The Senate met at 9:30 a.m., on the expiration of the recess, and was called to order by the President pro tempore (Mr. THURMOND).

PRAYER

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

God of Abraham, Ishmael, Isaac, and Israel, as Jewish people through America and the world anticipate the High Holy Days which celebrate their new year, we pray for the peace of Jerusalem and the Middle East. Grant to the leadership of those peoples the will to peace. Give them transcendental wisdom in their decisions and actions. Help our President, Secretary of State and others involved in the situation to fulfill our Nation’s role in establishing peace.

May the prophecy of Micah soon come to pass:

And they shall beat their swords into plowshares, and their spears into pruninghooks: nation shall not lift up a sword against nation, neither shall they learn war any more.—Micah 4: 3.

On this 195th birthday of the Constitution of the United States, we thank Thee for this remarkable political document on which our Nation is based. We thank Thee for the radical change of the Amendments to House Joint Resolution 520, the debt ceiling bill.

Under a previous order, following the special order for the Senator from Montana (Mr. BAucus) and a period for routine morning business, the Senator from Florida (Mr. CHILES) will be recognized to continue debate on his amendment.

There has been no order preventing rollcall votes, so Senators are reminded that there is still a possibility of votes.

On yesterday, however, the majority leader did indicate to the Senate that we would recess today by approximately 2 p.m.

Mr. President, after the session today the Senate will have but a working days left until the beginning of the new fiscal year. Thus far, out of the 13 annual appropriation bills necessary to keep the Government operating, the Senate has only two appropriation bills from the other body, the military construction bill which passed the House on August 19, and the HUD appropriation bill which passed the House last week.

We face the problem of having to function the majority of the Government, including defense, under a continuing resolution. In my opinion, the way the Senate cannot afford to operate under a formula that is sewn together in just a few days, the complications of which are difficult to understand in such a short time.

In my role as chairman of the Defense Appropriations Subcommittee I have been attempting this past week to mark up the Defense appropriation bill for fiscal year 1983.

Some people accuse our committee of trying to spend too much; other people accuse our committee of not spending enough. As a practical matter, the reason why I bring this to the attention of the Senate at this time, is to ask the Senate to do everything it can to avoid having the Defense appropriation bill become a part of a continuing resolution that lasts for just a few months. It will literally cost the taxpayers of this country hundreds of millions of dollars each month if we operate on a month-to-month basis in the largest procurement department of the Federal Government. It is not possible to properly plan and execute the procurement programs and the defense strategy of the United States on a month-to-month basis.

Last year almost on a daily basis my good friend from West Virginia, the distinguished minority leader, asked the Republican leadership when the Senate planned to act on the appropriation bills for fiscal year 1982. The difficulty now is, and my friend has nothing to ask really, because we have only two bills here in the Senate now from the other body for fiscal year 1983. The Appropriations Committee marked up three Senate bills yesterday and we will move as rapidly as possible on those bills.

I am not trying to belabor the point, Mr. President, except to say that there is great frustration brewing in the Senate, and I think it is over the appropriation and budget processes. Members of the Senate still have a chance to make this system work in the next 2 weeks, and one of the ways to make it work is to insist that the defense appropriation bill ought to be a full annual bill in order to save the taxpayers of this country the money that can be saved by the annual budget of the Department of Defense in this period of modernization.

Mr. President, much remains to be done in the next 2 weeks. I hope the Senate will assist those of us who are trying to do it right.

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

Mr. STEVENS. Mr. President, I am happy to yield.

Mr. CHILES. I notice the distinguished minority leader is not here today, and he did trigger the remarks that he made last year.

I was a little confused with the Senator’s statement. I certainly agree with the Senator that we should have an annual defense bill, and we ought to take that bill up. I am a little bit confused as to why we do not have that bill. On the hand, we do not have a bill over from the House but, on the other hand, the distinguished Senator from Alaska has been saying we cannot mark up the bill we have now because he cannot get the administration to give us any figures as to where the cuts should go.

SENATE SCHEDULE

Mr. STEVENS. Mr. President, today the Senate will continue consideration of the amendments to House Joint Resolution 520, the debt ceiling bill.

Under a previous order, following the special order for the Senator from Florida (Mr. CHILES) and a period for routine morning business, the Senator from Montana (Mr. BAucus) will be recognized to continue debate on his amendment.

The President pro tempore did indicate to the Standing order that the Journal approved to date.

Without objection, it is so ordered.

SENIOR LEADER

Mr. CHILES. Mr. President, will the Senate yield?

Mr. STEVENS. 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.

ORDER FOR PERIOD FOR THE TRANSACTION OF ROUTINE MORNING BUSINESS

Mr. STEVENS. Mr. President, I ask unanimous consent that following the recognition of the two leaders under the standing order and the special order for Senator CHILES, that there be a period for the transaction of routine morning business not to extend beyond 10:30 a.m. today in which Senators may make speeches for not to exceed 5 minutes each.

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

RECOGNITION OF THE ACTING MAJORITY LEADER

The President pro tempore. The acting majority leader is recognized.

THE JOURNAL

Mr. STEVENS. 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.

ORDER FOR PERIOD FOR THE TRANSACTION OF ROUTINE MORNING BUSINESS

Mr. STEVENS. Mr. President, I ask unanimous consent that following the recognition of the two leaders under the standing order and the special order for Senator CHILES, that there...
So what is the problem? Is the problem with the House or with the administration or is it with both places?

Mr. STEVENS. I say to my friend the gentleman from West Virginia, I do hope that in the course of considering the continuing resolution the Senate will insist that the defense portion of that bill be for a full defense bill. That is the only goal. I hope it is the goal of the Senate.

Thank the Senator from Florida and the Senate.

RECOGNITION OF THE ACTING MINORITY LEADER

MR. PROXMIRE. Mr. President, President, in the absence of Senator Byrd, I will take only a minute and then yield back the floor and reserve the remainder of his time for his later use if he wishes to use it.

MICHAEL GOLDBERG: A LIFE SCARRED BY GENOCIDE

Mr. PROXMIRE. Mr. President, today I bring to the attention of the Senate the spiritual wounds genocide inflicted upon a young child. Michael Goldberg. Goldberg's book, "Nem­sake," which recounts his lifelong odyssey toward peace of mind, was reviewed in the New York Times on September 5, 1982.

According to the review, Michael Goldberg was born in France in the late 1920's, the worst possible time to be a Jew. His father was deported during the war and died in a gas chamber at Auschwitz. His mother remarried, and to save her son from the Nazis, gave him his stepfather's Jewish surname. He did not tell Michael that he was of Jewish origin. Hence Michael Goldberg became Michael Cojot, a change that saved his life, but scarred his soul.

Why did Michael's soul change? His ignorance of his ethnic heritage allowed him to fall prey to the Nazi culture and propaganda of occupied France. He became involved in other Nazi traits, such as sadism, destructive ambition, and contempt for others.

The later discovery that he was Jewish aroused a strong sense of self. Goldberg decided to murder the man. Is this risk worth taking? No way.

Mr. PROXMIRE. Mr. President, in the absence of Senator Byrd, I will take only a minute and then yield back the floor and reserve the remainder of his time for his later use if he wishes to use it.

CONGRESSIONAL RECORD—SENATE

September 17, 1982

Mr. PROXMIRE. Mr. President, Wednesday, Senator BUMPERS and Representative COUGHLIN sponsored a forum on the Clinch River breeder reactor. The speakers included some of the most knowledgeable scientists and economists to study this program.

Their evidence against the program was overwhelming—huge cost overruns, obsolete technology, ample substitute fuels at dramatically lower costs, and increased danger of nuclear proliferation.

But that is not the worst part. According to Dr. Theodore Taylor, former Deputy Director of the Defense Atomic Support Agency, if just one breeder reactor were bombed, emissions of strontium-90 and cesium-137 would equal the radiation produced by the explosion of all the nuclear bombs in the world. That is right, all the nuclear bombs.

Is this risk worth taking? No way. According to Congressman OTTIGER the true cost of the project is about $10 billion, and this expense is to demonstrate a technology which, according to the Department of Energy's own figures, will not be competitive until at least 2040.

There is not one good reason to fund this project now when we have had to severally cut back on so many worthwhile programs.

Even the Department of Energy's own Energy Research Advisory Board has a low opinion of the Clinch River plant. They rated Clinch among the worst of the Department of Energy's current energy supply programs.

I urge my colleagues to stop funding this project now.

EXCUSES, EXCUSES FOR LACK OF ARMS CONTROL

Mr. PROXMIRE. Mr. President, three critically important treaties—representing years of arms control negotiations and the best product of our military experts—lie languishing in the Senate. I refer to the Threshold Test Ban Treaty of 1974, the Peaceful Nuclear Explosions Treaty of 1976, and the 1979 SALT II Treaty.

Mr. President, nobody should have to endure that kind of mental agony. Nobody. But Michael Goldberg is just one of millions of people in our time who has lived—or died—under the specter of genocide.

What we must do to help prevent what happened to Michael Goldberg from happening to others, Mr. President, is make genocide a crime under international law. I therefore call upon the Senate to ratify the Genocide Convention.
number of excuses. The Carter administration, for one, did not push for the Peaceful Nuclear Explosions Treaty out of fear that it would upset the Senate. The Senate, as an institution, has a responsibility to take some action on these treaties instead of letting them remain here with no prospect of attention.

The alternatives facing the Senate have been cogently spelled out in an excellent article on this subject by Carl Marcy—the longtime chief of staff of the Senate Foreign Relations Committee who now is codirector of the American Committee on East-West Accord.

Mr. Marcy notes that the Senate could:

1. It could consent to ratification of the treaties and send them to the President, who would then have the option of ratification.

2. Consent to the treaties with suitable reservations and understandings.

3. Return the treaties to the President after having failed in a two-thirds vote.

Fourth, or allow them to remain in legislative limbo—an unacceptable alternative.

Mr. President, I think Mr. Marcy is exactly right in his assessment. The Senate should hold to its obligation under the Constitution and take action on these treaties—be they modified, accepted or rejected. That is our duty.

Mr. President, I ask unanimous consent that the Carl Marcy article 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, Sept. 15, 1982]

Advice? Consent? What?

By Carl Marcy

WASHINGTON.—Whatever happened to the Senate? The Constitution endows it with the power to give its advice and consent to treaties made or approved by the President. Yet treaties are among the most important treaties ever negotiated and that are now physically and legally pending before it.

Senators have not accepted the opportunity to discharge their obligation to stand up and be counted on the Threshold Test Ban Treaty of 1974, the Peaceful Nuclear Explosions Treaty of 1976 and the 1979 treaty limiting strategic arms. Why?

The President approaches, how come the electorate does not know, by the evidence of recorded votes, how the senators voted? The Senate had three of the most important treaties ever negotiated and that are now physically and legally pending before it.

Senators have not accepted the opportunity to discharge their obligation to stand up and be counted on the Threshold Test Ban Treaty of 1974, the Peaceful Nuclear Explosions Treaty of 1976 and the 1979 treaty limiting strategic arms. Why?

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The President approaches, how come the electorate does not know, by the evidence of recorded votes, how the senators voted? The Senate had three of the most important treaties ever negotiated and that are now physically and legally pending before it.
The first of the two amendments would modify the Florida constitution so as to limit the reach of the exclusionary rule. The proposal now before the voters of Florida would make the exclusionary rule applicable to the States back in 1961, Florida amended its constitution to include the language of the exclusionary rule within the body of the Florida constitution. Over the last 10 years, the U.S. Supreme Court, in a series of decisions, has cut back on the reach of the exclusionary rule. In many instances, the State of Florida was unable to follow the lead of the Supreme Court because the provision in the Florida constitution prevented a more narrow reading of the exclusionary rule. The proposal now before the voters of Florida would specify that the exclusionary rule, as it applies to cases in Florida, shall be interpreted consistently with the more restrictive recent Supreme Court decisions. Mr. President, that would help assure that the operation of the exclusionary rule is brought more into line with its purpose, which is to deter willful police violations of the search and seizure rules. Today, the exclusionary rule is often applied in a mechanical way, so that technical violations of the search and seizure rules are used to exclude crucial evidence at trial. As a result, prosecutors do not bring cases because they know that the exclusionary rule will be used to prevent crucial evidence from being used at trial. Earlier this week, Ed Austin, Florida’s State attorney for Jacksonville reported that Jacksonville prosecutors have had to drop 79 felony cases this year because of technical search and seizure violations. It is no wonder that the American public has such little confidence in the ability of the courts to convict and sentence criminals.

The second proposed amendment that will be presented to the people of Florida modifies the bail provisions of the State constitution to allow a person who has been arrested to be held without bail pending trial if the court determines that the person’s release would create a danger to the community. Floridians are all too familiar with today’s revolving door bail system, in which a person who is arrested gets out on bail practically before the police are able to fill out his arrest forms. Under current laws, the judge is unable to consider how dangerous it would be to let the person who has been arrested out on bail. He simply applies a rather mechanical rule, which asks whether or not the person is likely to show up for later proceedings. If we allow the judge to consider whether or not release on bail poses a danger to the community, we will give the court system more flexibility to protect society against dangerous criminals who have been arrested.

Mr. President, there are counterparts here in the Senate to both of the ballot questions that will be before the voters of Florida this year. Earlier this week, the President submitted a bill to the Congress that would make changes in the exclusionary rule to prevent the rule from being used to exclude crucial evidence at trial. The police violation of the search and seizure rules was technical and the police acted in good faith. The President’s proposal, which is now pending on the Senate Calendar, is similar to a bill proposed by Senator DeConcini and cosponsored by myself. Bail reform provisions similar to those before the voters of Florida are contained in both the anticrime packages, S. 2543 and S. 2572, now pending on the Senate Calendar. We in the Senate have the opportunity in the remaining days to pass the kinds of changes on the Federal level that the State of Florida is considering adopting. If we act before we adjourn, we will send a message to people from Florida, and to people from around the country, that the Senate is in tune with the concerns and desires of the public to do something to reform our courts and to stop the crime which is plaguing this country. Both S. 2543 and S. 2572 can be taken off the calendar and passed at any time. Both bills would reform our bail laws, and would make other important changes to help in the fight crime, especially since we have this unique opportunity to take positive action. I urge my colleagues not to let this opportunity slip away. The fight against crime is too important.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

The PRESIDING OFFICER. Without objection it is so ordered.

ROUTINE MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, there will be a period for the transaction of routine morning business.

The Senator from Alabama is recognized.

SEQUICENTENNIAL OF RANDOLPH COUNTY, ALA.

Mr. HEFLIN. Mr. President, as the senior Senator from the State of Alabama, I am quite pleased and proud to congratulate the citizens of Randolph County, Ala., on the approaching occasion of the 150th anniversary of their being a part of Alabama.

In 1832, Randolph County was created by the State legislature on December 18, 1832, and was formed from the last Creek Indian cession. It bears the name of John Randolph of Virginia, a prominent Member of Congress around the beginning of the 19th century.

The first county seat was created at Hedgeman Tripplett’s Ferry, on the west bank of Big Tallapoosa River. Two years later, it was moved about 10 miles west, to Wedowee, located in the central part of the county. This was named for an Indian chief whose vil-

lase stood near the present site of the town.

Through the years, Randolph County has had a full and rich history-from the days of the Indians to the settlement by early pioneers and the battles of the Civil War and on into the present day.

Walking through local pine forests, one finds remnants of Creek Indian towns, including a stonehenge-like circular structure of stone, some 2 or 3 feet high, with entrances on the east and west. These remains were found just a few miles from Wedowee. Some years ago, a row of stone piles or pillars, extending over a distance of more than 1 mile, at intervals of 100 yards, were found at the same site. No one knows why they were placed there.

Randolph County is blessed with outstanding natural resources-rich mineral beds, fertile farmland, pure and plentiful water. In fact, the name of the county seat, Wedowee, means “rolling water,” and the name is certainly justified, for there is a square 40-acre tract of land in all of Randolph County that is not penetrated by a stream, creek, or river.

All of this contributes to its reputation of being a healthy environment. In fact, during the national census of 1880, the census official assigned to Randolph County turned his report in to his Washington headquarters, only to have it returned to him for correction. The officials at the headquarters had declared the death rate as too small to be true. The original report, however, was returned to Washington unaltered, as there had been no mistake in figures.

Mr. President, Randolph County does have a grand history, outstanding natural resources, and a pleasant climate. I believe, however, that the most important attribute the county has is its people. I must admit that I may be somewhat biased in saying that—for I do have some close ances-
tral ties to Randolph County. Two of my great-grandfathers were early settlers of this county—Wyatt Heflin and Harrington Phillips. I have many relatives today residing there including those that bear the names of Phillips, Gay, Blake, Stell, Poole, McMurray, Daniels, and Heflin. Randolph County has a warm spot in my heart. I do sincerely believe that all the citizens of Randolph County, through the years, have shown themselves to be great Alabamians and Americans. Together, they have weathered many storms, always demonstrating a great sense of community pride and determination.

It is a true pleasure representing Randolph County in the Senate, and even more of a pleasure to congratulate the people of Randolph County on their approaching 150th birthday.

**AN AMENDMENT TO THE SOCIAL SECURITY ACT**

Mr. HEFLIN. Mr. President, I was shocked when I learned that almost $1 billion in social security benefits are going to illegal aliens and foreign nationals. This loophole in the social security system is inexcusable at a time when the system is straining to meet its commitments to the millions of elderly Americans who have worked hard to earn their benefits.

It is unbelievable that, at the present time, there are more than 300,000 persons living abroad in more than 60 countries who receive $962 million annually in social security benefits, 70 percent of these recipients are not American citizens. An example of the abuse to the social security system which has resulted from this loophole is the case of a foreigner who moved to the United States and worked here for a number of years and then returned to his homeland at the age of 70. Upon returning to his native country, he married a 17-year-old girl and turned to his homeland at the age of 70. Upon his death, his newly acquired family, who had never been to the United States, began collecting thousands of dollars annually in social security benefits. It is unfair that this sort of abuse is allowed to exist during a time when American elderly citizens who have worked hard all of their lives to earn social security benefits have been threatened with potential cuts in those benefits.

If we do not act to close this loophole and stop this type of abuse to the social security system in the United States, our American citizens who have earned and truly deserve social security benefits will be the ones who suffer. To remove this unneeded burden on our social security system and the benefit of elderly Americans who have retired in reliance upon our social security system I have cosponsored an amendment offered by my distinguished colleague from Indiana (Mr. Lugar), and I urge all of my colleagues to join me in support of this measure to insure that social security benefits continue to go to those truly deserving American citizens.

**THE PRESIDENT IS RIGHT**

Mr. HARRY F. BYRD, JR. Mr. President, I think the President of the United States is exactly right in demanding a special session of Congress to handle the appropriations bills. Congress has not yet passed a single one of the 13 appropriations bills. This fiscal year ends in less than 2 weeks, yet Congress has done nothing in regard to passing the necessary appropriations bills.

The President said it is bad economies and bad management of the Government's finances. I agree with that. I therefore support his demand for a special session. I hope that it means that he is determined also to force a reduction in the excessive spending that Congress has engaged in for so long.

It is time for Congress to act on these appropriations bills, it is time for Congress to reduce runaway and excessive Government spending. I hope that what the President had in mind when he issued his call for a special session in November.

Mr. HEFLIN. Mr. President, I wish to associate myself with the remarks of the distinguished Senator from Virginia.

**ONE-LEGGED CLIMBER**

Mr. JACKSON. Mr. President, hundreds and hundreds of people from all over the world attempt to climb Mount Rainier in my native State of Washington every year. It is a tremendous mountain and it is a mental and physical test of endurance. For those who reach the top of this 14,410-foot volcanic peak, it is an exhilarating accomplishment.

