated purpose of the academy is to promote peace through "peace learning." It is said that peace and conflict resolutions are subjects that can be taught, rather like the science of labor-management relations. The only differences are that, instead of negotiating wages and fringe benefits, the peace negotiator may find himself at a table where the issue is the life or death of nations, and instead of having to contend with the likes of Lee Iacocca and Douglas Fraser, he will be faced with the Ayatollah Khomeini and Saddam Hussein, or Yasser Arafat and Menachem Begin. But science is science and as such knows no national or other kinds of boundaries.

According to the National Peace Academy Campaign, "there is now a science tested and proved in actual practice—that can help make war obsolete [and] this science can be taught, learned and applied—anywhere in the world." Indeed, one professor of conflict resolution testified in the Senate hearings that had the Peace Academy been in place, "things might have been different" in the Falkland Islands dispute. The academicians would have brought the British and Argentinians together in the "kind of forum . . . developed [to deal with] places like Cyprus or Northern Ireland." Not very convincing examples, Cyprus and Northern Ireland, but the Senate bill, with 54 cosponsors, was reported favorably by the Labor and Human Resources Committee in June, and on July 20 committee hearings were begun in the House. Since peace is popular and because all 435 House members and 20 of those 54 cosponsoring Senators are up for reelection this year, early passage of this legislation seems almost certain.

What Congress would be getting for its money is likely to prove very similar to what it is already getting from the United Nations, except this time it will have to pay 100 percent, rather than a mere 25 percent, of the cost. Leaving aside the studies commissioned to resolve domestic conflicts, we can expect the graduates and fellows of the Federal Peace Academy to begin immediately to churn out disarmament and peace proposals.

Among other things, we shall probably be told that peace requires disarmament and disarmament requires the abolition of sovereign states. As Jonathan Schell puts it (and his name surfaces frequently in the testimony favoring the academy), weapons are needed for wars, and wars are fought by sovereign states (never mind the PLO, the Polisarios, the various Red Brigades); therefore, without sovereign states, there would be no need for weapons, no wars, and—voila!—peace. Peace, Mr. Schell tells us, and we are likely to hear it from the U.S. Peace Academy, depends on the establishment of a world government, for only a world government can dispense with armaments.

What is disheartening in this business is that our legislators seem unaware of the fact that they hold office under a Constitution that was inspired by a handful of political philosophers who, beginning some 300 years ago, succeeded in discovering precisely what the peace academicians will now be paid to rediscover (but won't), namely, how to achieve peace. (When Jefferson was designing the curriculum of the University of Virginia's law school, he put some of their books on the required reading list.)

This search for the conditions of peace began with Thomas Hobbes, the need for peace being as evident in his day as it is in ours. As he wrote in his most famous book, during war the life of man is "solitary, poor, nasty, brutish and short." What he accomplished (with the help of the other philosophers of natural rights, such as John Locke, "America's philosopher") was a radical change in the acknowledged purpose or goal of political society. No longer would the "city" attempt to satisfy the desires of the soul, for it is the pursuit of such desires—glory or salvation, for example—that promotes conflict and war, both foreign and civil; it would confine itself to satisfying the desires of the body, or providing the conditions under which they might be satisfied.

PROMOTE LIBERAL DEMOCRACIES

This is what Madison had in mind when, in Federalist 10, he said that "the first object of government (is) the protection of different and unequal facilities of acquiring property." If these desires are pursued vigorously and freely, there would be a vast increase in the ability to provide material goods, which Adam Smith called "The Wealth of Nations." That increased wealth could be widely shared, and those who shared it would be inclined to subordinate their other desires. During the 1960s, some of them would unknowingly echo Hobbes and Locke by saying, make love (thereby satisfying the body's needs) not war.

On these principles, and with institutional refinement contributed by Montesquieu and our own Founding Fathers, we in the U.S. built the first liberal democracy. The connection between liberal democracy and peace is suggested by the following facts: The United States has never fought a war against another liberal democracy; not one of the many wars now raging in the world is a war between two liberal democracies; indeed, there has never been a war between two liberal democracies.

The conclusion seems obvious: Instead of wasting our money on a Peace Academy, Congress ought to do what it can to advance the cause of liberal democracy around the world.

MENACING JUDICIAL ACTIVISM

Mr. ARMSTRONG. Mr. President, during the next several weeks, the Senate will be considering various proposals designed to restrict the jurisdiction of the Federal Judiciary. Like most Senators, I will approach this task with great caution.

At the same time, however, I regret that courts themselves have been much less than cautious about extending their jurisdiction, assuming prerogatives not intended by Congress or the Constitution and, in general, acting more and more like political bodies and legislative tribunals rather than courts in the old-fashioned tradition. The Wall Street Journal (Friday, Aug. 6, 1982) contained the most interesting article by Mr. Alexander Troy. Mr. Troy illuminates one particular aspect of the menace of excessive judicial activism. I ask unanimous consent that this article be printed in the RECORD.

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

[From the Wall Street Journal]

LEARNING THE LAW AT HARVARD

(By Alexander Troy)

The proper role of the judiciary in creating and directing social policy has been a contentious issue in American politics. At various periods courts have challenged the constitutional limits placed on their powers, either by abusing judicial review or, more recently, by adjudicating political problems they have traditionally avoided. For example courts have in recent years undertaken the management of school systems, hospitals and prison facilities. Judicial management of our society is now so extensive that Congress is considering legislation to remove jurisdiction over certain issues from the federal courts. But whatever Congress does, legal education, particularly at Harvard Law School, will continue to contribute to the problem of an overweening judiciary.

Harvard Law School's reputation for producing lawyers belies the school's current educational environment. Among the Harvard commuity, visions of remaking society are now much preferred to expressions of interest in a corporate career. The law school faculty, which to a large degree shares the antipathies and aspirations of its students, encourages these visions with its instruction. The first year Harvard student is taught today that a lawyer need not be an attorney for a corporation or an individual client, but rather an advocate for society at large. The student is informed that the lawyer's principal activity, litigation, is often less a means of resolving a dispute between two adversaries than a device for implementing social change. In short, Harvard's legal education now seems aimed at developing social engineers rather than lawyers as traditionally envisioned.

A EUPHEMISM FOR CONTROVERSY

Civil procedure, the course that focuses on the nature of litigation, emphatically proclaims at Harvard the decline of the traditional notions of the lawyer and the lawsuit. Traditionally, the lawsuit was regarded as the battle for retrospective redress, and the impact of the contest was generally limited ot its participants. This notion of litigation has been replaced, one Harvard professor explains, by a new model called "public-law litigation."

Public-law litigation is a euphemism for all the controversial activities that judges have undertaken: creating remedies unrelated to the lawsuit's principals or even to the issues before the court administering the remedies over years, and even delegating the responsibility for creating these solutions to experts and masters. Public law litigation, as conceived of and taught by Harvard professors, is a very powerful mechanism for achieving specific notions of social reform.

Obviously, the relegation of the traditional lawsuit to a less significant status signals a corresponding change in the roles of lawyer and judge. The lawyer, formerly an advocate for a client, is now the initiator of a bureaucratic process that supplements or overides legislative efforts. He may choose to represent people who do not know him and have not consented to his representation, and he seeks redress for conditions that he believes require sweeping social change.

The judge becomes a broker of remedies, often actively participating in a continuous bargaining process between the adversaries in an effort to negotiate a solution to a problem often more political than legal. Judge Arthur Garrity is an example of the new type of jurist. His management of Boston's public-school system for the past 10 years, a complete failure, is exactly the sort of activity envisioned by proponents of public law litigation.

Notably, only the clients have diminished in importance in public law litigation. In the typical public-law case, clients merely fulfill the requirement that the lawyer represent someone. The presence of clients gets the case into court, so that judges can wrestle with the larger social issues that lawyers seek to address.

To older law school graduates, the idea of introducing broad social themes in as mechanical a course as civil procedure must be astonishing. However, the transformation of the conception of the lawyer at Harvard has brought about a significant change in courses once thought to be scholastic and apolitical.

Only those recently graduated from Harvard could correctly identify the course given to part of the first-year class as Torts. The course was a desultory survey of economics, spistemology and social psychology, but the professor also found time to address the issue of the limits of a court's power in a democratic society. The professor's conclusion was a simple one: Judicial decisions are substantively indistinguishable from legislative ones. Judges, like legislators, cater to competing interests by compromise rather than by the application of a neutral calculus. therefore, the view that courts are less suited for legislative decision-making because of their institutional nature is unsound. The inference left for students to draw is that there is little that a court cannot do.

JUDICIAL RESTRAINT NEEDED

Since the Harvard faculty is granting a carte blanche to its students to remake society, it must teach the methods that are commonly used in the legislative process. Courses in economics, statistics and public policy are offered by Harvard's law school, as well as its business and government schools. This preparation is not necessarily undesirable, as an exposure to policy techniques can just as easily underscore the difficulties of using the judicial method to solve social problems as encourage its application.