In fact, even young people in good condition train for weeks and even months before trying to climb Mount Rainier. It is often described by those who are unsuccessful, as the most grueling physical test of their lives.

I mention this, and draw my colleagues' attention to it, because I recently had occasion to meet a man, Mr. Donald H. Bennett, Mercer Island, Wash., who became the first amputee in the world to climb to the top of Mount Rainier. He was aided only by one leg and his crutches.

Mr. Bennett—and the members of his climbing team, John Skirving, Vashon Island; Rick Hanika, Seattle; Bob Hart, Federal Way; Cy Perkins, Enumclaw; and Al Shelley, Tacoma—made the climb to emphasize what people can do if they lose a limb. Their climb was sponsored by the Seattle Chapter of the National Handicapped Sports and Recreation Association.

Mr. Bennett uses an artificial leg in his daily life, but did not take it with him to Mount Rainier. He used specially rigged ski poles as crutches to help him with the climb. To prepare for the rugged climb, he hopped 5 miles a day for 2 months prior to the climb.

A documentary film entitled "Hop to the Top" is being made about the climb.

Mr. President, the commendable success of Mr. Bennett and his team members can serve as an inspiration to all handicapped persons—as well as all Americans. His motto is "can do" and it serves us well to reflect upon his philosophy and share it with others.

An article about the climb appeared in the Bellevue Journal American and I ask unanimous consent to have printed in the RECORD the text of the article.

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

**ONE-LEGGED CLIMBER: NEVER A MAYBE**

(By Barbara Winslow)

The 52-year-old one-legged man who hopped his way to the top of Mount Rainier this weekend never doubted that he could make it.

"I think it was one of the greatest experiences of my life," Don Bennett of Mercer Island told reporters Monday morning. But he said he has no plans to climb any other mountains.

Bennett, who is believed to be the first one-legged climber to reach Mount Rainier's summit without use of an artificial leg, said there was never a "maybe" as he and his five-member team trekked up the mountain that beat him a year ago. The tanned, lean mountain climber described the trip as "really good" and said the weather cooperated with the expedition.

Bennett arrived home about 2 a.m. Monday after a small celebration of fried chicken and pitchers of beer on Crystal Mountain Sunday night.

"I should be tired, but I'm not really, he said. "I'm still up on the mountain!"

It was just one year ago that the handicapped man tried to conquer the mountain, but gave up when he was planning another attempt. He vowed that he wouldn't try again, but when he heard the news of Mr. Bennett's success, he was planning another attempt.

Bennett uses an artificial leg in his daily life, but did not take it with him to Mount Rainier. He used specially rigged ski poles as crutches to help him up the mountainside.

The poles have a seal-skin circular base and hand grips half-way down the shaft.

The physical conditioning Bennett did prior to this trip made a difference in his strength, he said. For the past two or three months, he hopped five miles a day and swam.

"I felt physically much better," he said.
most, Americans feel as the Rev. Tom Scalise, the father of John Scalise, Updike's splendid novel, "A Month of Sundays," says: "Athletic fields and golf courses excepted, the out-of-doors wears an evil cast. The region that produces the brainless proliferation of vegetable forms."

But America will not soon be paved over or otherwise. As much as 25 percent of the standing forest is about what it was 50 years ago, and 75 percent of what it was in 1620. There is an answer to Watt's complaint. The government "is going to" and has the national consensus for governmental activism concerning environmental protection.

Indeed, if the Reagan years become locust years, that will be because a few strategically placed persons recognize and regret that this is the case. The administration's plan to offer for lease, quickly, one billion acres of offshore oil tracts looks like an attempt to seize a fleeting opportunity. It is economically imprudent to dump tracts onto a depressed market. It is environmentally rash to do so at a time when we are being asked to overwhelm the capacity for supervision.

At a first sale, held two weeks ago, bids were received on the availability of 13 tracts. The 40 high bidders totalled just 12.3 million, the lowest yield per acre in the 28 years of federal offshore leasing. Recent leases on the East Coast brought $76 million. At least $500 million had been anticipated.

A recent sale of coal leases in the Powder Basin of Montana and Wyoming brought such disappointing revenues that it must be viewed as a violation of the law requiring that the public get fair market value for coal. Of the 13 tracts for lease, eight attracted one bidder, three attracted no bidders, and twotracts attracted one. The Interior Department plans to lease 5 billion tons of coal over the next two years. The market is already glutted: given the current rate of mining, two centuries worth of coal land had already been leased.

"Congress" fiscal 1983 budget resolution anticipates $13.7 billion in revenues as a result of administration "management initiatives." These are executive efforts. The initiatives are the most important deficit-reducing measures.

The biggest component of the package of initiatives is supposed to be bonus bids royalty, oil and gas leases, and rents from offshore oil exploration. Yields from these sources are supposed to double in fiscal 1983. They will not.

James Watt, the interior secretary, plans to sell up to 35 million acres of public lands—a chunk of America about the size of Iowa. The proceeds may be used to increase timber cutting in national forests, in spite of the fact that today there are 30 billion board-feet of cut but unsoild timber. The administration is nothing if not reverent about the law of supply and demand, but it seems careless about increasing supply in a period of slack demand. The Administration's plan probably is that the administration thinks such sales are good for the nation's soul, regardless of the results, because shrinking the public sector is inherently good.

Watt is the administration's most vigorous exponent of this doctrine. He is the only person conspicuous in the upper reaches of the administration who is in the carto of Ronald Reagan as an immoderate ideologue. He has the sharpest tongue and the bluntest political instincts in Washington. In a city of subtleties and nuances, many of the most effective operators have public personalities to match.

That is one reason why, after 19 months of doing battle with Watt, environmentalists are merry as crickets. They are exulting in the regulatory complaint concerns. The Clean Air Act, pesticide controls, leasing in wilderness areas, offshore oil tracts. Watt is a blowtorch. He is the perfect man to resemble the Rev. Marshfield—who think, with reason, that the story of civilization is the story of mankind's long hike from the health to concrete—know that acid rain falls on golf courses, too.

ACID RAIN

Mr. FORD, Mr. President, yesterday I had printed in the Recorn the statement of Mrs. Kathleen Bennett, Assistant Administrator for Air, Noise, and Radiation of the U.S. Environmental Protection Agency, presented before a Senate Energy Committee hearing on acid rain and congressional attempts to control it. Today I offer for my colleagues' information the statement of Mr. James Mares, Acting Under Secretary of Energy, which was given at the same forum.

Mr. Mares' testimony is particularly inclusive in its criticism of the acid rain control strategy that is being considered by the Committee on Environmental and Public Works. He hits on the head one of the most glaring flaws in the proposal when he points out that the legislation would single out sulfur dioxide emissions for massive reductions when "[T]here are a number of other pollutants that are believed to be potential precursors of acid rain or which may play important roles as catalysts in the atmosphere." The examples he offers are nitrogen oxides which "not only contribute to rainfall acidity but also may play a critical role in the atmospheric chemistry of sulfur oxide."

Mr. Mares also echoes Mrs. Bennett's concern about this particular control strategy:

While our estimates of the cost of proposed controls for acid rain reduction are admittedly uncertain, these cost uncertainties are small compared to the uncertainties in our understanding of the benefits, if any, that will be obtained. We have no estimate of the reduction in acidic deposition that would result from a reduction in emissions... further research is required before the modeling work can be considered as relevant for decision making.

I hope my colleagues are beginning to realize how precipitous and limited in scope the Environmental Committee proposal is, and I ask unanimous consent that Mr. Mares' statement be printed in full in the Record.
STATEMENT OF JAN W. MARES, ACTING UNDER SECRETARY

Mr. Chairman and Members of the Committee, thank you for inviting the Department of Energy to testify on the issue of acid rain. This subject is of great importance to us. The Department has committed to continuing to support the claims of environmental damage being addressed. We are concerned that deliberation; that there are efforts in light of the fact that major scientific studies as a result of the conversion of many powerplants. They propose a massive investment in industrial and electric utility growth will have to cause almost every one of them to be idling that, the selling price of low-sulfur coal will be strictly proportional to mining costs. In contrast, the market for coal is likely to remain stable, as I will discuss in a moment. These three assumptions are not unique to the Department of Energy analyses, but are inherent in all the analyses we have seen which attempt to estimate the costs of reducing sulfur oxide emissions. Taking these points into consideration, it would not be unreasonable to estimate that the actual costs of the proposed legislation are in the range of $5 to $7 billion annually. If these do not materialize, we directly increased utility bills for consumers. Subject to the same caveats associated with cost estimating, the Department has calculated a 3 to 10 mills per kWh increase in electricity generation costs. This, in turn, will cause electricity rates to rise by between 4 and 25 cents per kWh depending upon the utility serving a particular customer. Moreover, since utilities don't average their costs over the full 10-year period, higher cost increases are probable during the initial implementation period.

There are also indirect costs associated with proposed legislation. By far, the greatest will be incurred by our Nation's coal supply sector; i.e., coal firms, the families involved, and the regions in which they work and live. To achieve the proposed level of sulfur dioxide reduction more than 200 million tons of coal per year will have to be either switched or subjected to flue gas desulfurization. As a result, the costs of accelerating the reduction of sulfur emissions balanced by the benefits? cost of emission controls. The Department of Energy has undertaken a number of studies of the costs that would be incurred if such a massive control program is initiated. The intent of this program is to reduce the sulfur dioxides. The most recent of these studies is a staff analysis entitled "Costs to Reduce Sulfur Dioxide Emissions," prepared by the Coal and Air Quality Control Technology between the years 1995 and 2025. As a result, we anticipate that the proposed legislation will not add to this decrease, but simply accelerate it by a few to at most 30 years. I would also point out that the proposed legislation singles out sulfur oxide emissions for massive reductions. There are a number of other pollutants to be reduced as well, but potential precursors of acid rain or which may play important roles as catalysts in the atmosphere. For example, nitrogen oxides, the chief byproduct of electric utility boilers, and nitrogen oxides also play a critical role in the atmospheric chemistry of sulfur oxide.

I make these points so often we hear the issue of controlling emissions from older powerplants portrayed as an "all or nothing" affair. That is not the case. The structure of the current Clean Air Act will eventually accomplish the same results as the proposed acid rain legislation. Therefore, the issue is quite straightforward: Are the costs of accelerating the reduction of sulfur emissions balanced by the benefits? cost of emission controls. The Department of Energy has undertaken a number of studies of the costs that would be incurred if such a massive control program is initiated. The intent of this program is to reduce the sulfur dioxides. The most recent of these studies is a staff analysis entitled "Costs to Reduce Sulfur Dioxide Emissions," prepared by the Coal and Air Quality Control Technology between the years 1995 and 2025. As a result, we anticipate that the proposed legislation will not add to this decrease, but simply accelerate it by a few to at most 30 years. I would also point out that the proposed legislation singles out sulfur oxide emissions for massive reductions. There are a number of other pollutants to be reduced as well, but potential precursors of acid rain or which may play important roles as catalysts in the atmosphere. For example, nitrogen oxides, the chief byproduct of electric utility boilers, and nitrogen oxides also play a critical role in the atmospheric chemistry of sulfur oxide.

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The Nation's utility industry is already experiencing severe difficulties in raising capital to meet new and stricter financial requirements, such as the capital costs for flue gas scrubbing equipment and, or plant modifications necessary for receiving low sulfur coals, which will significantly add to the financial stress of our Nation's utilities.

While our estimates of the costs of proposed controls for acid rain reduction are admittedly uncertain, these cost uncertainties are no excuse for us to have the same uncertainties in our understanding of the benefits, if any, that will be obtained. We have no estimate of the reduction in acid deposition that would result from a reduction in emissions. Attempts have been made to model how sulfur compounds are transported in the atmosphere and transformed into acidic species. Unfortunately, our current knowledge of the chemistry of sulfur oxides and other chemicals contributing to acid deposition in the atmosphere and in clouds is insufficient. As a result, further research is required before any progress can be considered as relevant for decisionmaking. I would like to emphasize here that I am not talking about reducing scientific uncertainties by two or three points; these are scientific uncertainties I am discussing cover a broad range of possible outcomes. We cannot say at this time whether any proposed massive emission reductions would have an insignificant impact on acidic deposition in Eastern North America.

The transport and chemistry of acidic pollutants in the atmosphere is only one area where major scientific uncertainties are present. The scientific understanding of how changes in rainfall acidity would lessen the damages currently being attributed to acidic deposition is still uncertain. We need to know what portion of these damages would be alleviated by reducing the level of emissions. We have no knowledge, at present, of the benefits that would accrue due to the implementation of any proposal to substantially reduce sulfur dioxide emissions in a geographic area, such as the region covered by the 31 eastern states.

RESEARCH INITIATIVES

This Administration, in recognition that major scientific uncertainties are still associated with the policies under consideration, is proposing an accelerated research program. This program, of course, responds to the Congressional initiatives in the Energy and Air Quality acts of 1980.

Even in these times of tight Federal budgets, Federal agencies have doubled the acid rain research budget from fiscal year 1981 levels to $22 million in fiscal year 1983. Much of this work follows initial directions set by DOE and ERDA in the mid 1970s. DOE also actively participates in the Interagency Task Force on Acid Rain and we conduct approximately $2 million in acid rain research, about 10 percent of the Federal budget for such research. Further, our National laboratories continue to play a major role in advancing our state of knowledge through a comprehensive program of research and technical assessments.

CONCLUSION

We share the concerns of those who value our environment and our Nation's natural resources. The Department of Energy will continue to participate in and support both Federal and State programs and research into the causes, effects and alternative means of controlling acidic precipitation. The scientific insights which will be forthcoming over the next few years should place both the Administration and the Congress in a position to intelligently address alternative courses of action. We will be in a position to know better if accelerated action is required or whether we can wait for the natural retirements of older coal-fired powerplants. If action is deemed necessary, we will understand which pollutants we need to control and how they can be controlled. Control of sulfur oxides may be less effective than focusing controls on other atmospheric pollutants, especially those capable of converting sulfur dioxide into acidic deposition. We need additional research and better understanding of how changes in rainfall acidity would lessen the damages currently being attributed to acidic deposition.
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The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Labor and Human Resources:

To the Congress of the United States:

In accordance with Section 428 of the Department of Education Organization Act (P.L. 96-88), I transmit herewith the second annual report of the Department of Education which covers fiscal year 1981.

RUDOLPH W. HEINZ

THE WHITE HOUSE, September 17, 1982.

MESSAGE FROM THE HOUSE At 9:41 a.m., a message from the House of Representatives, delivered by Mr. Berry, one of its reading clerks, announced that the House has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 5658. An Act to authorize the use of education block grant funds to teach the principles of citizenship.

HOUSE BILL PLACED ON CALENDAR

The following bill was read the first and second times by unanimous consent and placed on the calendar:

H.R. 5658. An Act to authorize the use of education block grant funds to teach the principles of citizenship.

PETITIONS AND MEMORIALS

The following petitions and memorials were laid before the Senate and were referred or ordered to lie on the table as indicated:

POM-1184. A joint resolution adopted by the Northern Mariana Commonwealth Legislature; to the Committee on Energy and Natural Resources:

SENATE JOINT RESOLUTION No. 3-11, H.D. 1

"Whereas, Section 601(a) of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America provides that "the income tax law in force in the United States will come into force in the Northern Mariana Islands as a local territorial income tax on the first day of January following the effective date of this Section, in the same manner as those laws are in force in Guam;"

"Whereas, by Presidential proclamation, these income tax laws were to have come into effect on January 1, 1979, in the Commonwealth of the Northern Mariana Islands, which law annulls legislative action on the part of the United States Congress in addition to those offers, and which further provides for the Commonwealth of the Northern Mariana Islands; and

"Whereas, the Commonwealth of the Northern Mariana Islands hereby expresses its desire that the United States Government act to amend all or void the tax laws in force in the Northern Mariana Islands, which provide for a local territorial income tax system, and to nullify the provisions of the Covenant and thereby discontinue the Commonwealth of the Northern Mariana Islands; and

"Whereas, Section 601 of the Covenant is based upon the mirror-image application of the United States Internal Revenue Code, a concept which has been thoroughly discredited by two studies prepared by the United States Department of the Treasury:

"(1) Territorial Income Tax System's provisions by the United States Government in the Treasury in October, 1979, discussing the tax systems in the Virgin Islands, Guam, the Northern Mariana Islands, and American Samoa;

"(2) United States Federal Tax Policy Towards the Territories prepared by Karl Hoff, International Economist on the staff of the Department of the Treasury, in August, 1981, analyzing and critiquing the income tax systems in Puerto Rico, the Virgin Islands, Guam, and

"Whereas, the mirror-image application of the Internal Revenue Code would disasterously affect the economic development of the Commonwealth at a time when the Commonwealth is seeking to achieve economic development on a par with that enjoyed by the continental United States; and

"Whereas, pursuant to Section 601 of the Covenant and U.S. Public Law 96-847, the provisions of the Internal Revenue Code will apply in the Commonwealth as of January 1, 1985; and

"Whereas, by House Joint Resolution No. 6, the Legislature of the Commonwealth of the Northern Mariana Islands has indicated that Section 601 of the Covenant should be modified to allow the Commonwealth to develop an alternative income tax system for individuals and businesses residing in the Commonwealth; and

"Whereas, by the same House Joint Resolution No. 6, the Government of the United States was asked to enact legislation to modify Section 601 of the Covenant for this purpose; and

"Whereas, by House Joint Resolution No. 6 also requested financial and technical assistance from the United States to develop an alternative income tax system for the Commonwealth; and

"Whereas, best estimates are now that it may require up to two years to develop a satisfactory alternative tax system and modify Section 601 of the Covenant as requested; now, therefore,

"The Commonwealth of the Northern Mariana Islands hereby expresses its desire that the United States Government act to amend U.S. Public Law to delay the implementation date of the United States Internal Revenue Code income tax system in the Commonwealth
from January 1, 1983 until January 1, 1985; and

"Be it further resolved, That the Governor and the Washington Representative to the United States for the Commonwealth of the Northern Mariana Islands are hereby authorized to negotiate for an exchange whereby the Commonwealth shall receive a deferred year of the United States Internal Revenue Code for income tax for the years 1983 to January 1, 1985 within the Commonwealth; and

"Be it further resolved, That the President of the Senate and the Speaker of the House of Representatives shall certify and the Senate Legislative Secretary and House Clerk shall attest to the adoption of this resolution and the Senate Clerk shall thereupon forward a certified copy to the Governor who shall endorse the resolution and forward copies of it to the President of the United States, the Secretary of the Treasury, the Commissioner of the Internal Revenue Service, the President of the United States Senate, and the Speaker of the United States House of Representatives."

POM-1185. A joint resolution adopted by the legislature of the State of California; to the Committee on Environment and Public Works:

"SENATE JOINT RESOLUTION No. 27

"Whereas, The oceans of the world are vital to all life on the continents; and

"Whereas, The oceans waters off the shore of California are the basis for the state's commercial and recreational fisheries which are a source of food for the people of California and are important to coastal recreation and tourism economies; and

"Whereas, The marine environment is a fragile ecosystem that may be significantly altered or contaminated by short-sighted disposal of radioactive waste; and

"Whereas, Radioactive wastes have been dumped in the coastal waters off the shore of California and some samples of ocean sediment have been found to be contaminated with radioactive materials, including plutonium; and

"Whereas, The consequences of nuclear wastes in the marine environment are poorly understood and pose a threat to the human food chain; and

"Whereas, Representative Glenn Ammon of New Hampshire is considering HR 6113 by Representative Norman D'Amours of New Hampshire to extend and amend the Marine Protection Research and Sanctuaries Act; and

"Whereas, Representative Glenn Ammon of New Hampshire has proposed an amendment to the existing law that any federal agency proposing to dump radioactive wastes in the ocean shall provide Congress and the public with site-specific information about the full health, environmental, and economic consequences of the proposed dumping; and

"Whereas, The Anderson amendment also would allow either house of Congress to veto any permit the Environmental Protection Agency to issue for ocean dumping of radioactive waste; and

"Whereas, The United States Environmental Protection Agency is preparing regulations for ocean dumping radioactive waste in United States territorial waters, which has been opposed to by the United States Department of Energy in developing the option of seafloor disposal of radioactive wastes; and

"Whereas, The United States Navy is considering plans to scuttle decommissioned nuclear submarines in the ocean, possibly off the shore of Cape Mendocino; and

"Whereas, Wherein the State of California has proposed to plan common strategy for this opposition; and be it further

"Resolved, That the Secretary of the Senate transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, to each Senator and Representative from California in the Congress of the United States, to the Administrator of the Environmental Protection Agency, to the Director of the National Marine Fisheries Service, to the Administrators of the National Oceanic and Atmospheric Administration, and to the Governors and presiding officers of the Legislatures of Alaska, Hawaii, Idaho, Oregon, and Washington, and to the Governor of each of the United States Pacific territories."

POM-1186. A joint resolution adopted by the legislature of the State of California; to the Committee on Environment and Public Works:

"SENATE JOINT RESOLUTION No. 41

"Whereas, At a time when Californians are burdened with increasing utility bills, the New Melones Dam is completed, but remains unfilled, denying a less expensive source of a clean, renewable energy resource; and

"Whereas, In July 1973, the Legislature of the State of California, by adoption of Assembly Joint Resolution No. 7, urged Congress to proceed with construction of New Melones Dam as quickly as possible; and

"Whereas, In 1974, the people of California, by means of a statewide vote on an initiative measure, expressed their desire not to keep the Stanislaus River as a wild and scenic river; and

"Whereas, In May 1980, the Legislature by adoption of Assembly Joint Resolution No. 58, reaffirmed its position by urging Congress to proceed to fill the New Melones Reservoir to its maximum operating level; and

"Whereas, Nearly $350 million dollars have been expended to construct this major project which is now fully operational and will provide the people of California extensive benefits, including fish and wildlife enhancement, water quality protection, flood control prevention; and

"Whereas, New Melones Dam will significantly help to restore the Stanislaus River fisheries run to its historical levels; and

"Whereas, A fully operational reservoir would help to foster and maintain environmentally beneficial water quality standards for the southern portion of the Sacramento-San Joaquin Delta; and

"Whereas, New Melones Dam is vitally needed to prevent unnecessary flooding and seepage damage to prime farmlands along the lower Stanislaus River and the Sacramento-San Joaquin Delta; and

"Whereas, The average annual generation by the New Melones Dam over a long period of years is 455 billion watt hours of electricity, which would conserve an average of 750,000 barrels of fuel oil, and the State Water Resources Control Board's decision to lower the New Melones level at 844 feet denies the public the benefit of 275 billion
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wait hours, causing the consumption of an additional 455,000 barrels of fuel oil; and

"Whereas, The lost watts of renewable energy amounts to 24 million dollars that the public must absorb and replace with more expensive, less desirable, oil-generated power; and

"Whereas, New Melones Dam, with a capacity of 24 million acre-feet, has the potential to generate 700,000 acre-feet per year and irrigation water, a supply sufficient to serve over 100,000 acres, with revenues of over 10 million dollars annually from farmland productivity; now, therefore, be it

Resolved by the Senate and Assembly of the State of California, jointly, That the Legislature of the State of California recognizes the need to reduce the capacity of 2.4 million acre-feet, has the productivity; now, therefore, be it

Resolved by the Senate and Assembly of the State of California, jointly, That the Legislature of the State of California supports the Secretary of the Interior in his efforts to operate the New Melones Reservoir at its maximum capacity to fully achieve all the benefits envisioned by Congress when the project was authorized; and be it further

Resolved, That the Secretary of the Senate transmit copies of this resolution to the President and Vice President of the United States, to the Secretary of the Interior, to the Speaker of the House of Representatives, and to each Senator and Representative from California in the Congress of the United States."

POM-1187. A joint resolution adopted by the Legislature of the State of California: to the Committee on Finance:

"RESOLVED, That the Senate and Assembly of the State of California, jointly, That the Legislature of the State of California supports the Secretary of the Interior in his efforts to operate the New Melones Reservoir at its maximum capacity to fully achieve all the benefits envisioned by Congress when the project was authorized; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, to each Senator and Representative from California in the Congress of the United States, and to the Chairman of the House and Senate Committees on Taxation.

POM-1188. A joint resolution adopted by the Committee of the State of California: to the Committee on Finance:

"Senate Joint Resolution No. 46

"Whereas, The California State Lands Commission administers trust lands coming on stream per century tax reductions in ratemaking; and

"Whereas, The "flow-through" method of accounting for current tax reductions in ratemaking; and

"Whereas, The "flow-through" method of accounting allows the utilities' current tax reductions to be immediately reflected in lower rates to utility customers; and

"Whereas, The federal Economic Recovery Tax Act of 1981 to provide that the tax benefits to investor-owned electric and gas utility companies resulting from changes in accelerated depreciation rules, investment tax credits and other tax deductions be passed through to the utilities' ratepayers; and be it further

Resolved, That the Senate transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, to each Senator and Representative from California in the Congress of the United States, and to the Chairmen of the House and Senate Committees on Taxation.

POM-1189. A joint resolution adopted by the legislature of the State of California; to the Committee on Internal Revenue.:

"Senate Joint Resolution No. 70

"Whereas, There are more than 4 million Californians over the age of 60, and more than 2.5 million Californians over the age of 65 and

"Whereas, More than 3.1 million Californians who are aged or disabled, or who are the survivors or dependents of persons eligible for Social Security benefits for their economic security on the integrity of the Social Security System; and

"Whereas, Those proposals were found to be so onerous and unacceptable by the community of senior citizens of this country that the President withdrew them from consideration by Congress and instead appointed the National Commission on Social Security Reform, which is directed to report to the President and Congress on or before December 31, 1982;

"Whereas, The 97th Congress has authorized interfund borrowing between the Old Age and Survivors Insurance Fund, the Disability Insurance Fund, and the Health Insurance Fund, which collectively constitute the financial base of the Social Security System; and

"Whereas, The interfund borrowing authorization, which will be essential to permit continued payment of Social Security benefits beginning in the last calendar quarter of 1982, expires on December 31, 1982; and

"Whereas, There is great fear and concern among members of the senior citizens community and among other groups whose economic security is vitally linked to the integrity of the Social Security System that the pending expiration of the interfund borrowing authorization will force the President to recall the 97th Congress in a "lame duck" session after the November 1982 elections and alter the President's original drastic and strin.
gent revisions of the Social Security Act that would provoke extreme political opposition if it were taken up prior to the November 1962 elections; and

Whereas, It would be highly inappropriate for any major action to change the Social Security Act to be taken in a lame duck session of Congress, but would be entirely appropriate for such decisions, if any, to be left to the deliberations of the 96th Congress, which will convene in January 1963 and will have two full years in which to grapple with the problems of Social Security; and

Whereas, It is possible that significant numbers of Members of Congress meeting in a lame duck session would, in fact, themselves be ‘lame ducks’ by virtue of retirement or defeat in the elections and therefore not appropriately accountable to the electorate for major policy decisions enacted under such circumstances; and

Whereas, A lame duck session would not be necessary if the 97th Congress were to extend the interfund borrowing authority beyond December 31, 1962, before it adjourns. If the November 1962 election results, now, therefore, be it

Resolved, by the Senate and Assembly of the State of California, jointly, That the Legislature of the State of California respectfully memorialize the President and the Congress of the United States to extend the provisions of Public Law 97-123, which authorized interfund loans and transfers, to at least the first two calendar quarters of 1963; and be it further

Resolved, That the President and the leadership of the Senate and the House of Representatives be urged to assure the senior citizens of this state and this country that no efforts will be made to enact major changes in the benefit or financing structure of Social Security before the balance of the 97th Congress; and be it further

Resolved, That the Secretary of the Senate transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, and to each Senator and Representative from California in the Congress of the United States.

POM-1190. A joint resolution adopted by the International Typographical Union opposing the contemplated changes by the Reagan Administration on our social security system; to the Committee on Finance.

POM-1192. Joint resolution adopted by the Legislature of the State of California; to the Committee on Finance.

The Constitution has sheltered the pursuit of free enterprise, resulting in the extraordinary availability of jobs, food, clothing, and shelter in every community in the State of California, jointly proclaim June 23, 1962, Titex Day.

POM-1194. Joint resolution adopted by the Legislature of the State of California; to the Committee on the Judiciary.

Whereas, The Constitution of the United States of America is an inspired document of the people, by the people, and for the people; and

Whereas, The people’s freedom of religion, of speech, of the press, to peaceably assemble, and to petition, of their own free will and accord, are enshrined in the Constitution of the United States; and

Whereas, The Constitution has sheltered the pursuit of free enterprise, resulting in the extraordinary availability of jobs, food, clothing, and shelter in every community in the State of California; and

Whereas, On September 17, 1787, one hundred and ninety-five years ago, George Washington, the chairman of the constitutional convention, Benjamin Franklin, and thirty-seven other great Americans approved this immortal instrument of government; now, therefore, be it

Resolved, by the Senate and Assembly of the State of California, jointly, That the President of the United States, the Governor of the State of California, the Congress of the United States, the Governor of the State of California, the governor of the several states, and the legislatures thereof be respectfully urged to join with all Americans in proclaiming our fidelity to the principles contained in the Constitution of the United States; and be it further

Resolved, That every citizen of the United States is urged to actively participate in the observance of this anniversary and advance in understanding of the Consti-
tution so that we shall ‘secure the blessings of liberty to ourselves and our posterity’, and be it further.

Resolved, That the Secretary of the Senate transmit copies of this resolution to the President of the United States, to the Speaker of the House of Representatives, to each Senator and Representative from California in the Congress of the United States, to the Governor of California, and to the governors and legislatures of each of the 50 states.”

POM-1195. A petition from a citizen of Kansas City, Mo. urging Congress to reject "the Gay Bill of Rights"; to the Committee on the Judiciary.

POM-1196. A concurrent resolution adopted by the Legislature of the State of Michigan; to the Committee on Labor and Human Resources:

"SENATE CONCURRENT RESOLUTION NO. 731

"Whereas, The Senior AIDES Program is an employment program for senior citizens which is funded under Title V of the Older Americans Act. This program, along with all others under Title V, is scheduled for elimination; whereas, this program has been particularly effective in enabling low-income seniors the opportunities they need to supplement their incomes and provide them with meaningful activities. Its elimination would be devastating to countless senior citizens throughout Michigan and the country as a whole; and

"Whereas, Title V programs provide employment to approximately 54,000 of the nation's senior citizens. The AIDES of the Senior AIDES Program honors older workers for their alert, industrious, dedicated, and energetic service. The people who work under this program's auspices must be at least fifty-five years of age, willing and able to work, and at or below the U.S. Department of Labor's low-income guidelines. They work in nonprofit organizations approximately twenty to twenty-five hours per week and earn an average of $3.50 per hour. Such employment may include driving senior citizens, delivering food to homebound seniors, or helping in various other aspects of senior services; and

"Whereas, Seniors benefit not only financially, but find their work rewarding, stimulating. Through their work they meet people and participate in the mainstream of American life rather than sitting, passive and being spectators in life. We cannot allow these critically needed employment opportunities to disappear, therefore, be it

"Resolved by the Senate (the House of Representatives concurring), That the Congress of the United States be memorialized to maintain funding for the Senior AIDES Program for 1983; and be it further

Resolved, That a copy of this resolution be transmitted to the President of the United States Senate, the Speaker of the United States House of Representatives, each member of the Michigan delegation to the Congress of the United States, and the President of the United States.”

MEASURE PLACED ON CALENDAR

The Committee on the Budget was discharged from the further consideration of the resolution (S. Res. 447) waiving section 402(e) of the Congressional Budget Act of 1974 with respect to the consideration of S. 1606; and the resolution was placed on the calendar.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. THURMOND (for Mr. Simpson), from the Committee on Veterans' Affairs, without amendment:

S. 2929. A bill to amend title 38, United States Code, to increase the rates of dependency and indemnity compensation for disabled veterans, to increase the rates of dependency and indemnity compensation for surviving spouses and children of disabled veterans, and to modify and improve the education and vocational rehabilitation programs administered by the Veterans' Administration and veterans employment programs administered by the Department of Labor, and for other purposes (Rept. No. 97-559).

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. BURSTEIN:

S. 2922. A bill relating to defense of insanity, and for other purposes; to the Committee on the Judiciary.

By Mr. ROBERT C. BYRD:

S. 2923. A bill for the relief of Joseph Benjamin Pearson, formerly of South Africa; to the Committee on the Judiciary.

By Mr. MOYNIHAN (for himself and Mr. D'AMATO):

S. 2924. A bill to modify Federal land acquisition and disposal policies carried out with respect to Fire Island National Seashore, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. RANDOLPH:

S. 2925. A bill to amend the National Labor Relations Act to give employers and performers in the performing arts rights given by section 9(e) of such act to employers and employees in the construction industry, and for other purposes; to the Committee on Labor and Human Resources.

By Mr. MOYNIHAN for himself, Mr. BRADICK, Mr. HELMS, Mr. LUGAR, Mr. NUNN, Mr. QUAYLE, Mr. GRASSEY, Mr. PUSZLER, Mr. DIXON, Mr. SADLER, Mr. HURDTOLLSON, Mr. BOSCHWITZ, and Mr. ABNOOR:

S. Con. Res. 122. Concurrent resolution relating to the processed product share of U.S. agricultural exports; to the Committee on Finance.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. HEFLIN:

S. 2927. A bill concerning revenue from the sale of the Carlisle Indian School; to the Committee on the Judiciary.

FEDERAL INSANITY DEFENSE BILL

Mr. HEFLIN, Mr. President, the Hinckley verdict has caused a tremendous amount of discussion on the issue of insanity and its relationship to the criminal justice system. A large number of American citizens followed the accounts of the trial of John Hinckley and were shocked when the jury returned the verdict of not guilty by reason of insanity. This has evoked indignation on the part of many citizens that the criminal system is not living up to its responsibilities.

The Judiciary Committee has had extensive hearings on the relationship of the defense of insanity in the criminal justice system. I would like to commend Senator THURMOND, Senators SPECTER and their able staffs for the capable and thorough review in the hearings. It is a complex issue and the
hindsight have brought forth scholarly and enlightening views from many diverse corners.

Four of the jurors in the Hinckley case appeared voluntarily before the committee. These jurors stated in substance that they heard testimony from the defense psychiatrists that Hinckley was not therefore responsible for his acts; then they heard testimony from the prosecution psychiatrists that Hinckley was sane and therefore responsible for his acts. After hearing this conflicting testimony, the trial judge charged the jury that the burden of proof was on the prosecution to prove beyond a reasonable doubt that Hinckley was sane. The judge’s provision was the deciding factor in their decision.

My home State of Alabama and other States have statutes that recite in substance that every person over 14 years of age charged with crime is presumed to be responsible for his acts and that the burden of proving a defense of Insanity is upon the accused, not the States. The U.S. Supreme Court has upheld a similar statute from the State of Oregon.

I am convinced from hearings that the most important thing that can be done to prevent Hinckley verdicts in the future is to change the burden of proof to the accused. Today, I am introducing a bill to toughen our Federal law regarding the insanity defense. Most significantly, my bill will place the burden of proving insanity squarely on the defendant. I believe this is the most important structural change that this Congress can make relative to the use of insanity as a defense.

My bill will basically follow the Alabama statute and create a presumption that every person over 14 years of age is presumption responsible for his acts and charges the burden of proof from the prosecution to the defendant when the defendant raised the defense of insanity.

My bill as provides for an automatic Federal commitment for one who is acquitted by reason of insanity, followed by a court determination of whether the person presents a risk of bodily injury to himself and others. Had John Hinckley been acquitted in Alabama in a Federal district court, he could have walked out of the courtroom until such time as the State could file a commitment proceeding. The situation would be the same in most States which do not have automatic commitment procedures themselves. My bill will insure the public safety through an immediate commitment. It will insure the rights of the acquitted by a timely court determination, not more than 45 days after the verdict.

My bill also provides for direct commitment to the custody of the Department of Health and Human Services, or if the person is a veteran, to the Veterans’ Administration. I believe that Federal commitment is imperative for those acquitted by reason of insanity under Federal law. While proposals have been made to turn custody of these individuals over to the State in which the Federal proceeding occurred, I do not believe this is proper policy.

The States should not be expected to take the care, custody, and responsibility for those who have been charged under Federal law, and I am not certain that the Federal Government has the power to force the States to do so. Furthermore, as Federal courts, and not State courts, will retain jurisdiction to review whether the acquitted can be released, it is more appropriate for a Federal facility to retain control.

Also, without a definite commitment to a Federal facility, the acquitted individual, who is in need of psychiatric treatment, runs the risk of being juggled back and forth between Federal and State facilities, or even possibly released, while the Federal and State entities wrangle over custody. A Federal disposition will insure Federal control, Federal treatment, and Federal responsibility.

Finally, my bill will maintain the issue of insanity as a separate affirmative defense. I realize that some of my distinguished colleagues have advocated the elimination of a separate insanity defense and, instead, allowing evidence of mental disease to go only to the issue of guilt, but I have previously raised my concern to this body that this test will only expand the insanity defense and probably permit a thousand Hinckleys to go loose.

Now, having heard the testimony of Federal judges, defense lawyers, psychiatrists, and State legislators, I am more than ever convinced that a mens rea test will only liberalize the insanity defense and open the door to unlimited psychiatric evidence. It would be used to reduce charges and to plea bargain on lesser included offenses and punishment.

I, therefore, advocate that the separate insanity defense be maintained with the burden of proof on the accused for the issue of insanity.

In closing, I am hopeful that Congress can move forward with this legislation, or some measure to shift the burden of proof to the person of another, and is found “not guilty by reason of insanity”, he shall be committed by the trial court to a suitable facility of the Department of Health and Human Services, or if the person is a veteran, of the Veteran’s Administration, for examination and treatment.

“(b) Within 45 days of the date of confinement for examination and treatment, the superintendent of the institution shall forward to the committing court an evaluation of the mental condition of the committed person and the court shall promptly thereafter hold a hearing to determine whether the person presents a risk of bodily injury to himself or others and whether the person is in need of treatment.

“(c) If the court finds by clear and convincing evidence that the committed person will not in the reasonable future pose a risk of bodily injury to himself or others and is no longer in need of treatment, the court shall order such person unconditionally re-
leased from further confinement. If the court does not so find, the court shall order such person unconditional and temporarily released from further confinement.

"(d) Where any person has been committed to a suitable facility of the Department of Health and Human Services or if the person is under the Veterans' Administration for treatment.

"(e) Where, in the opinion of the superintendent of the facility a person confined under subsection (b) of this section does not pose a risk of bodily injury to himself or others, the court shall order such person unconditionally released from further confinement.

"(f)(1) A person committed or conditionally released pursuant to the provisions of this section may file a motion before the committing court for release or other relief concerning his custody.

"(2) A motion for relief may be made at any time after a hearing has been held pursuant to subsection (b) of this section.