It's unlikely, however, that students who accept the public-law perspective will infer any need for judicial restraint from their policy-preparation courses. Many students enter Harvard Law School with firm convictions about the need for swift change in American society. For them, the message of public-law litigation is a welcome one, delivered by professors who sympathize with the causes these students support. On the other hand, students who enter Harvard unfamiliar with the law and uncertain about their reasons for studying it are being molded into social engineers, a disparaging phrase invented by the late dean of Harvard Law, Roscoe Pound.

Whatever the merits to Harvard's legal training, its presentation and conclusions capture an attitude that permeates the law school. That attitude, explicitly stated in a New York Times editorial by Harvard Law School Professor Lloyd Weinreb, is an impatience with the workings of a democratic society: "One might accept the call for judicial restraint with more equanimity if it were accompanied by as loud a call for greater activism elsewhere."

In short, if the pace or the direction of government is not to the liking of Harvard's Mr. Weinreb, the court system should provide a speedier alternative to the goals that he and some legal elite support. At root, the attitude is anti-democratic, and, if it is accepted by the students it is offered to, the nation can anticipate destructive conflict between its legislative and judicial institutions.

PORTRAIT OF THE MILITARY

Mr. ARMSTRONG. Mr. President, over the last few years, the impression has grown that the men and women in uniform, who have committed their lives to the defense of this country, are morons, malcontents, drug addicts, or worse. So I was extremely pleased to read Fred Reed's recent commentary which decisively refutes this notion. I commend this thought-provoking article to the attention of all my colleagues, and I ask unanimous consent to have it printed in the RECORD.

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

PRESS PORTRAYS MILITARY AS INCOMPETENT—IS IT?

(By Fred Reed)

Among the more curious aberrations of the press is its habitual portrayal of the military as fools, clowns, madmen, children and incompetents. Whether editors and reporters engage in this deliberately can be debated. My view, based on a good many years of watching, is that they do it more from reflex than from policy. They inarguably do it. They have been doing it so long, so energetically, in so many places, that it has become part of the unnoticed mental luggage of the educated.

If you doubt the existence of the bias, think a moment. When was the last time you saw in a newspaper in Washington, or for that matter on television, a story implying the military had done anything right? Unless you are a confirmed conservative, my asking the question probably strikes you as in bad taste . . . doesn't it? Such is the power of repetition.

When did you last see a story about the military that didn't say or imply strongly that (1) some weapon isn't working, isn't needed or can't work; (2) some weapon is having cost overruns; (3) the military is preparing to do something hideous; (4) the military's strategy and tactics are wrong; (5) the military is bellicose, dangerous and really our principal enemy; (6) the military is racist, sexist or full of Klansmen and druggies; (7) the generals are preparing to fight the last war, or; (8) the generals are concentrating too much on Buck Rogers weaponry? (The last two are mutually exclusive, which doesn't in the least prevent people from believing both.)

Military men are not infallible, or even close to it, but they know a surprising amount about warfare. If you assume that the military is always wrong, however, then questions about a particular policy are answered before they are asked. If you assume that officers are fools, then there is no point in consulting them. The result is mili-

tary coverage uninformed by military knowledge, preordained in its conclusions and useless as grounds for thought. This we have.

Are officers stupid? The average score on the SATs of midshipmen at the Naval Academy is about 1,237. That's on a level with Georgetown (1,225); 147 points above George Washington, a poor second, (figured for 1978) and 48 points below John Hopkins. Maryland at 950 is comparatively a joke. I asked the academy what proportion of its students had the 1,300 combined boards needed to join Mensa, the club for those with IQs in the top 2 percent. Answer: a shade fewer than one-third.

Are officers incompetent? At what? There is a sense in which any bureaucracy is incompetent—the left hand has only a sporadic acquaintance with the right hand, five tons of paper clips are mysteriously delivered to an office that doesn't use paper clips, and nobody is sure exactly how the budget gets spent. It is true that an error at the Pentagon can have consequences, whereas it doesn't matter what HUD does. As far as individual competence is concerned, the officer corps is impressive.

Spend a few days at sea with a naval vessel. The things run like clocks. Warships are not easy to operate, being stuffed to the overheads with sophisticated electronics and semi-literate sailors, but the fact is that crews operate them almost flawlessly. Running flight operations at night from a carrier in choppy seas is not remotely a job for the incompetent, but it gets done regularly.

Are they competent as strategists? How can you tell? It is easy to detect the fairly common aptitudes needed to be, say, a helicopter pilot, and easy to tell whether a man can fly. No one knows just what rare talents make for strategic ability, much less how to recognize them.