"(3) Unless the motion and the files and records of the case conclusively show that the person is entitled to no relief, the court shall cause notice thereof to be served upon the prosecuting authority, grant a prompt hearing thereon, determine the issues, and make findings of fact and state conclusions of law with respect thereto. On all issues raised by his motion, the person shall continue to have the burden of proof. If the court finds that the person is entitled to his release from confinement, either conditionally or unconditionally, a change in the conditions of such confinement is not required, the court shall order such person unconditionally released from further confinement.

"(4) A court shall not be required to entertain a second or successive motion for relief under this section more than once every 6 months.

An appeal may be taken from an order entered under this section to the court having jurisdiction to review final judgments of the court entering the order.

By Mr. MOYNIHAN (for himself and Mr. D'AMATO):

S. 2924. A bill to modify Federal land acquisition policy with regard to the Fire Island National Seashore, and for other purposes; to amend the Fire Island National Seashore Act (Public Law 88-587).

This bill is similar to a bill (H.R. 6771) introduced in the House of Representatives on July 15, 1982, by Congressmen THOMAS DOWNEY.

The Fire Island National Seashore was established by Congress in 1964 for the conservation and preserving for future generations of unspoiled and undeveloped beaches, dunes, and other natural features within Suffolk County, N.Y., which possess high values to the Nation as examples of unspoiled areas of great natural beauty in close proximity to large concentrations of urban population.

Fire Island, located just 50 miles east of New York City, is composed of sandy beaches, salt marshes, and sand dunes, which are among the highest on the east coast. Within the boundaries of the seashore there are 18 small, heavily developed communities, primarily consisting of single-family homes and cottages and the businesses serving them and day visitors.

The 1964 act grants the Secretary of the Interior limited powers of condemnation in order to further the purposes of preserving the natural features of the seashore. In 1980, I joined Senator Jacob K. Javits, one of the prime sponsors of the legislation creating the seashore, in requesting that the General Accounting Office (GAO) review the Nation Park Service's land acquisition and management policies and practices for the Fire Island National Seashore. The GAO report (CED 81-78) issued on May 8, 1981, made several suggestions concerning ways to improve land acquisition and management policy at the seashore.

The legislation I introduce today is designed to perfect certain provisions of Public Law 88-587. The bill allows the Secretary of the Interior to sell certain acquired property, with covenant to ind and disposal conforming to the purposes of the act, with such sales to be made only to a nonconformance.

Second, the bill amends the provision that would direct the Park Service to certify if a nonconformance would permit the Park Service to certify if a nonconformance would permit the Park Service to certify if a nonconformance structure might harm the resource or not. The GAO went on to recommend that the Secretary suspend condemnation is not discretionary. The new language in the bill will make it clear that a zoning variance is not, in and of itself, cause for condemnation. Instead, only a variance that results in a use inconsistent with the purposes of the act would be cause for condemnation. This would put the Park Service back into the business of resource protection, where it belongs. Mr. President, as I previously stated, the intent of this bill is to simply perfect the existing law (Public Law 88-587). This is necessary not only to make the operations of the seashore more efficient but also to help alleviate some very real concerns being expressed by Fire Island landowners about land acquisition policies within...
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to the seashore. It is for these reasons that I am today introducing this bill.

Mr. President, I should add that this matter was brought to my attention by the Honorable Thomas J. Schwarz, mayor of the village of Ocean Beach. Mayor Schwarz, long been dedicated to preserving the beauty of the natural features and comfortable settings that abound on Fire Island. I am confident that his legislation will serve to further such purposes.

By Mr. RANDOLPH: S. 2925. A bill to amend the National Labor Relations Act to give employers and performers in the performing arts rights given by section 8(e) of such act to employers and employees in similarly situated industries, and to give to employers and performers in the performing arts the same rights given by section 8(f) of such act to employers and employees in the construction industry, and for other purposes; to the Committee on Labor and Human Resources.

PERFORMING ARTS LABOR RELATIONS AMENDMENTS

Mr. RANDOLPH. Mr. President, today I am introducing the performing arts labor relations amendments, legislation which amends the National Labor Relations Act to provide necessary changes with regard to the performing and entertainment industry. My bill would extend to the entertainment industry the same provisions currently covering workers in the apparel and industry. The performing industry and professional musicians are similar to the apparel and construction trades in that workers experience hardships and instabilities associated with short-term employment, often with many different employers, minimal job security, and additionally must travel frequently in order to find employment. The circumstances do not fit neatly into the work experience generally addressed by the National Labor Relations Act (Taft-Hartley). Because of this, organized individuals in the performing industry have had a difficult time with purchasers of their services. Under interpretations by the National Labor Relations Board, the purchasers of music, for example, cannot be compelled to recognize the musicians' collective bargaining agent, and the musicians are compelled to bargain individually since the purchasers under the National Labor Relations Act. The circumstances are not considered the employers of the musicians, even though the purchasers exercise the rights of employers in setting working conditions. The definitions of "employer" and "employee" are key to the Taft-Hartley Act. By denying that the purchasers are employers under the meaning of the act, this denies the workers the rights of employees.

My bill will correct these inequities by clarifying the employer under the National Labor Relations Act, as purchaser of musical performance services. It will also allow a performer to collect dues after 7 days of employment, just as the construction industry may do now, as a recognition of the brevity of employment experiences. Under current law, the period is 30 days. This bill also authorizes prehire agreements and legitimate collective bargaining.

I believe these amendments to the National Labor Relations Act are long overdue. I am pleased that there is similar legislation pending in the House of Representatives. I believe the unique circumstances of the performing industry must be recognized under the labor laws of the Nation. Musicians and other performers must be afforded fair and equitable treatment under the laws, not be penalized simply because the work experience is not of a permanent nature.

By Mr. MOYNIHAN (for himself, Mr. HART, Mr. RANDOLPH, Mr. KENNEDY, Mr. LUGAR, Mr. BRADLEY, and Mr. CRANSTON): S. 2926. A bill to create a National Commission on the Rebuilding of America, which will conduct an inventory of our Nation's water and sewer systems, bridges, highways, and roads; develop a 10-year investment plan to rebuild the public improvements essential to national economic renewal; make recommendations concerning changes in Federal laws and regulations that influence the pattern of Federal expenditures for public improvements; and for other purposes; to the Committee on Environment and Public Works.

REBUILDING OF AMERICA ACT OF 1982

Mr. MOYNIHAN. Mr. President, today I introduce, on behalf of myself and the undersigned, a bill to conduct the inventory and to develop the plan, a National Commission on the Rebuilding of America would be established. The Commission would have 2 years to complete its work. As part of its responsibilities, the Commission would draw up a list of proposed changes in Federal statutes and regulations which would be necessary to implement the investment plan.

For some years, as our economicills have come more and more apparent, there has been discussion of the need to reindustrialize America, to modernize the equipment and facilities of private manufacturing. Only recently, however—really within the past year—has attention begun to focus on the need to rebuild and recapitalize America, to repair, replace, and modernize the public improvements such as roads, bridges, and water supply systems without which productive economic activity cannot take place. And, surely, this rebuilding must accompany any attempt at reindustrialization.

A sampling of the past year's articles on the state of our public works infrastructure will suffice to underscore the alarm with which those who look even cursorily at the problem come to view it:

Time magazine, April 27, 1981, "The Crumbling of America."


Newsweek magazine, August 2, 1982, "The Decaying of America."

I ask unanimous consent that the texts of these and several other articles on this topic be printed in the Record after my remarks.

Perhaps the most persuasive case for rebuilding America was made in a 1981 publication of the Council of State Planning Agencies, "America in Ruins," by Pat Choate and Susan Walter. These authors state the problem succinctly:

America's public facilities are wearing out faster than they are being replaced. The exigencies of tight budgets and inflation, the maintenance of public facilities essential to national economic renewal has been deferred. Replacement of obsolescent public works has been postponed. New construction has been cancelled. The deterioration of basic facilities that underpin the economy will prove a critical bottleneck to national economic renewal during this decade unless we can find ways to finance public works.

The following facts suggesting the magnitude of the problem emerge from "America in Ruins":

The 42,500 mile Interstate Highway System is deteriorating at a rate requiring reconstruction of 2,000 miles of road per year. Because of inadequate funding in the 1970's, over 8,000 miles of the system and 13 percent of its bridges remain in their designed service life and must be rebuilt.

The costs of rehabilitation and new construction necessary to maintain existing levels of service on non-urban highways will exceed $700 billion during the 1980's.

One of every five bridges in the U.S. requires either major rehabilitation or reconstruction ($33 billion).
The 756 urban areas with populations over 50,000 will require between $75 billion and $110 billion to maintain urban water systems over the next 20 years. Approximately one-fifth of these communities will face investment shortfalls.

Over $25 billion in government funds will be required during the next five years to meet existing water pollution control standards.

Despite unmistakable evidence of such threats, real-dollar public works investments, measured in constant dollars, fell from $38.8 billion in 1965 to less than $31 billion in 1977—a 21 percent decline. On a per capita basis, public works investments in constant dollars dropped from $189 per person in 1965 to $140 in 1977—a 29 percent decline. When measured against the value of the nation’s Gross National Product, public works investments declined from 4.1 percent in 1965 to 2.3 percent in 1977—a 44 percent decline.

At least one half—and possibly up to two-thirds—of the nation’s communities are unable to support modernized development until major new investments are made in their basic facilities that undergird the economy.

There can be no doubt that this problem is public in nature, national in scope, and appropriately attended to by the Federal Government. Geography, economics, and history all argue for Federal leadership.

Our public works infrastructure, or public improvements, as Jefferson so much more elegantly termed them, constitute an economic investment that is peculiarly public. These facilities epitomize what the economists call a “public good”—a commodity that everyone values, but that private enterprise is loath to supply because it is difficult or impossible to sell the good; to the private units, and to deny the benefits of the good to those who do not pay for them.

Our national experience, both remote and recent, demonstrates that public improvements are also important to the Federal Government. In 1807, the Senate, at the prompting of President Jefferson, asked the Secretary of the Treasury to prepare a plan “for the system of roads and canals, which must ultimately be con­stitutionally within the power of Congress, to the purpose of making roads, for removing obstructions in rivers, and making canals; together with a statement of the undertakings of that nature now existing within the United States which, as objects of public improvement, may require and deserve the aid of Government.” The following year, Secretary Albert Gallatin produced the landmark “Report on Roads and Canals,” a 10-year plan calling for a federally supported system of roads and canals.

In 1834, the Congress directed Secretary of War John C. Calhoun to prepare surveys and plans for roads and canals. This legislation initiated the meritorious service of the Army Corps of Engineers in extending the development of the Nation.

The Federal Government is now responsible for fully one-half of all public works investment in the United States through grants and direct investment. We are therefore well­beyond the 19th century arguments about whether the Federal Government should be involved with “internal improvements.” Extensive Federal involvement is an indisputable fact. To ignore, fail to coordinate planning and expenditure of these sums—nearly $25 billion annually—is also an indisputable fact.

A 1980 Commerce Department study, “Public Works Investment in the United States,” made several interesting observations with regard to the regional allocation of Federal funds for public works:

- The western and southern regions of the U.S. received over three-fourths of all direct Federal public works investment in 1972 and 1977.

- On a per capita basis, the Mountain region received $97 per capita in 1977 and the New England region received $3 per capita.

From the Federal perspective, public works projects fall into three basic categories: First, federally owned; second, federally assisted but owned by a State or local government; and third, totally non-Federal projects. Most public works projects in the north-eastern region of the United States fall into the third category. Cities and States in the Northwest traditionally have built their own canals, highways, and water systems without assistance from the Federal Government.

Clearly, in Federal programs through which the $25 billion is spent each year are not meeting the needs of a significant portion of our population. Those areas are instead struggling to meet their own needs, and in most cases, they are failing to do so.

It is not the purpose of this legislation to preempt State and local prerogatives. It is necessary to reestablish the Federal government’s role in national public improvements that now exist in Federal laws and regulations, and in the Constitution. The 19th century arguments have long been胜过．

I shall ask that hearings on this legislation be scheduled at the earliest opportunity in the Committee on Environment and Public Works. I would hope that even at this late date in this Congress, we can begin receiving comments on the legislation.

I ask that a copy of the bill and the bill itself be printed in the Record following my remarks.

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

S. 2926

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act shall be cited as the “Rebuilding of America Act of 1982.”

FINDINGS

Sec. 2. The Congress finds and declares that—

(a) highways, roads, bridges, and water supply and sewer systems are public improvements vital to national development and prosperity;

(b) public works investment in the United States has declined at an alarming rate over the last decade and has resulted in the poor condition of much of our public improvements;

(c) the national costs of deteriorated public improvements are significantly higher than the costs of renewing, rehabilitating, improving or replacing existing facilities;

(d) the Federal Government is responsible for one half of all public works investment in the United States through grants in aid and direct investment to encourage the most economically efficient pattern of investment in public improvements by the Federal Government.

NATIONAL INVENTORY OF PUBLIC IMPROVEMENTS

Sec. 4. The National Commission on the Rebuilding of America, established pursuant to Section 7 and hereinafter referred to as the “Commission,” shall conduct an inventory of existing major public improvements by region, state, and major metropolitan area and by level of government, to be kept up to date, and to be submitted to the Congress and the President.

(i) means of financing the maintenance, repair, rehabilitation, replacement, and new construction of facilities;

(ii) means of financing the maintenance, repair, rehabilitation, replacement, and new construction of facilities;

(iii) means of financing the maintenance, repair, rehabilitation, replacement, and new construction of facilities;

(iv) means of financing the maintenance, repair, rehabilitation, replacement, and new construction of facilities;

(v) means of financing the maintenance, repair, rehabilitation, replacement, and new construction of facilities;

(vi) means of financing the maintenance, repair, rehabilitation, replacement, and new construction of facilities;

(vii) means of financing the maintenance, repair, rehabilitation, replacement, and new construction of facilities;
provisions in each region, for the next ten and twenty years, or such other time periods as the Commission may deem appropriate, to sustain regionally balanced national economic activity and growth, and that the Federal Government has failed to develop a capability of such facilities to support balanced development of the nation.

Section 7. (a) There is hereby established a National Commission on the Rebuilding of America which shall assess the condition of the national public works infrastructure, analyze causes of disinvestment on the national public works infrastructure, and evaluate the need to repair, maintain, replace, and expand the national public works infrastructure to support balanced development of the nation.

(b) The Commission shall be composed of:

(1) the Secretary of the Army, the Secretary of Transportation, and the Secretary of Commerce; in the event the Secretary is unable to attend a meeting of the Commission, he may designate a representative but in no case may the designee be of a rank lower than assistant secretary.

(2) representatives of each of the following organizations: the National Governors Association, the National Conference of State Legislatures, the National League of Cities, United States Conference of Mayors, and the National Association of Counties;

(3) five individuals from the private sector selected by the President who among them have experience in and knowledge of public investment financing, civil engineering, state and local budgeting practices, and regional planning.

(c) The President shall designate one of the five individuals as Chairman of the Commission. The Chairman shall be an individual of national recognition with experience in both public affairs and private enterprise. The Chairman shall be confirmed by the Senate.

(d) The Secretary of Housing and Urban Development, the Secretary of Labor, the Secretary of Agriculture, the Secretary of the Interior, and the Administrator of the Environmental Protection Agency or their designees shall attend the meetings of the Commission as non-voting members.

(e) The Commission shall be convened within 30 days of enactment of this Act.

Section 8. For the purposes of this Act:

(a) The term "national public improvement" means the nation's systems of highways, roads, bridges, sewers, water systems, and public works infrastructure; the nation's public works infrastructure includes the public works infrastructure of the states, the term "national public works infrastructure" means the public works infrastructure of the United States, and these shall be the policy of the Federal government.

(b) The term "facility" means any physical structure, such as a highway, road, or bridge, or structure related to a water supply system, storage, treatment, and distribution system or sewage treatment and collection system which is owned and operated by the Federal government, a state, municipality, or other public agency or authority organized pursuant to State law.

(c) The term "maintenance" means routine and regularly scheduled activities intended to keep the facility operating at its design specifications.

(d) The term "repair" means the correction of a structural flaw in the facility with...
metropolitan area and by type of facility, with attention to the condition of the facilities, their sufficiency to support economic growth, and recent patterns of investment and deterioration (Section 2 of the bill); and

In developing the public investment plan, setting priorities and detailing the means of financing needed public improvements, the Commission shall take into account all factors affecting investment, including the condition of the facilities, their sufficiency to support economic growth, and recent patterns of investment and deterioration.

Second, state and local governments can start charging for the services they provide. They now have a national obligation to pay for expensive water supply systems unless they use the water. Yet, in most states, they pay for irrigation systems for farmers, ore-washing for mining companies and green lawns in new suburbs. A water users' fee will encourage greater conservation, reducing the need for new reservoirs and water treatment facilities. Those who use the most will pay.
photographs of the structure from every conceivable angle. If a bridge has a serious defect requiring immediate attention, the file is edited and placed with over 300 other "red flag" files.

STOP GAP MEASURES

It is one thing to identify problems, however, and quite another to deal with them. In the last year, Mr. Zaimes has been forced to close 19 bridges. At least 100 others aren't receiving the immediate attention they need.Dozens more are getting at best, "Band-Aid" repairs, such as the application of plastic sealants to retard erosion or the installation of wooden supports to reinforce cracked concrete columns. Sometimes all that can be done is to bore a hole at the end of a developing crack in a bridge's steelwork; this keeps the crack from spreading but doesn't prevent new cracks from forming.

Such half-measures are costly, Mr. Zaimes says. Higher, for example, seven viaducts on seven different expressways could be preserved if $30 million were spent to chip away and replace the top layer of pavement. Acid from snow-melting salt is leaking through the worn pavement and corroding the underlying steelwork. Instead, Mr. Zaimes spends $1.5 million a year, roughly half the level appropriated by Congress, on 10 pieces of wire and charged $50 each, he figures he could garner $25 million. So, far, city officials have been cool to the plan, but he keeps pushing. "I'll do anything to raise money, he says. "I'm fighting a war here."

Mr. Zaimes's 54th-floor office at the World Trade Center in some respects resembles a war room. A hard hat is always within reach. Mr. Zaimes has decided he must propose the five-cent-a-gallon scheme that would have done P.T. Barnum proud. Next year, the centennial of the Brooklyn Bridge, he proposes cutting up all the rotten wire that he plans to replace on the bridge and selling small mounted lengths of it as souvenirs. If he cut 500,000 pieces of wire and charged $50 each, he figures he could garner $25 million. So, far, city officials have been cool to the plan, but he keeps pushing. "I'll do anything to raise money," he says, "I'm fighting a war here."

Mr. Zaimes's colleagues in and out of government credit him with doing the best job possible under the circumstances. "George is an excellent man, but even Superman would have a difficult time if he were up against what George is," says Arthur Asse- son, the city's construction coordinator for transportation. Janet Weinberg, executive director of a citizens' group, Transportation Alternatives, adds, "I wouldn't want his job for anything."

Mr. Zaimes wouldn't argue with that assessment. "I'm burning out and so is my staff," he says. "I don't know how much more I can take."

At any moment in his typical 12-hour day, a crisis could arise. A 24-hour call for emergencies. A few weeks ago, for example, a dangerous crack appeared on the Manhattan Bridge between cars and subway tracks. City officials feared the supports would weaken and put the lives of everyone crossing the bridge in jeopardy. The workmen said of Mr. Zaimes: "What a vision, what a vision."

His hopes were dashed in April, when the president tabled the plan, deciding he couldn't ask Congress to raise taxes at a time he was urging it to trim the federal budget.