One may wonder whether a huge managerial bureaucracy like the Pentagon is likely to produce them. Probably not—but what would? The traditional way to find strategists is to have a war and see who wins. Trying to find strategic talent in peacetime is like trying to find musical talent without an audition.

It remains that the jejune denunciations of strategy, so beloved of Washington's cocktail Napoleons, are nothing short of fatuous. You know the kind of thing—the A-bomb makes tanks obsolete, so we should disband NATO, or Russian submarines go underwater, so we should scrap the surface fleet. If you look into these questions at greater length than a paragraph, you find perplexing subtleties, unsuspected complications and technical considerations that never make the newspapers (they will make this one). The realization comes: What do you know, this stuff isn't as simple as it looks.

Lieutenants can talk in articulate detail about such things. You will never hear them do so, thanks to the presumption that military men are uniquely ignorant of things military.

CONCLUSION OF MORNING BUSINESS

Mr. BAKER. Mr. President, will the Chair inquire if there is further morning business?

The PRESIDING OFFICER. Is there further morning business? If not, morning business is closed.

ORDERS FOR THURSDAY

ORDER FOR RECESS UNTIL 10 A.M.

Mr. BAKER. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in recess until 10 a.m. tomorrow.

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

ORDER FOR RECOGNITION OF SENATORS NUNN AND SPECTER

Mr. BAKER. Mr. President, I ask unanimous consent that after the recognition of the two leaders under the standing order, the Senator from Georgia (Mr. NUNN) be recognized on special order for 15 minutes, to be followed by a special order of a similar length in favor of the Senator from Pennsylvania (Mr. SPECTER).

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

ORDER FOR TRANSACTION OF ROUTINE MORNING BUSINESS

Mr. BAKER. Mr. President, I ask unanimous consent that the time available after the execution of the special orders and prior to 11 a.m. be dedicated to the transaction of routine morning business in which Senators may speak for not more than 2 minutes each.

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

ORDER FOR RESUMING CONSIDERATION OF THE TEMPORARY INCREASE IN THE PUBLIC DEBT LIMIT

Mr. BAKER. Mr. President, I ask unanimous consent that at 11 a.m. tomorrow the Senate resume consideration of the debt ceiling bill.

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

ORDER FOR PROCEDURE TOMORROW

Mr. BAKER. Mr. President, tomorrow we will convene at 10, and at 11 a.m. we will resume consideration of the debt limit bill, at which time the pending question will be——

The PRESIDING OFFICER. The Baucus amendment.

Mr. BAKER. The Baucus amendment. The Senator from Oregon (Mr. PACKWOOD), according to the order previously entered, will be recognized at that time to resume his presentation without interruption without it counting as a second speech under the rule.

RECESS UNTIL 10 A.M. TOMORROW

Mr. BAKER. Mr. President, I move, in accordance with the order previously entered, that the Senate stand in recess until 10 a.m. tomorrow.

The motion was agreed to, and at 7:10 p.m. the Senate recessed until tomorrow, Thursday, August 19, 1982, at 10 a.m.

CONFIRMATIONS

Executive nominations confirmed by the Senate August 18, 1982:

U.S. INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Charles W. Greenleaf, Jr., of Virginia, to be an Assistant Administrator of the Agency for International Development.

DEPARTMENT OF STATE

James Malone Rentschler, of Pennsylvania, a Career Member of the Senior Foreign Service, class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Malta.

Theodore George Kronmiller, of Virginia, Deputy Assistant Secretary of State for Oceans and Fisheries Affairs, for the rank of Ambassador.

Robert John Hughes, of Massachusetts, to be an Assistant Secretary of State.

FARM CREDIT ADMINISTRATION

Tom H. Carothers, of Texas, to be a Member of the Federal Farm Credit Board, Farm Credit Administration, for a term expiring March 31, 1988.

Leonard R. Fouts, of Indiana, to be a Member of the Federal Farm Credit Board, Farm Credit Administration, for a term expiring March 31, 1988.

DEPARTMENT OF AGRICULTURE

Wilmer D. Mizell, Sr., of North Carolina, to be an Assistant Secretary of Agriculture.

THE JUDICIARY

William M. Acker, Jr., of Alabama, to be U.S. district judge for the northern district of Alabama.

Bruce M. Selya, of Rhode Island, to be U.S. district judge for the district of Rhode Island.

DEPARTMENT OF JUSTICE

Charles L. Dunahue, of Colorado, to be U.S. Marshal for the district of Colorado for the term of 4 years.

Clinton T. Peoples, of Texas, to be U.S. Marshal for the northern district of Texas for the term of 4 years.