New York State's fiscal problems have forced it, too, to cut back funding for bridge and road repair. The combined effect has meant Mr. Zaimes has had to cannibalize, his own programs. This year, for example, he received only $6 million of the $24 million in federal money needed to fix viaducts on the Henry Hudson Parkway north of Manhattan. To make the difference, he postponed repairs on half a dozen other bridges.

RACE AGAINST TIME

Reparis on the Henry Hudson couldn't wait. The parkway is at the northern end of the West Side Highway, one of Manhattan's two north-south arteries, and it must be

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bad shape and our roads look like the Ho Chi Minh Trail.

Ever since the canals boom of the 1800's, public works have shaped the nation's character and accommodated its growth. But today the infrastructure system is worn out and needs resurfacing. One-half of Conrail's rails and roadbeds are seriously decayed. Half of all American communities cannot expand because their water-treatment systems are at or near capacity. A recent Federal Highway Administration study found that many state and local governments are spending only $1 million a year in time and gasoline wasted on the city's snarled expressways. In Houston, for example, city planners estimate that motorists pay a "traffic congestion tax" of $800 a year in time and gasoline wasted on the city's snarled expressways. U. S. Steel spends an extra $1 million a year detouring its trucks around a closed bridge in Pittsburgh. TRIP (The Road Information Program) in an industry study estimates that the aggregate cost of the private sector of bad roads and bridges is $30 billion a year for everything from broken axles to lost business. Even worse, the infrastructure crisis is exacting a heavy human toll. A recent Federal Highway Administration study found that 300 people are killed on the roads every day. Even more than road users, the infrastructure crisis is exacting a heavy human toll. A recent Federal Highway Administration study found that 300 people are killed on the roads every day. Even more than road users, 1.5 million vehicles are damaged or destroyed each day. Even more than road users, the infrastructure crisis is exacting a heavy human toll. A recent Federal Highway Administration study found that 300 people are killed on the roads every day. Even more than road users, 1.5 million vehicles are damaged or destroyed each day.

There are nearly as many reasons for infrastructure decay as there are potholes. Some of it stems simply from old age. Built largely in the 1950's, the interstate-highway system, for example, was designed to last only 25 years. Many roads, bridges, and water systems are also bearing far greater burdens than they were ever intended to accommodate. Heavy trucks cut and fill over 50,000 miles of secondary roads a year. Half of all American communities cannot expand because their water-treatment systems are at or near capacity. A study of the crisis for the Council of State Planning Agencies states: "We've been squander­ing hundreds of billions of dollars on projects that won't last a lifetime when there is little money to spare. The American Institute of Architects says: "The U.S. Treasury is slowly choking the ability of states to raise money, leaving them with serious financial problems."

As the fiscal crises of the 1970's hit, many local officials balanced budgets by canceling preventive maintenance and deferring needed repairs. "In the choice between laying off police or maintaining sewers," says Lincoln, Neb., Mayor Helen Bosanjek, "the sewers win hands down."

Although billions of dollars have been spent on public works in recent years, the vast bulk of expenditures has gone not to maintain old facilities but to build ambitious new projects. Often determined more by politics than actual need, these projects are already in fiscal trouble, and more costly to operate than ordinary systems. In Cincinnati, money was spent on an experimental high-speedway system built in 1959 for 75,000 cars a day, is now an axle-crunching obstacle course for 130,000 cars daily. At a cost of $150 million, including construction, the system throughout the 1960s on ever-burgeoning revenues from the 4-cent-a-gallon Federal gas tax, has been sorely disappointed. Of the $187.5 million spent on Federal-aid highways in 1978, 30% went to a third water tunnel. In Pittsburgh Mayor Peter delle Frank recently brought the battle over a 76-year-old bridge in southeastern Pennsylvania Transportation (DOT) estimates that the need to keep nonurban highways at current levels will cost more than $500 billion by the year 2000; Federal, state and local governments combined spent on all public works in the 1970's. The cost of maintaining roads has soared. In Chicago, for example, it was "posted" at a maximum of 8 tons in 1977.

Mass transit. Believe it or not, conditions on subways and buses are actually improving in many cities. Since 1979, when two Philadelphia buses caught fire on the road, conditions have only worsened. During operat­ing on the Broad Street line one night, the Southeastern Pennsylvania Transportation Authority (SEPTA) has reported that Federal-aid programs are supposed to provide for periodic inspections and aid to the most dangerous bridges, but a 1961 General Ac­counting Office report found that many na­tional safety standards were not being met. Heavy trucks continue to barrel over the Mountain Avenue Bridge in Malden, Mass., for example, even though it was "posted" at a maximum of 6 tons in 1977.

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shops. Meanwhile, critics remain leery of the rescue plan, since the financing includes $1.8 billion in bonds to be paid off by fare-box revenues. MTA Chairman Richard Ravitch "may be known in the future for two things: the cement that holds the city hall roof nearly fell in on him last year."

Railroads. Tempers have been rising along with freight rates. Wall Street Journal photographer David Grossman notes that half the ridership of the Long Island Rail Road joined in a one-day strike, refusing to show the $2.50 fare. As for passenger traffic, "electric" trains, which will spend $1.3 billion on capital improvements over the next five years. Many systems are saddled with ancient equipment a tweak designed for sand-speed commuter service. "Edison Cars," dating back to 1923 when Thomas A. Edison threw the switch, still make up 107 of the New Jersey Transatlantik Corp.'s fleet.

Commuter headaches will be compounded later this month when the Corridor, a commuter-rail business, leaves local transit agencies completely responsible for 210,000 riders daily. SEPTA officials warn that unless the Corridor puts up $40,000 a year, they may have to close down the commuter-rail service.

The precedent set by public takeover of bankrupt freight lines is not encouraging. In Michigan, for instance, half of the 931 miles of state-owned rail lines lie dormant in disputes over subsidies.

Water and sewage systems. Every day more than 500 water mains break in U.S. cities. One is every 10 miles old, America's sewer and water systems are subterranean time bombs. City officials estimate that 756 major water lines will have to be replaced this year, raising the financial burden on cities.

Dams. Like the earthen dam that burst in Colorado last month, these levees cannot hold the waters when they come. Dams are tiny, aged and privately owned—but their collapse would jeopardize hundreds of lives and homes. State and Federal officials didn't even know where many of the dams were until the 1977 collapse of a dam in Toccoa, Ga., spurred Jimmy Carter to order states to examine all of their dams. In January alone, and in just meeting pollution-control standards for water systems over the next twenty years, and just meeting pollution-control standards will cost $25 billion over the next five years.

On their own, 31 states have raised state gas taxes and other fees in recent years and have raised fees on the young and the old. Water and sewage systems. Every day more than 500 water mains break in U.S. cities. One is every 10 miles old, America's sewer and water systems are subterranean time bombs. City officials estimate that 756 major water lines will have to be replaced this year, raising the financial burden on cities.

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and cities to repair—and some local officials are beginning to decide that they can't afford the Federal largesse. Cincinnati, for example, has adopted a policy of "planned shrinkage" of its physical plant. That is possible—even turning down Federal grants to concentrate its own funds on maintaining what it has.


debate increasingly becomes one of guns vs. butter vs. asphalt, planned shrinkage may become the public-works policy of the future. Already, officials doubt that the interstate-highway system, as it is envisioned, will not be completed or repaired. The Department of Transportation recently classified 45 percent of the nation's 557,516 highway miles in need of rebuilding that accumulated because of cuts in financing in recent years. The condition of the nation's highways, of automobiles, of vital cities and water systems that are the envy of the world. Today's hard choices will determine the shape of America in the decades to come. [From the New York Times, July 18, 1982]"
and new urban development sprang up near them; state governments spread their colleges over vast expanses of land abandoned by former industrial giants and the old cities, like those in the South and West, where urban and rural sprawl was greatest; after the 1960 census the Federal role had increased. Now, with many buildings having been abandoned, the demand in the thinned-out central cities. The infrastructures in old cities, which suffered heavy population losses, serve many vacant lots, half-empty buildings and closed factories and warehouses. But the facilities must usually be maintained as though they were being used at capacity. At a recent conference on land use sponsored by the Center for Local Tax Research in New York, Mr. Richard Seldin, a land-use economist, pointed out that the city government could not afford to maintain the South Bronx, where many buildings had been abandoned, and there was a storm of protest and the suggestion was dropped. "I don't think there is any way to do that with any degree of acceptability," he said, in reference to a suggestion that there be a reduction in the Federal role. Richard Seldin, of the Center for Local Tax Research in New York, pointed out that when the city government suggested that it could no longer afford to maintain the South Bronx, there was a storm of protest and the suggestion was dropped.

**DEMAND IN CITIES REMAINED**

But the new growth did not lessen the demand in the thinned-out central cities. The infrastructures in old cities, which suffered heavy population losses, serve many vacant lots, half-empty buildings and closed factories and warehouses. But the facilities must usually be maintained as though they were being used at capacity. At a recent conference on land use sponsored by the Center for Local Tax Research in New York, Mr. Richard Seldin, a land-use economist, pointed out that the city government suggested that it could no longer afford to maintain the South Bronx, where many buildings had been abandoned, and there was a storm of protest and the suggestion was dropped. "I don't think there is any way to do that with any degree of acceptability," he said, in reference to a suggestion that there be a reduction in the Federal role. Richard Seldin, of the Center for Local Tax Research in New York, pointed out that when the city government suggested that it could no longer afford to maintain the South Bronx, there was a storm of protest and the suggestion was dropped.

**PROPOSAL BY HOUSE MEMBERS**

Two Pennsylvania representatives, Willam S. Clinger Jr., a Republican, and Robert W. Edgar, a Democrat, have been pushing legislation for a capital budget that would force the Administration to take an inventory of capital needs and assign priorities for spending on public works, as a first step toward long-term recovery. They were joined in their efforts by such diverse leaders as Speaker Thomas P. O'Neill Jr. and Representative Jack Kemp, the conservative Republican from Buffalo, who were among a number of Congressmen signing a letter to Mr. Reagan asking him to consider the idea. A similar bill has been introduced in the Senate by Food Dodd, Democrat of Connecticut.

Meanwhile, a number of Democrats around the country have taken up the issue on ground that rebuilding the nation's capital plant would be a "necessary evil." A bus driver in order to collect one acre of people has to drive five acres to find them. And he has to drive past five miles of sewer pipe instead of one. It is a land-use problem. If you have to finance five miles for every one you will forever be in the red.

According to a number of authorities, no national administration has succeeded in bringing order to its sprawling mass of public works spending. The Carter Administration, they said, was beginning to coordinate Federal spending so that priorities could be established.

The Reagan Administration, according to those officials, abandoned the coordination and to some extent has stopped the use of Federal funds for capital projects in new areas. For example, it refused to finance water treatment plants in new communities around Orlando, Fla. The rationale was that if people there wanted new communities they could finance them themselves.

**FUTURE OF FEDERAL ROLE**

Yet even high White House officials acknowledged that the Reagan Administration had no comprehensive policy on public works, except that it intended to drastically cut the Federal role. Richard S. Williamson, assistant to the President for intergovernmental affairs, had been instructed to find Federal funds for capital projects in new areas. For example, it refused to finance water treatment plants in new communities around Orlando, Fla. The rationale was that if people there wanted new communities they could finance them themselves.

He said that in recent years the nation had become accustomed to "taking a fix" for whatever bothers it without much thought to the long-range consequences, especially in the national and regional inter- ests that can command support for narrow goals, and policy is fragmented.

He called for a maturing of the political processes so that Congress could reach compromises for the overall good and be "willing to settle for a fair shake."
CONGRESSIONAL RECORD—SENATE

September 17, 1982

The DECAY THAT THREATENS ECONOMIC GROWTH

While high interest rates have led in recent weeks to doubts over the prospects for growth in the 1980s, many Americans at large still seem to be committed to its central premise—that a revolutionary curtailment of the government’s role in the economy should release resources to the private sector and create a new era of non inflationary growth. Vast tax and spending changes have been pushed that are intended as enabling legislation for unleashing the private sector. But in its zeal to put the U.S. back on a fast-growth track, the Reagan Administration may unwittingly have created a barrier to the success of its program.

Falling revenues are now combining with an inability to borrow in a way that is making it extremely difficult for Washington’s great partner in the federal system, state and local government, to finance the national role of producing the basic government infrastructure for growth—such elementary things as bridges, roads, sewage, water and transit. So serious is the decay of the nation’s infrastructure and so poor the prospects for its refurbishment that many business and economists believe the U.S. is entering a period of severe crisis for state and local government.

Although its physical infrastructure is only part of the state and local authorities’ problem. Compounding the crisis are cuts in federal funding in the no less important area of human capital—job training, vocational education, and health care. Letting such public services decline could have high costs not only in social and political terms but also in terms of the operating environment for business.

Acceptance of decay

To a nation that has already experienced the virtual bankruptcy of New York City in 1975, the forced reorganization of Cleveland’s finances in 1978, and the recurring difficulties of many cities and states, including Michigan and Missouri, in meeting their payrolls, the idea that local governments are once again in dire straits may seem like nothing to get alarmed about. Indeed, as the passage of Proposition 13 in California and similar tax-spending-limitation moves in 18 other states has shown, the American people is sick and tired of paying high local taxes, even if tax relief means accepting a reduction in services and living with potholes in the streets, bridges that are on the verge of collapse, and an interstate highway system that is about 95% complete but already needs $26 billion in repairs.

But the current crisis is far more severe than in the past. For a series of forces is now at work that calls into question the ability of local governments throughout the nation—not only in the traditionally dependent, but now the fast-growing Sunbelt—to provide the infrastructure needed for economic growth. These forces are:

Massive Cuts in Federal Aid to State and Local Government

After growing almost fourfold in the 1970s, federal grants-in-aid will be drastically cut, the figures range from $86 billion in 1980 to $78.8 billion in 1983.

A Reduced State and Local Tax Base

With the cut in federal taxes—especially for state and local governments—there is little reason to expect their taxes to federal taxes will fall, declining revenues.

Record-Breaking Interest Rates

The rates that states and cities have had to pay for money have almost doubled since 1977. The average municipality now has to pay 20% more to borrowing money than it has to pay for long-term money; only two years ago it was 70%. So prohibitive have borrowing costs become that even such financially sound states have recently suspended new bond offerings.

A Reduction in the Attractiveness of Tax-

To spur private saving and investment, the Reagan Administration has lightened the tax load, particularly in the upper brackets, and has provided special tax-exempt investment vehicles as the All Savers certificates and has broadened the supply of Individual Retirement Accounts. This has reduced the attractiveness of tax-exempt munipalities to the rich, who have been their traditional purchasers. The effect of these four forces is to put municipal finance in an unprecedented vise at a time of growing need.

Acceptance of federal functions were shifted to state and local government. And the Administration maintains that it has a large role in the management of local and state governments. For example, a wave of anxiety among local officeholders, including many key Republican governors and mayors. They fear that the states and cities have been set adrift, because there may simply not be enough counties that the Reagan new federalism has assigned them a role that they plainly do not have the resources to fill. As a consequence, a desperate new in many states to raise revenues and to increase the borrowing needed to tackle the infrastructure crisis.

But these burdens financial episodes only serve to worsen the real growth problem. For in the past local politicians have responded to financial stress by postponing the maintenance of our streets, bridges, and currently an economist at TRW Inc. “I don’t want to sound like the Joe McGee of the Administration. The fact is that much of America’s infrastructure is on the verge of collapse.” The problem is so
widespread, he says, that "three-quarters of America's mass transit systems are in need of rehabilitation in Reagan's economic growth program."

The delay is evident in all parts of the nation's stock of public capital.

**Sewers and Highways**

More than 8,000 mi. of the interstate highway system's 42,500 mi. and 13 percent of its bridges are now beyond their designed service life and must be rebuilt. And just to maintain current service levels on the roads and highways outside urban areas that are not part of the interstate system will require more funds for rehabilitation and reconstruction during the 1980s-$700 billion-more than all levels of government spent on all public works investments during the 1970s.

**Bridges**

It will cost $41.1 billion to replace or rehabilitate the more than 200,000 deficient bridges-two out of every five-in the nation.

**Sewers**

To meet existing water pollution control standards, federal and local governments will have to invest more than $31 billion in sewer systems and wastewater treatment plants over the next two decades just to maintain their water systems. Even more than $31 billion over the next two decades just to maintain current service levels on the roads and highways outside urban areas that are not part of the interstate system will require more funds for rehabilitation and reconstruction during the 1980s-$700 billion-more than all levels of government spent on all public works investments during the 1970s.

**Water**

The 756 urban areas with populations over 60,000 will have to spend up to $110 million over the next two decades just to maintain their water systems. Even more money will be required to develop new water sources for fast-growing areas in the Southwest and West.

**Mass Transit**

Spurred by the Administration's proposed elimination of operating subsidies and other pressures, up to one-quarter of the country's 300 metropolitan transit systems might have to cease operation by 1985. The New York City Transit Authority must raise $5 billion to rebuild its rusty, dilapidated rail and bus systems. Chicago's system raised its fare to 90 cents this year, and Los Angeles has begun informally delaying its repair and maintenance schedules.

**The MTA's Plans to Borrow Some $5 Billion**

The MTA's plans to borrow some $5 billion to service its massive debt by high interest rates and will suffer further from Reagan's proposed cuts, which could reduce capital aid by $30 million and operations grants by $94 million over the next three years, forcing higher taxes or a 15¢ fare increase, to 49¢, says Steve Polan, special assistant to the chairman. If the $3.6 billion in capital aid expected this year is delayed, transit failures will choke the economic vitality of the region even further.

In Massachusetts, federal operating subsidies will decline $13 million in fiscal 1982 and $26 million more over the next two years. "The first third that goes we can cope with," says James P. Carlin, Massachusetts' Transportation Secretary. "But when the cuts go up to $20 million, we could have some problems. One of their problems will be caused by Conrail's consolidation, which will leave the communities in the southeast of the state without service. "The state is weighing in, and we'll come in and run those lines," explains Carlin.

Since fast-growing cities in the Sunbelt have reaped a federal surplus, they will be disproportionately affected by the funds that will come straight out of spending for the interstate system. The Sunbelt, home to nearly 40% of the nation's business, is now faced with bearing the full burden of financing its future mass transit needs unless the state helps. Although the Miami area last year rejected the establishment of a regional transportation authority, mass transit like sewers, is vital for growth. If growth continues at its present rate, without the development of a mass transit system, cities like Dallas and Houston could eventually be paralyzed.

Inadequate sewer lines and wastewater treatment plants are also stalling economic activity both in stagnating areas and in regions that are growing at a lesser rate than the sunbelts. Congress, a number of state and local governments to shift their own funds to services and out of intra-structure, Reagan's second round of cuts—12 percent across the board—is being resisted by Congress, there is little doubt that the final result will be to shrink even the already-embattled funds available for upkeep of local public capital.

**Not only older cities**

The blow these cuts will deal to older cities will especially severe, for it is where the problems are most advanced. Financial strain on cities means that they must spend $40 billion to repair and rebuild its 8,000 mi. of streets, 6,200 mi. of sewers, the 775 bridges it owns, and the 1.5 billion gallons of day water users dollars $124 million to rehabilitate more than 40 miles of its 800 bridges. And Chicago is seeking $3.3 billion to repair and maintain their infrastructure. Fast-growing Dallas must spend $12 billion in the next five years to rehabilitate everything—roads, bridges, sewers, and mass transit.

But even the cities in the Sunbelt, which have newer physical plants and rapidly expanding tax bases, face problems with their infrastructure. Fast-growing Dallas must spend $12 billion in the next five years to rehabilitate everything—roads, bridges, sewers, and mass transit.

**The Florida Environmental Protection Agency**

The Florida Environmental Protection Agency, one of the fastest-growing areas in the U.S., from adding more homes to its overloaded sewer system. The moratorium was lifted only when Orlando signed court decrees promising to build more sewage treatment capacity. If the Administration's plans for distributing treatment plant funds go through—it wants to limit funds to the cities' needs as of 1975—it could be the Midwest and suburbs will have to build capacity for new population without federal money. Capital spending for wastewater treatment is
facilities by all levels of government has tripped since the Clean Water Act was passed in 1972, making it the largest single public works program ever undertook. The Federal Administration wants to cut the estimated remaining federal costs for treatment plants to $24 billion. An Administration source said that the project would slice annual federal expenditures from $3.5 billion to $2.4 billion.

**Water and the West**

If Reagan becomes law, there will be less money to spend overall, but changes in the allocation formula will benefit some cities and cost others. It could end up penalizing growing areas and helping older cities. Baltimore, for example, needs to spend nearly $1.5 billion, or $1,880 per capita, to get its sewers and waste treatment system in shape, according to estimates by the U.S. Environmental Protection Agency. Projects like this one, city officials say, would have been spending around $35 per capita per year, according to the Washington-based Urban Institute, which has made a major study of infrastructure needs. Reagan's proposals are expected to give Baltimore more money. But in the Chicago area, where the agency has used raw sewage to flush homes and lakers alike with a disturbing regularity, the Metropolitan Sanitary District, which funds it, wants to build a $3.4 billion, 131-mile "deep tunnel" to upgrade its system. It has already sunk $1.3 billion into pollution control projects but probably will have its flood control moneys slashed by Washington.

Reagan's approach could also reduce growth pressure on some areas. In Texas, for example, it cuts $3 per capital for Tulsa, Tucson, San Jose, and Dallas.

But over the long run the cuts could create problems. Houston is receiving 75% federal matching funds for a large sewage project, which the city needs to meet federal clean water standards. Once that is spent, City Controller Kathryn J. Whitmire does not expect any more federal funds. "If we don't start building today, we won't have the money to turn to the developers; we've already seen developers ready to participate," she says. "But federal money is tight. It's always been as much as is feasible through revenue bonds based on user fees," she says. "But if the federal government is really pressed, we have to turn to the developers; we've already seen developers ready to participate." But some experts point out that this will raise costs of new construction, and that could slow growth.

Huge investment also would be required in water systems over the next two decades to maintain economic vitality. "The history of much of the West is the history of its water projects," says Choate, "And water will determine its future." The water systems in much of the West have not been well maintained, and they will require additional spending in the 1980s. Since the federal government does not support local water systems, Reagan's cuts will have no direct impact. Cuts in independent authorities, the cuts in other areas could force political decisions that would penalize the ability to maintain the water system, and that could increase problems in the future. In the West, water was wired to be spent on water, but there the problem is storage, treatment, and distribution. "One half of the water lines are so decrepit that they need to be replaced," says Choate, New York City, for example, loses 100 million gal. of water per day because of leaks.

The squeeze on state and local governments is not coming only from Reagan's austerity push. Even while federal capital assistance has been reduced, improvements in jail conditions are requiring many cities and states to upgrade their prisons. A Reagan administration would not give a break to the local governments and states the money for jail and prison construction," says Susan Walters, an infrastructure expert at the Urban Institute. "In some areas, the trend of mandating jail replacement by the judiciary means that streets, water systems, and schools will go.

Cities and states are scrambling to find ways to buffer their infrastructures from these revenue shortfalls. One approach being considered by cities that still control their sewers and water supplies and other facilities is to turn these over to independent operating authorities that have pricing power and bond power. Experts have noted that, since they have their own revenue sources, the authorities' maintenance programs have been insulated from the fiscal squeeze that has led many municipalities to skimp on maintenance. They "generally have more cash on hand and probably have a healthier financing," says Urban Institute economist George E. Peterson. "It costs less to operate," says the City of Houston's Director of Public Works, who operates the George Washington Bridge, says Peter C. Goldmark, Jr., executive director of the Port Authority of New York, the largest multi-use purpose operating authority in the U.S. "We resurfaced it two years ago." The City of New York, by contrast, has so neglected some segments of the George Washington Bridge that it must sharply limit traffic there for several years while it rebuilds.

**A Long Recovery**

Yet independent authorities have their drawbacks. Every time one is set up, it limits the flexibility of the government to shift funds to meet its most pressing priorities. There is no way city officials can subsidize street repair out of water fees, for example, if the water system is operated by an independent authority. Says Peterson, head of UT's infrastructure study: "If you generalize that model so every service has its own financing and operating authority, it eliminates any trade-offs between services. How far can you go?"

The crisis in America's infrastructure has been building for decades, and its resolutions will take decades. "This is not a crisis for the short-winded," says former New York City Budget Director David A. Grossman. "Most rebuilding will take a decade or decade and a half." adds TRW's Choate. Yet even with such a long horizon, there is no doubt that the cuts Reagan has made and the cuts he has proposed portend a major setback to the rebuilding of America's infrastructure.

(From the New York Times, Sept. 11, 1981)

**Public Facilities Held Facing Crisis**

By B. Drummond Ayres, Jr.

WASHINGTON, Sept. 10.—A national crisis is developing because the nation's transporta­tion, sewage, water and other public works are being repaired or replaced, urban affairs and economic development specialists warned to Congress today.

They placed much of the blame on the Federal Government and Congress, asserting that capital aid programs and monetary policy could be overhauled to help the situation.

"It is national policy that is the principal deterrent to action," Alan Beals, executive director of the National League of Cities, told the House Subcommittee on Economic Stabilization. The subcommittee is holding hearings on "shambles" and "ruins" of the town's public facilities, which Mr. Beals said "simply cannot succeed" without massive aid to rebuild the national infrastructure.

Mr. Beals said the tight monetary policy of the Federal Reserve Board had made a "shambles" of the municipal credit market. He added that the recent tax laws would make matters worse because many investors would be encouraged to put their money into the tax-free savings certifi­cates to be offered beginning Oct. 1 as opposed to investing in municipal bonds.

**CURRENT AID PLANS ASSAILED**

As for current Federal aid programs, Mr. Beals said that the proposed new construction of public facilities rather than maintenance and repair of existing facilities would "simply not work.

He asked to assess the overall status of the nation's streets, highways, bridges and water and sewer systems, Mr. Beals replied. "In some communities, it may be characterized as a crisis.

The subcommittee chairman, Representative John W. Donaldson, Democrat of New York, said that almost one of every four miles require replace­ment. Conrail faces the prospect of "ruins," a recent study of the state of the nation's public facilities. He said that this target of targets, where public policy had caused a 28 percent drop in public works investment over the last 15 years, adding: "Today, one of every five bridges requires major rehabilitation or total reconstruction. The nation's Interstate Highway System was estimated at the beginning of the year to account for about $150 billion of the nation's $220 billion public facilities. Experts on the subcommittee said that almost one of every four miles requires replace­ment. Conrail faces the prospect of "ruins," a recent study of the state of the nation's public facilities. He said that this target of targets, where public policy had caused a 28 percent drop in public works investment over the last 15 years, adding: "Today, one of every five bridges requires major rehabilitation or total reconstruction. Yet independent authorities have their drawbacks. Every time one is set up, it limits the flexibility of the government to shift funds to meet its most pressing priorities. There is no way city officials can subsidize street repair out of water fees, for example, if the water system is operated by an independent authority. Says Peterson, head of UT's infrastructure study: "If you generalize that model so every service has its own financing and operating authority, it eliminates any trade-offs between services. How far can you go?"

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**WATER LOSSES IN NEW YORK**

New York loses about 100 million gallons daily through leaks in its water distribution lines, Mr. Choate continued. He said that in Albuquerque, New Mexico, a third of the city's sewer lines have decayed to the point that they are often crushed when trucks pass over them and added that half of the water mains in Washington needed to be replaced. In all, Mr. Choate said, the deterioration of vital public facilities "afflicts" three of every four American communities.

Mr. Choate estimated that half the nation's cities would not allow substantial industrial expansion because of inadequate water and sewage systems. Another quarter of the nation's cities, Mr. Beals said, could not improve their economies because their roads, streets and certain other public faciliti­es were worn out, obsolete or already operating at full capacity.

"We have a major problem," he concluded, "and we will have to deal with. We cannot simply continue to go on the way we have gone and expect the federal government to establish a national public works budget to bring "coherence" to the rehabilitation task ahead. At today's hearings, Eugene P. Foley, former Assistant Secretary of Commerce for economic development in
the Kennedy and Johnson Administrations, agreed that the Federal Government needed to give more direction to its public works efforts. Recognizing that the tendency of Congress to appropriate funds for new construction, he said, "It's ridiculous budgeting to put all this money into new facilities when we could rebuild and repair for so much less."

PROBLEMS IN BOND MARKETS

Melvin Mintz, director of the United States Conference of Mayors, told the subcommittee that the municipal bond market had become so hectic and confused that even the booming Sun Belt cities were finding it difficult to raise funds. "You can have a good bond rating but still not be able to carry out the needed functions," he said.

Attempting to sum up the situation his committee was studying, Representative Blanchard told of a recent visit he made to Detroit to make a speech on urban revitalization. While being driven to the speech site, he said, he attempted to drink a cup of coffee while studying an outline of his remarks.

"But there were so many potholes in the streets in Motown," he continued, "that I couldn't get it down."

Mr. HART. Mr. President, America—it is reported—is crumbling all around us. Streets are cracking, dams are breaking, sewers are overflowing, and water mains are leaking.

America's "infrastructure"—the stock of public facilities that underpin our national economy—has so deteriorated as to impede efforts to restore our economic health. And it continues to deteriorate faster than we can repair or replace it. It makes little sense for us to worry about the decline in investment in private capital, such as industrial plant and equipment, while we disregard chronic underinvestment in the vital public facilities—roads, bridges, ports, and dams—that support our Nation's commerce.

Because I consider rebuilding our national infrastructure an essential step toward establishing a comprehensive Federal policy for rebuilding the infrastructure in all regions of the country. It would establish a National Commission on Rebuilding America to:

First, inventory the existing major public facilities by region, state, and major metropolitan area; and to develop within 2 years a National Facilities Investment Plan (NFIP) to develop priorities for the needed repairs, improvements or expansions of specific public facilities over the next 10 years. The NFIP would become the infrastructure policy of the Federal Government, unless disapproved by joint resolution of Congress.

This bill assesses, as its major premise, that simply throwing money into any public works project that comes along will not necessarily improve the Nation's infrastructure. We cannot continue the failed "pork barrel" politics of the past. Rather, we must spend our limited resources on those projects that will provide the greatest benefit to the public.

Just as the strength of our military depends not on how much we spend but rather on our ability to spend, so the strength of our infrastructure depends on how closely our spending follows an effective infrastructure strategy like the one the NFIP would institute.

Mr. President, the Senator from New York has done an excellent job in explaining the details and logic of the bill. I will not repeat that effort. I would like to discuss, however, the three issues this bill addresses that I consider particularly important. First, the bill directs the National Commission on Rebuilding America to make recommendations on establishing a Federal capital budget. Virtually all major corporations, all State governments, and most local governments use capital budgets as a basic policy and administrative tool. It is amazing that the Federal Government does not also have a capital budget to guide national policy for public facilities. For that reason, I offered an amendment to the balanced-budget constitutional amendment resolution (S.J. Res. 58) that would have directed the President to submit to the Congress a capital budget as part of the annual budget process.

The administration opposes a capital budget because it would present "familial accounting problems" and raise questions about whether to classify certain expenditures as capital or noncapital. These arguments are not persuasive. The Federal Government already includes 11 special analyses in its annual budget to highlight specified program areas and enable it to coordinate policy. Moreover, accounting always presents difficult choices in classification, yet accountants make those choices knowing that even some classification will improve the capital process. Some capital budgeting is certainly better than none at all.

A Federal capital budget would reverse years of uncoordinated investment and management practices by Federal public works agencies that now "operating a facility through a "flying blind." It would permit the administration and the Congress to conduct a comprehensive review of the Federal Government's life cycle costs in evaluating public facilities and to consider public works activities in light of other national needs.

Second, this bill requires the National Commission to consider life cycle costs in evaluating public facilities and setting investment priorities. Too often, government agencies consider only the front-end construction costs in deciding whether to fund a project. As a result, to make a facility more politically acceptable, an agency may try to reduce front-end costs by "cutting corners" in construction and design. This actually increases the costs of operation and maintenance. Life-cycle costing would minimize this problem by taking into account all the estimated life-cycle costs of a facility—construction, operation, and maintenance—throughout its life.

Finally, the bill requires the National Commission to address the serious problem of waste and fraud in public works programs. Fraud costs the taxpayer inestimable amounts of money through increased project costs and deficient construction. Many States and communities have virtually institutionalized the process of awarding government contracts on the basis of political contributions. In 1980, the Justice Department obtained indictments against 34 companies and 41 individuals for four Shriners' conspiracy to raise prices and allocate highway construction contracts. The establishment of an independent inspector general, as part of a comprehensive Federal infrastructure policy would go a long way toward stopping fraud in projects receiving Federal funds. In addition, government agencies should set standards for construction of various types of public facilities and notify the public of all contracts they propose to let.

Waste also drains the funds available for rebuilding the national infrastructure. Waste occurs, in part, because so many government agencies have responsibility for funding public facilities. For example, 100 separate Federal agencies, 50 State governments, the District of Columbia, Puerto Rico, the protectorates, 3,042 counties, 35,000 general-purpose local governments, 15,000 school districts, almost 26,000 special districts, 2,000 regional authority units, 1,200 Metropolitan Planning Organizations, 200 Interstate compacts, and nine multistate regional development organizations have responsibility for public works. This fragmentation of the Nation's public works activities prevents the most efficient use of funds and leads to costly delay in project approvals; duplication of some facilities and services and omission of others; fragmented regulatory activities and conflicting program procedures; and uncertainty over which agencies have responsibilities for financing, constructing, maintaining, and operating a facility.

Mr. President, the Rebuilding of America Act would establish for the first time a coherent national strategy for attacking the problem of a deteriorating national infrastructure. We should not underestimate the enormity of the challenge before us. Experts predict we will have to spend between...
$2.5 and $3 trillion simply to maintain our infrastructure in its current condition. The additional improvements necessary to sustain a growing economy will cost billions more. Yet, we cannot afford to wait:

One of every five bridges in the United States requires major rehabilitation or reconstruction.

The Interstate Highway System requires reconstruction at a rate of 2,000 miles each year. A Commerce Department survey of 6,870 communities found that 3,000—or 46 percent—had wastewater treatment facilities operating at or near full capacity. Another quarter of the nation’s communities are on a path to bankruptcy because other public facilities such as roads, streets and industrial waste disposal sites are either worn out, obsolete or operating at full capacity. Overall, three-quarters of America’s communities will be unable to participate in whatever economic renewal plan the President has in mind. If we do not act now to reverse this trend, we may soon find our public facilities can no longer support a modern industrial economy. I urge the Senate to consider and pass this bill as one weapon in the fight to revitalize our economy.

Mr. President, the rapid deterioration of the national infrastructure is a time bomb waiting to explode. If we do not act now to reverse this trend, we may soon find our public facilities can no longer support a modern industrial economy. I urge the Senate to consider and pass this bill as one weapon in the fight to revitalize our economy.

The Corps of Engineers has inspected 9,000 of these dams and found many needing safety improvements.

We need a major program of expanding our ports if we hope to increase significantly our exports of coal and other products.

FIRMS AND EMPLOYMENT IN CONSTRUCTION, 1977
(In thousands)

<table>
<thead>
<tr>
<th>Industry</th>
<th>Establishments</th>
<th>Employees</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contract construction</td>
<td>473</td>
<td>4,210</td>
<td>3,500</td>
</tr>
<tr>
<td>General building contractors</td>
<td>154</td>
<td>1,160</td>
<td>960</td>
</tr>
<tr>
<td>Heavy construction contractors</td>
<td>87</td>
<td>520</td>
<td>380</td>
</tr>
<tr>
<td>Special trade contractors</td>
<td>289</td>
<td>2,120</td>
<td>1,850</td>
</tr>
<tr>
<td>Plumbing, heating, air-conditioning</td>
<td>57</td>
<td>450</td>
<td>370</td>
</tr>
<tr>
<td>Painting, paperhanging, decorating</td>
<td>87</td>
<td>520</td>
<td>380</td>
</tr>
<tr>
<td>Electrical</td>
<td>87</td>
<td>520</td>
<td>380</td>
</tr>
<tr>
<td>Masonry and stonework</td>
<td>87</td>
<td>520</td>
<td>380</td>
</tr>
<tr>
<td>Plastering, drywall, insulation</td>
<td>37</td>
<td>250</td>
<td>190</td>
</tr>
<tr>
<td>Roofing and sheet metal</td>
<td>87</td>
<td>520</td>
<td>380</td>
</tr>
<tr>
<td>Carpenter, cabinet work</td>
<td>45</td>
<td>300</td>
<td>230</td>
</tr>
</tbody>
</table>

Public works and jobs. The construction industry is a major sector in the U.S. economy. In 1977, nearly 478,000 firms employing more than 4.2 million were directly engaged in construction activity. Some 3.5 million of these firms invested more than $43 billion, or 60 percent of the nation’s total investment. Furthermore, the public sector invested an additional $50 billion in the purchase of right-of-ways, existing buildings and equipment.

Public works investments account for a substantial share of construction activity. Of the $228 billion in new construction put in place in 1980, over $56 billion was for public works—almost 24 percent of the total investment. Furthermore, the public sector invested an additional $30 billion in the purchase of right-of-ways, existing buildings and equipment.

Substantial variations exist in the quantities and types of materials and equipment used in different types of public works projects.

Such variations are important because we can take advantage of them to tailor public works investments to meet a number of objectives, including stabilizing the economy, alleviating structural unemployment and helping distressed areas to adapt to new economic development possibilities.
Public works and communities. A large and growing number of communities are now hamstrung in their economic revitalization efforts because their basic public facilities—streets, roads, water systems and sewage treatment plants—are too limited, obsolete or worn out to sustain a modernized industrial economy. A Department of Commerce survey of the wastewater treatment capacities of 6,870 communities found that over 30 percent of these systems were operating at 80 percent or more of capacity. A system operating at this level of capacity generally cannot accommodate additional industrial load. The same survey indicated that water treatment and distribution systems were operating at effective full capacity in a third of these communities.

When the condition of other public facilities essential to private sector investment are also considered, it becomes clear that most of the nation's communities are unable to support modernized development until major new investments are made in the basic public facilities that undergird their economies.

A number of studies have attempted to measure the influence of public works on the location and investment decisions of individual firms. The most comprehensive was a Census Bureau survey conducted in the mid-1970s for the Economic Development Administration. Over 2,000 firms operating in 254 distinct product classes were examined. For virtually all 254 categories studied, the survey found that the availability of public works facilities was either of critical or significant importance to location decisions. Moreover, public facilities were almost always more important locational consideration than were local tax incentives or industrial revenue bond financing.

VALUE OF NEW CONSTRUCTION TRENDS AND PROJECTIONS, 1978-81

(100 million of constant dollars)

<table>
<thead>
<tr>
<th>Type of construction</th>
<th>1978</th>
<th>1979</th>
<th>1980</th>
<th>1981</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total new construction</td>
<td>205,460</td>
<td>228,800</td>
<td>229,300</td>
<td>270,320</td>
</tr>
<tr>
<td>Private construction</td>
<td>157,560</td>
<td>179,950</td>
<td>171,600</td>
<td>206,700</td>
</tr>
<tr>
<td>Public construction</td>
<td>47,900</td>
<td>49,000</td>
<td>46,700</td>
<td>63,620</td>
</tr>
<tr>
<td>Buildings</td>
<td>15,240</td>
<td>15,800</td>
<td>18,100</td>
<td>20,100</td>
</tr>
<tr>
<td>Housing and redevelopment</td>
<td>7,100</td>
<td>7,420</td>
<td>8,300</td>
<td>9,200</td>
</tr>
<tr>
<td>Industrial facilities</td>
<td>7,180</td>
<td>7,410</td>
<td>8,800</td>
<td>10,300</td>
</tr>
<tr>
<td>Education</td>
<td>6,550</td>
<td>6,600</td>
<td>7,000</td>
<td>8,100</td>
</tr>
<tr>
<td>Hospital</td>
<td>1,870</td>
<td>1,850</td>
<td>1,800</td>
<td>1,800</td>
</tr>
<tr>
<td>Other public</td>
<td>4,920</td>
<td>4,880</td>
<td>5,000</td>
<td>5,500</td>
</tr>
<tr>
<td>Highways and streets</td>
<td>10,170</td>
<td>11,920</td>
<td>15,500</td>
<td>17,800</td>
</tr>
<tr>
<td>Military facilities</td>
<td>1,930</td>
<td>1,640</td>
<td>2,700</td>
<td>2,500</td>
</tr>
<tr>
<td>Conservation and development</td>
<td>4,450</td>
<td>4,500</td>
<td>5,000</td>
<td>5,500</td>
</tr>
<tr>
<td>Other public construction</td>
<td>13,950</td>
<td>16,000</td>
<td>16,400</td>
<td>18,200</td>
</tr>
<tr>
<td>Sewer systems</td>
<td>6,770</td>
<td>7,200</td>
<td>7,600</td>
<td>8,500</td>
</tr>
<tr>
<td>Water supply facilities</td>
<td>7,660</td>
<td>7,490</td>
<td>5,800</td>
<td>4,200</td>
</tr>
<tr>
<td>Miscellaneous</td>
<td>4,600</td>
<td>5,220</td>
<td>5,500</td>
<td>5,500</td>
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</tbody>
</table>


It has long been assumed that public works investments could be modulated to help stabilize the ups and downs of the economy. In practice, however, the United States has given little attention to such uses of public works expenditures.

The current recession is the sixth such decline in the economy since the end of World War II. As with previous recessions, the 1980-81 economic downturn has created substantial unemployment and underutilization of production capacities in the construction, materials and equipment industries. In 1980, the unemployment rate in the construction industry averaged 15 percent nationwide and as high as 40 percent in some regions. The steel industry, closely linked to construction, operated at about 50 percent of capacity throughout 1980, idling some 80,000 steelworkers.

Economic policy might reduce the harsh impacts of a severe recession by using the nation's $80 billion of annual public works investments as a countercyclical tool to provide employment in the construction, materials and equipment industries. But precisely the opposite has occurred. Public works investments in the United States have long been made in a perverse pattern, increasing during expansions in the economic cycle and decreasing during contractions. Such "pro-cyclical" management of public works investments creates adverse consequences:

Increasing public works investments during periods of economic expansion makes the costs of materials, equipment and labor artificially high and contributes to inflation; and

Decreasing public works investments during economic downturns exacerbates underutilization of labor and industrial facilities in the materials and equipment industries, and worsens the recession.

The temporary countercyclical LPW program of 1976-77 did nothing to relieve the 1974-77 recession until late in 1976. Over 80 percent of the employment generated in these expenditures occurred in the summer of 1976, directly by LPW projects did not occur until the recovery phase of the cycle had begun. This time lag reflects less on the efficiency of public works as a countercyclical device than on the sclerosis of the executive and legislative process. Lags occurred because of delays in securing passage of legislation. Presidential approval, appropriation of funds, selection of projects and construction can be accelerated at the beginning of the 1974 recession, until the summer of 1976, the use of countercyclical public works for economic stabilization continued to be rejected in favor of traditional fiscal and monetary measures.

Occasional recessions are inevitable. And federal public works expenditures can support major economic stabilizing influences. Thus, it is both timely and prudent to devise policies and administrative techniques for managing public works investments in anticipation of the economic cycle.

Using public works funds as a countercyclical device has many potential advantages. The first, perhaps most important, is to reduce the adverse consequences of the current pro-cyclical pattern of these investments. In many ways, these pro-cyclical investment patterns are akin to loose cargo in a ship in turbulent waters. As the ship sways from side to side, the cargo shifts and accentuates the sways. A permanent countercyclical public works policy would directly address fewer of these problems and programs cannot, by their very nature, accomplish.

If delays are eliminated, a large portion of the benefits of countercyclical federal works projects can be generated during contractions in the economic cycle. Also, recovery can be accelerated at the beginning of the economic expansion. After all, there is little merit in having massive unemployment and unused production capacity during a slow recovery period.

A number of reforms are worth discussion, including (1) standby authorizes for public works construction; (2) identification of a backlog of projects which would serve both countercyclical and long-term national and local development; and (3) creation of purchasing techniques that would permit stockpiling of materials and equipment for use in future projects.

By careful planning, government can target benefits to help both people and specific industries. Currently, for example, the steel industry, fabricators, metals and concrete, equipment and related industries are all operating well below full capacity. To counter this economic sluggishness, the current billion backlog of appropriated, but unspent, public works funds could be used to purchase needed materials and equipment in advance of actual construction.
24088

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This would produce many benefits. For example, purchasing steel when the industry is operating at only half its capacity would avoid ensuing price rises; permit the industry to operate closer to normal levels of production; improve conditions of certainty in that sector; create jobs for laid-off workers, many of whom reside in distressed areas; and eliminate almost $10 million per week in payments to steel producers in other areas of industry could be similarly assisted.

Targeting specific sectors can be an effective way to address many of the variations in the economic cycle. Pre-purchasing would also stimulate basic industries operating at low capacity in distressed areas.

At this time, it is difficult to even estimate the range of potential investments that will be required for public facilities. This reflects:

(a) the absence of national capital budgeting;
(b) the absence of common standards for public works facilities and the services they provide;
(c) inadequate information on the inventory and condition of existing facilities and costs of repair; and
(d) a lack of national consensus on what types of projects should be given priority.

Even though the magnitude of the problem cannot now be specified public works involving the investment for the 1980s can be estimated. For example, the costs of rehabilitation and new construction necessary to bring non-urban highways will exceed $700 billion during the 1980s. Even excluding the estimated $75 billion required to complete the final 1,600 miles of the interstate system, the balance required for rehabilitation and construction is still greater than all public works investments made by all units of government during the 1970s.

Clearly not all needed projects can be funded. Because so many other compelling public and private uses of capital exist, difficult strategic choices must be made. The first is to determine how much of the Gross National Product is to be allocated to capital investment. The second is to determine how much of that savings for new capital investment. The third is to determine how much of the Gross National Product is to be allocated to public works. The federal government's capital expenditures were better where fees were expected to provide other significant presentations of budget data. These analyses help bring to light the federal government's capital expenditures and operations over areas of major federal concern.

The special budget analysis of federal credit programs, for example, demonstrates that a careful accounting of fragmented federal activities can be an assessment of the federal government's capital expenditures and operations. The special budget analysis was not possible until the special analysis was created. Now that the magnitude of these credit activities is clear, OMB is better able to manage them.

The creation of a national capital budget analysis would permit a similar overview of the federal government's capital expenditures and operations. It would also permit consideration of public works activities in light of other national needs, as well as explicit consideration of construction, rehabilitation, maintenance and operation requirements.

The OMB's technical success in creating other complex special budget analyses demonstrates that it can surmount the accounting and classification problems that might arise in creating a national works capital analysis and a national public capital budget.

A national capital budget would consist of three essential components:

(1) Current and projected capital needs and expenditures;
(2) Current and projected operation and maintenance needs and expenditures; and
(3) Sources of financing. Such a budget would bring new coherence to public works policymaking and program management by providing a framework for legislative and administrative decisions. It would also provide a framework for systematic analysis of a number of issues:

One: The aggregate potential for domestic nondefense public works investments relative to other potential claims such as national defense and social programs.

Two: The impacts of government regulatory actions on public works investments and operations. For example, mandated investments to assists the handicapped on public transportation threaten to bankrupt some public transportation systems such as those in New York City.

Three: The consequences of allocations of limited public works funds as between new construction, rehabilitation, maintenance and operations.

Four: The social and equity issues associated with the distribution of public works funds among places and classes of projects.

Five: The sources, consequences and alternative financing sources of public works projects and their operation.

Capital budgeting is ultimately a political process through which resources are allocated. Advocates of federal public works investment would negotiate potential expenditures against other uses of federal funds; funds would be allocated among programs such as transportation, water treatment, navigation, and so forth; and funds would be allocated among construction, operation, maintenance and rehabilitation activities.

A capital budget would serve as a device by which the President and the Congress could bring necessary control to the present "free-for-service" policy and management practices of the various federal public works agencies. It would also permit effective comprehensive reviews and examinations by congressional committee actions which have contributed substantially to duplication and inconsistency.
Public works investments reflect a history of choices, decisions, bargains, compromises and agreements that provide a foundation for present and future actions. A capital budget could chronicle this information. It could set a statement of the future, specifying goals and resources needed to attain those goals. States and communities, now dependent on federal public works expenditures, would have a more coherent year-to-year basis with the ever present possibility that federal "commitments" will be altered or revoked. State and local governments need more certainty than is provided in a one-year federal budget. The private sector would likewise profit from more certainty.

The deteriorated condition of the basic facilities that underpin the economy will prove a critical bottleneck to national economic renewal during this decade unless we can find ways to finance critical public facilities. Our success in this effort hinges on the willingness of the Executive Branch to share responsibility for creating and managing public works policy more coherently than is currently the case.

Congress should require the preparation of an annual special analysis outlining the nation's public works needs as they affect national economic performance.

Congress should direct the Executive Branch to undertake an inventory of national public works needs as they affect the economy.

With the inventory as a starting point, Congress should require presentation of a capital budget that proposes phased capital investments matched with both short-term cyclical and long-term national economic needs. The budget would display preconstruction, construction, maintenance and operating costs.

Congress should direct the Executive Branch to report steps for reducing delays in public facilities construction through reforms in federal, state and local administrative procedures. Similar efforts in reducing other regulatory delays are already underway at the direction of the President.

Congress and the Executive Branch should consider undertaking a series of reforms designed to minimize the corruption and waste connected with public works expenditures.

The Executive Branch should undertake an administrative evaluation of the scattered public works activities of the federal government and be prepared to consume consolidated reforms simultaneous with the proposed public works report to Congress.

Congress or the Executive Branch should direct the Advisory Commission on Inter-governmental Relations or a new body constituted for the purpose to review the public works responsibilities of each level of government and propose appropriate guidelines for allocating functions and responsibilities.

It would be tempting to avoid dismantling the knotted threads of intergovernmental complexity and to assume that federal public works expenditures must be drastically curtailed in the face of current delays action on Davis-Bacon until this legal dispute is finally resolved by the courts, then additional years will pass and several billion dollars more will be wasted on inaccurate wage determinations.

I believe the Congress has a responsibility to clean up the act quickly so that the taxpayers may benefit forthwith.

The legislation I am submitting today mirrors the administration's key proposed changes in all but one provision—the threshold level. The four changes I am proposing are:

Mr. RANDOLPH. Mr. President, I am pleased to join with my colleagues in introducing the Rebuilding of America Act of 1982.

For most of our 206 years as a nation the United States has placed great emphasis on building. From a wilderness we have constructed a prosperous nation which provides to its citizens the highest standard of living in the world. Our economy and our way of life were created and are supported by public infrastructure representing investments of billions of dollars. We are becoming increasingly aware, however, that the public facilities on which we depend so greatly are wearing out faster than they are being replaced. In recent years our investments in public works have declined dramatically. It is necessary only to drive on some of our roads, ride our trains or review the knotted threads of public works policy more coherently than is currently the case.

In this era when we look for ways to revitalize our economy, we must look to new investments in public facilities if we are to be successful.

Mr. President, I believe that the situation we face is a result of several factors. In recent years we have recognized the need for Government involvement in many new programs. With limited resources at our disposal we have reduced public works expenditures in order to support these new needs. Inflation has limited the return we receive from these reduced investments and the situation has been exacerbated by the past 2 years to reduce Federal spending in general.

Mr. President, the measure we introduce today is designed to reorder priorities to assure that the development and maintenance of vital public facilities receive adequate attention. This bill establishes the procedures for an inventory of our public infrastructure and its needs. It provides for considering Federal public facilities spending on a unified overall basis.

Mr. President, we do not anticipate that the Congress will act on this legislation during the short time remaining in the 97th Congress. Rather, we do so now in anticipation of bringing attention to the critical situation which exists. I would hope that hearings can be scheduled this fall or early in 1983 to allow us to examine in detail our needs for public facilities and the ways in which we meet these needs.

By Mr. HATFIELD:

S. 2928. A bill to provide for equal access to public secondary schools; to the Committee on Labor and Human Resources.

(The remarks of Mr. HATFIELD on this legislation appear earlier in today's Record.)

By Mr. NICKLES (for himself, Mr. EAST, Mr. GRASSLEY, Mrs. HAWKINS, Mr. HUMPHREY, Mr. LAXALT, Mr. MATTINGLY, and Mr. THURMOND):

S. 2929. A bill to amend the Davis-Bacon Act; to the Committee on Labor and Human Resources.

DAVIS-BACON ACT AMENDMENTS

Mr. NICKLES. Mr. President, today, I am introducing legislation—along with Senators EAST, GRASSLEY, HAWKINS, HUMPHREY, LAXALT, MATTINGLY, and THURMOND—to reform the Davis-Bacon Act. Speaking for myself, I believe that the act has long outlived its usefulness and currently is so outmoded that it cannot be administered fairly absent statutory changes. Frequently, the result reached by the Labor Department's predetermined prevailing wage calculations are inequitable to the very persons the act is designed to protect—construction craftmen and their employers.

To its credit, the Reagan administration has tried to bring the 50-year-old act into the late 20th century, but has been stymied by a court-imposed restraining order obtained by the real beneficiaries of artificially determined prevailing wages—the building trade unions. I suspect that if the Congress delays action on Davis-Bacon until this legal dispute is finally resolved by the courts, then additional years will pass and several billion dollars more will be wasted on inaccurate wage determinations.

I believe the Congress has a responsibility to clean up the act quickly so that the taxpayers may benefit forthwith.

The legislation I am submitting today mirrors the administration's key proposed changes in all but one provision—the threshold level. The four changes I am proposing are:
First, for the first time, a definition of prevailing wages would be written into the act. Currently, in the absence of a statutory definition, the Labor Department uses the notorious 30 percent rule. This legislation requires the Department of Labor to establish a majority rule or, if a majority wage rate cannot be identified, a weighted average.

Second, an outright ban on importing urban wage rates into rural civil subdivisions and vice versa.

Third, the addition of a helper classification would be formally written into the act. This practice is not new. For years the Department of Labor has recognized helper classifications in several States and has issued wage determinations accordingly. But this recognition needs to be expanded. The National Building and Construction Trades Department has already acknowledged the existence of helper classifications in several States and has issued wage determinations accordingly. But this recognition needs to be expanded.

Fourth, the current $2,000 threshold is raised to $100,000. This modest increase is long overdue and will give the Department of Labor the ability to set wage rates for the construction industry. The Department of Labor has issued wage determinations in several States and has issued wage determinations accordingly. But this recognition needs to be expanded.

This legislation is designed to retain the rationale behind the Davis-Bacon Act—that prevailing wage scales and practices should not be undercut by labor cost. The current threshold is $2,000, but the legislation increases it to $100,000. This modest increase is long overdue and will give the Department of Labor the ability to set wage rates for the construction industry. The Department of Labor has issued wage determinations in several States and has issued wage determinations accordingly. But this recognition needs to be expanded.

Fifth, the addition of a helper classification would be formally written into the act. This practice is not new. For years the Department of Labor has recognized helper classifications in several States and has issued wage determinations accordingly. But this recognition needs to be expanded. The National Building and Construction Trades Department has already acknowledged the existence of helper classifications in several States and has issued wage determinations accordingly. But this recognition needs to be expanded.

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CONGRESSIONAL RECORD—SENATE 24091

September 17, 1982

ments. The amendments provided an express private right of action to migrant workers; it extended coverage to intrastate contracting activities; it extended registration requirements to contractors; it imposed affirmative duties on the Secretary of Labor to monitor and investigate the activities of contractors; and, it imposed substantive duties on a contractor with respect to transportation and housing. The amendments also imposed on farmers and other employers the requirement of confirming that a contractor is properly registered and the requirement to maintain payroll records on migrant workers furnished by the contractor.

Unfortunately, the experience under the 1974 amendments has been anything but satisfactory. Newspapers and the news magazines still periodically report on continuing exploitation of migrant workers, on squalid housing, and on unscrupulous crew bosses. At the same time, strong criticism has been directed against the Department of Labor, particularly against its expansive interpretation of the Act and its enforcement policies. Congressional hearings have confirmed that the Department in the past concentrated its scarce resources on securing the registration of every employer who might conceivably be subject to the Act, and failed to pursue a fair labor contractor. In an inordinate number of cases, farmers and other agricultural employers—basically fixed situs employers—were cited for technical violations dealing with registration requirements. The impact of this enforcement policy has not been the improvement of the migrant workers' lot in the workplace. The overriding result has been the harassment of agricultural employers. They have expended valuable time and effort in defending themselves against burdensome registration requirements which in fact are of little utility when it comes to stationary employers. They have wasted resources fighting legal battles over technical violations. If anything, the whole enforcement philosophy of the past has undermined cooperation between the Government and the agricultural employer community in curbing the exploitation of migrant workers.

The bill introduced today seeks to rectify these fundamental problems with current law. It eliminates burdensome registration requirements which in fact are of little utility when it comes to stationary employers. They have wasted resources fighting legal battles over technical violations. If anything, the whole enforcement philosophy of the past has undermined cooperation between the Government and the agricultural employer community in curbing the exploitation of migrant workers.

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

SECTION-BY-SECTION ANALYSIS

Section 1.—This section provides the table of contents for this Act and that the Act be entitled "the Migrant and Seasonal Agricultural Worker Protection Act of 1982".

Section 2.—This section states that the purpose of this Act is to remove the restraints on commerce caused by activities detrimental to migrant and seasonal agricultural workers; to require farm labor contractors to register under this Act, and to impose necessary protections for migrant and seasonal agricultural workers, agricultural associations, and agricultural employers.

Section 3.—This section provides for the definitions of terms to be used for the purpose of this Act.

(1) The term "agricultural association" is defined as "any nonprofit or cooperative association of farmers, growers, or ranchers, incorporated or qualified under applicable State law, which requires its members to be employers, hires, transports, or provides facilities for employment of agricultural workers.

(2) The term "agricultural employer" is defined as "any person who owns or operates a farm, ranch, processing establishment, canneries, gin, packing shed, or nursery, or who procures or conditions seed, and who either recruits, solicits, hires, employs, furnishes, or transports any migrant or seasonal agricultural worker.

(3) The term "agricultural employment" is defined as "employment in any service or activity included within the provisions of section 3(f) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(f)), or section 312(g) of the Internal Revenue Code of 1954 (26 U.S.C. 6012), for the purposes of implementing the requirements of that Act.

(4) The term "day-haul operation" is defined as "the assembly of workers at a pick-up Point, the transportation of such workers to an employer's establishment, the picking, harvesting, processing, transportation of such workers to agricultural employment, and the return of such workers to a drop-off point on the same day.

(5) The term "employee" is defined as "having the meaning given such term under section 3 of the Migrant and Seasonal Agricultural Worker Protection Act of 1938 (29 U.S.C. 203(g)) for the purposes of implementing the requirements of that Act.

(6) The term "farm labor contracting activity" is defined as "recruiting, soliciting, hiring, employing, furnishing, or transporting any migrant or seasonal agricultural worker.

(7) The term "farm labor contractor" is defined as "any person, other than an agricultural employer, an agricultural association, or an employee of an agricultural employer or agricultural association, who, for monetary or other consideration paid or promised to be paid, performs any farm labor contracting activity.

(8) The term "any individual who is employed in agricultural employment of a seasonal or other temporary nature, and who is required to be absent overnight from his permanent place of residence." Specifically excluded from the definition of a migrant agricultural worker are any immediate family members of an agricultural employer or a farm labor contractor and any temporary nonimmigrant agricultural H-2 alien worker.

(9) The term "person" is defined as "any individual, partnership, association, joint stock company, trust, cooperative, or corporation.

(10) The term "seasonal agricultural worker" is defined as "an individual who is employed in agricultural employment of a seasonal or other temporary nature and is not required to be absent overnight from his permanent place of residence and who is employed on a farm or ranch performing field work related to planting, cultivating, or harvesting; or engaged in cannning, packing, ginning, seed conditioning or related research, or processing oper-
This section provides for de
terminations with respect to a certificate of registration. In any such determinations, the Secretary may refuse to issue or renew, or may suspend or revoke, a certificate if the Secretary finds that the applicant has made any misrepresentation; is not the real party in interest and the real party in interest has been refused a certificate, or has had a certificate suspended or revoked, or does not qualify for a certificate; has failed to comply with this Act or the regulations; has failed to pay a court judgment under the Farm Labor Contractor Registration Act of 1983 (FLCRA) or to comply with a final order issued by the Secretary, as a result of a violation under this Act or FLCRA; or has been convicted within the preceding five years, or a crime relating to immigration, prostitution, peonage or smuggling or harboring individuals who have entered the country illegally.

Any person who is refused the issuance or renewal of a certificate or whose certificate has been suspended or revoked, is entitled to an opportunity for an agency hearing, upon request made within 30 days after the date of issuance of the notice of the refusal, suspension or revocation. Such a hearing must be held in accordance with the Administrative Procedures Act and the agency determination shall be made by the Administrative Law Judge.

If no hearing is requested, the refusal, suspension, or revocation shall constitute a final and unappealable order. If a hearing is requested, the initial agency decision shall be made by an administrative law judge and the decision shall become the final order of the President if the President modifies or vacates the decision. Notice of an intent to modify or vacate the decision shall be issued to the parties within 30 days after the decision of the administrative law judge.

Any person against whom a final order has been entered after an agency hearing may obtain a court to vacate the order by filling a notice of appeal within 30 days from the date of such order, simultaneously sending a copy of such notice and a copy of the record to the Secretary. The Secretary shall certify the record to the court. The findings of the Secretary shall be set aside only if found to be unsupported by substantial evidence. Any decision, order or judgment of the United States District Court shall be subject to appeal to the appropriate circuit court of the United States.

Section 104.—This section provides that a certificate of registration may not be transferred or assigned. Unless suspended or revoked, a certificate shall expire 12 months from the date of issuance, except that certificates issued between December 1, 1982 and November 30, 1983 may be issued for a period of up to 24 months to provide for an orderly transition. Certificates may also be suspended or revoked by the Secretary.

The term "Secretary" is defined as the Secretary of Labor or the Secretary's authorized representative.
tion of this Act or FLCRA during the preceding 5 years.

Section 105.—The section requires each farm labor contractor to provide to the Secretary, within 30 days, a notice of each change of permanent place of residence. The section also requires the Secretary to amend a certificate whenever a contractor intends to engage in another farm labor contracting activity; use another vehicle to transport migrant or seasonal workers; or use another facility or real property to house migrant workers.

Section 106.—This section states that no farm labor contractor shall recruit, hire, employ, or use, with knowledge, the services of any illegal alien. The contractor will be considered to have complied with this provision if he demonstrates that he relied in good faith on documentation prescribed by the Secretary and that he had no reason to believe that the individual was an illegal alien.

**TITLE II—MIGRANT AGRICULTURAL WORKER PROTECTIONS**

Section 201.—This section provides for informing migrant agricultural workers of their rights and protections afforded under this Act, including their right to receive a commission as a result of their employment; the place of employment; the wage rates to be paid; the crops and kinds of activities on which the worker may be employed; the period of employment; the transportation and other employee benefits and their costs; the existence of a strike or other concerted work stoppage, slow down, or interruption of operations at the place of employment; and the existence of any arrangements under which the farm labor contractor, agricultural employer or agricultural association which recruits migrant workers to purchase goods or services solely from them.

The section further provides that no farm labor contractor, agricultural employer and agricultural association which recruits seasonal workers when due. The section also prohibits the contractor, employer or association from requiring seasonal workers to purchase goods or services solely from them.

Finally, this section does not apply to any sales to the workers.

The section requires each farm labor contractor, agricultural employer and agricultural association which employs migrant workers in the United States to provide copies of all records with respect to each migrant worker, other than day-haul workers, to ascertain and disclose to the worker, upon request, the following information in writing for the workers when due. The section also prohibits the contractor, employer or association from requiring seasonal workers to purchase goods or services solely from them.

The section also provides that no farm labor contractor, agricultural employer and agricultural association which recruits seasonal workers when due. The section further provides for the workers when due.

**TITLE III—SEASONAL AGRICULTURAL WORKER PROTECTIONS**

Section 301.—This section provides for informing seasonal agricultural workers of their wages and working conditions and for the maintenance of records.

The section requires each farm labor contractor, agricultural employer and agricultural association which recruits seasonal workers to purchase goods or services solely from them.

Finally, the section states that no contractor, employer or association shall, without justifica-

The section further provides for the rights and protections afforded the workers under this Act, including their right to receive a commission as a result of their employment; the place of employment; the wage rates to be paid; the crops and kinds of activities on which the worker may be employed; the period of employment; the transportation and other employee benefits and their costs; the existence of a strike or other concerted work stoppage, slow down, or interruption of operations at the place of employment; and the existence of any arrangements under which the farm labor contractor, agricultural employer or association is to receive a commission as a result of any sales to the workers.

If the case of day-haul workers, the information shall be required to be disclosed at the place of recruitment.

The section further provides that no farm labor contractor, agricultural employer and agricultural association which recruits seasonal workers when due. The section also prohibits the contractor, employer or association from requiring seasonal workers to purchase goods or services solely from them.

Finally, the section states that no contractor, employer or association shall, without justifi-
fication, violate the terms of any working arrangements made with any seasonal workers.

TITLE IV—FURTHER PROTECTIONS FOR MIGRANT AND SEASONAL AGRICULTURAL WORKERS

Section 401.—This section provides for motor vehicle safety and applies to the transportation of any migrant or seasonal agricultural worker. The section does not apply to transportation of any migrant or seasonal agricultural worker on land of a combine, harvester, picker, or other similar machinery and equipment while such worker is actually engaged in the planting, cultivating, or harvesting of any agricultural commodity or the care of livestock or poultry.

This section requires each farm labor contractor, agricultural employer and agricultural association to ensure that any vehicle used to transport a migrant or seasonal agricultural worker conforms to certain standards which would prescribe standards to protect the health and safety of migrant and seasonal agricultural workers in issuing the standards for the protection of those workers, consider, among other factors, the maximum safe capacity in the vehicle, the type of roads and highways on which such workers will be carried in the vehicle, and the extent to which a proposed standard would cause an undue burden on agricultural employers, agricultural associations, or farm labor contractors.

The standards prescribed by the Secretary shall be in addition to, and shall not supersede or modify, any standard under the Interstate Commerce Act relating to the transportation of migrant workers which is inconsistent. A violation of these standards shall also constitute a violation under this Act.

In the event the Secretary fails to prescribe the standards by the effective date of this Act, the standards prescribed under the Interstate Commerce Act relating to the transportation of migrant workers which is identical shall be deemed to be the standards prescribed by the Secretary and shall, as appropriate and reasonable under the circumstances, apply (1) without regard to the mileage and boundary line limitations of that Act, and (2) until superseded by standards actually prescribed by the Secretary.

The level of insurance required by this section shall be at least the amount required for motor carriers under the Interstate Commerce Act.

If the farm labor contractor, agricultural employer or association is the employer of any migrant or seasonal worker for the purposes of State workers' compensation law and thus provides coverage for the workers in the case of bodily injury or death, the section would excuse the requirement of an insurance policy or liability bond if the worker is covered under that State law.

An insurance policy or liability bond will be required only in those circumstances where there is no coverage under State law.

Finally, the section requires the Secretary to promulgate regulations, not later than 180 days after the effective date of this Act in accordance with section 511 of this Act.

Section 402.—This section requires that prior to issuing a farm labor contractor certificate all persons should take reasonable steps to determine that the contractor is in compliance with the requirements of this Act, which authorizes the activity to be performed. The section states that the person in charge of the contractor may rely on the possession of a certificate of registration or on confirmation by the Department of Labor. The section also requires the Secretary to maintain a central public registry of all persons issued a certificate of registration.

Section 403.—This section requires each farm labor contractor to obtain at each place of employment and make available for inspection to the workers he furnishes a written statement of the conditions of employment described in sections 201 and 301.

Section 404.—This section states that no farm labor contractor shall violate, without justification, the terms of any written agreements made with agricultural employers or associations pertaining to any contract or agreement, including any agreement under this Act. The provisions also note that written agreements under this section may not relieve the responsibilities that they would otherwise have under the Act.

TITLE V—GENERAL PROVISIONS

PART A—Enforcement provisions

Section 501.—This section provides for criminal penalties for anyone who records, tests, or maps without regard to the mileage and boundary line limitations of that Act, and until superseded by standards actually prescribed by the Secretary in any civil litigation brought under this Act, the standards prescribed under the Interstate Commerce Act or the regulations. In determining the amount of damages to be awarded, the court is authorized to consider whether an attempt was made to redress issues in dispute before resort to litigation.

Civil actions brought under this section shall be subject to appeal to the appropriate circuit courts.

Section 502.—This section prohibits the discrimination against any person or seasonal agricultural worker and provides that no person shall intimidate, threaten, restrain, coerce, blacklist, discharge, or in any manner discriminate against such worker because the worker has filed a complaint or caused a complaint to be filed under this Act, or has exercised any rights or protections afforded by this Act.

A worker who believes that he has been discriminated against by any person in violation of this section, may within 180 days after the violation occurs, file a complaint with the Secretary. The Secretary shall investigate the complaint and if he determines that the provisions of this section have been violated, he shall bring an action in his own name, and against such person. The courts shall have jurisdiction, for cause shown, to restrain the violation and to order all appropriate relief, including damages, to that equal to the amount of back pay, or damages.
waive or to modify their rights under this Act shall be void as contrary to public policy, except for waivers or modifications in favor of the Secretary which shall be valid for purposes of enforcement of this Act.

Part B—Administrative provisions

Section 511.—This section authorizes the Secretary to promulgate regulations as are necessary to carry out this Act.

Section 512.—This section authorizes the Secretary to investigate and pursue complaints, including the inspection of records and the questioning of persons and gathering of information to determine compliance with this Act or its regulations. The provision extends to the Secretary the authority contained in sections 9 and 10 of the Federal Trade Commission Act relating to the attendance of witnesses and the production of documents. The provision also makes it a violation of this Act for any person to interfere in any manner with an official during the performance of his investigation or law enforcement function under the Act.

Section 513.—This section permits the Secretary to enter into agreements with Federal and State agencies to use their facilities, and to delegate authority, other than the power to enter into agreements, to any agency pursuant to a written State plan. The State plan must include a description of the functions to be performed, the methods of performance and the resources to be devoted to the performance of such functions. The State plan must also provide that the Secretary's performance of functions so delegated will be at least comparable to the performance of such functions by the Federal Government. The provision also permits the allocation or transfer of funds to the agencies for expenses incurred pursuant to such agreements.

Part C—Miscellaneous provisions

Section 521.—This section states that the Act is intended to supplement State action and therefore does not excuse anyone from compliance with State law or regulation.

Section 522.—This is a transition provision which permits the Secretary to deny a certificate of registration to any farm labor contractor who has a judgment outstanding against him under FLCRA or is subject to a final order of the Secretary under FLCRA assessing a civil money penalty which has not been paid. The provision also permits the use of any findings under FLCRA to be applied to determinations of willful and knowing violations under this Act.

Section 523.—This section repeals FLCRA. Section 524.—This section establishes December 1, 1982 as the effective date of this Act and provides for its classification in title 29, United States Code.

S. 2930
Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled.

Title I—Farm Labor Contractors

Sec. 101. Certificate of registration required.
Sec. 102. Issuance of certificate of registration.
Sec. 103. Registration determinations.
Sec. 104. Transfer or assignments; expiration; renewal.
Sec. 105. Notice of address change; amendment of certificate of registration.
Sec. 106. Prohibition against employing illegal aliens.

Title II—Migrant Agricultural Worker Protections

Sec. 201. Information and recordkeeping requirements.
Sec. 202. Wages, supplies, and other working arrangements.
Sec. 203. Safety and health of housing.

Title III—Seasonal Agricultural Worker Protections

Sec. 301. Information and recordkeeping requirements.
Sec. 302. Wages, supplies, and other working arrangements.

Title IV—Additional Protections for Migrant and Seasonal Agricultural Workers

Sec. 401. Motor vehicle safety.
Sec. 402. Confirmation of registration.
Sec. 403. Inspection on employment conditions.
Sec. 404. Compliance with written agreements.

Title V—General Provisions

Part A—Enforcement Provisions

Sec. 501. Criminal sanctions.
Sec. 502. Judicial enforcement.
Sec. 503. Administrative sanctions.
Sec. 504. Private right of action.
Sec. 505. Discrimination prohibited.
Sec. 506. Waiver of rights.

Part B—Administrative Regulations

Sec. 511. Rules and regulations.
Sec. 512. Authority to obtain information.
Sec. 513. Agreements with Federal and State agencies.

Part C—Miscellaneous Provisions

Sec. 521. State laws and regulations.
Sec. 522. Transition provision.
Sec. 523. Repeal.
Sec. 524. Effective date.

Purpose

Sec. 2. It is the purpose of this Act to remove the necessity or coercive association of farmers, growers, or ranchers, incorporated or qualified under applicable State law, which threatens, employs, furnishes, or transports any migrant or seasonal agricultural workers, agricultural associations, and agricultural employers.

Definitions

Sec. 3. As used in this Act—

(1) The term "agricultural association" means any cooperative or non-profit association of farmers, growers, or ranchers, incorporated or qualified under applicable State law, which threatens, employs, furnishes, or transports any migrant or seasonal agricultural worker.

(2) The term "agricultural employer" means any person who owns or operates a farm, ranch, processing establishment, cannery, gin, packing shed or nursery, or who produces or contracts for the production of any commodities, who either recruits, solicits, hires, employs, furnishes, or transports any migrant or seasonal agricultural worker.

(3) The term "agricultural employment" means employment in any service or activity included within the provisions of section 3(f) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(f)), or section 312(a)(9) of the Internal Revenue Code of 1954 (26 U.S.C. 312(a)(9)) and the handling, planting, drying, packing, processing, freezing, or grading prior to delivery for storage of any agricultural commodity in its unmanufactured state.

(4) The term "day-haul operation" means the assembly of workers at a pick-up point, followed by the migration of employed workers to a workplace for work on a paid day or period of time, followed by the return of such workers to agricultural employment, and the return of such workers to the pick-up point on the same day.

(5) The term "employ" has the meaning given such term under section 3(g) of the Labor Standards Act of 1938 (29 U.S.C. 203(g)) for the purposes of implementing the requirements of that Act.

(6) The term "farm labor contractor" means any person, other than an agricultural employer, an agricultural association, or an employee of an agricultural employer or agricultural association, who, for any money or other valuable consideration paid or promised to be paid, performs any farm labor contracting activity.

(8)(A) Except as provided in subparagraph (B), the term "migrant agricultural worker" means an individual employed in agricultural employment of a seasonal or other temporary nature, and who is required to be absent overnight from his permitted place of residence. (B) The term "migrant agricultural worker does not include—

(1) the immediate family member of an agricultural employer or a farm labor contractor; or

(2) any temporary nonimmigrant alien who is authorized to work in agricultural employment in the United States under sections 101(a)(15)(H)(ii) and 214(c) of the Immigration and Nationality Act.

(9) The term "person" means any individual, partnership, association, joint stock company, trust, estate, or any other entity.

(10)(A) Except as provided in subparagraph (B), the term "seasonal agricultural worker" means an individual employed in agricultural employment of a seasonal or other temporary nature and is not required to be absent overnight from his permitted place of residence. (B) The term "seasonal agricultural worker" does not include—

(1) any migrant agricultural worker;

(2) any immediate family member of an agricultural employer or a farm labor contractor; or

(3) any temporary nonimmigrant alien who is authorized to work in agricultural employment in the United States under sections 101(a)(15)(H)(ii) and 214(c) of the Immigration and Nationality Act.

(11) The term "Secretary" means the Secretary of Labor or the Secretary's authorized representative.

(12) The term "State" means any of the States of the United States, the District of
Title I—Farm Labor Contractors

Certificate of Registration Required

Sec. 101. (a) No person shall engage in any farm labor contracting activity, unless such person has a certificate of registration from the Secretary specifying which farm labor contracting activities such person is authorized to perform.

(b) A farm labor contractor shall not hire, employ, or use any individual to perform farm labor contracting activities unless such individual has a certificate of registration, or a certificate of registration as an employee of a farm labor contractor, which authorizes the activity for which such individual is hired, employed, or used.

(c) Each registered farm labor contractor and registered farm labor contractor employee shall maintain while engaging in farm labor contracting activities a certificate of registration and, upon request, shall exhibit that certificate to all persons with whom they intend to deal as a farm labor contractor or farm labor contractor employee.

(d) The facilities and the services authorized by the Act of June 6, 1933 (29 U.S.C. 49 et seq.), known as the Wagner-Ferey Act, shall be denied to any farm labor contractor upon refusal or failure to produce, when asked, a certificate of registration.

ISSUANCE OF CERTIFICATE OF REGISTRATION

Sec. 102. The Secretary, after appropriate investigation and approval, shall issue a certificate of registration (including a certificate of registration as an employee of a farm labor contractor) to any person who has filed with the Secretary a written application containing the following:

(1) a declaration, subscribed and sworn to by the applicant, stating the applicant's personal place of residence, age, and year of birth, whether he is an individual or a corporation or partnership, or a limited liability company, or a trust, or a governmental body, the nature of the business for which the certificate is requested, and such other relevant information as the Secretary may require;

(2) a statement identifying each vehicle to be used to transport any migrant or seasonal agricultural worker, and

(3) a statement identifying each facility or real property to be used to house any migrant or seasonal agricultural worker, and

(4) a set of fingerprints of the applicant;

and

(5) a declaration, subscribed and sworn to by the applicant, consenting to the designation by a court of the Secretary as an agent available to accept service of summons in any action against the applicant, if the application is denied, or in any action commenced or otherwise has become unavailable to accept service.

REGISTRATION DETERMINATIONS

Sec. 103. (a) In accordance with regulations, the Secretary may refuse to issue or renew, or may suspend or revoke, a certificate of registration (including a certificate of registration as an employee of a farm labor contractor) if the applicant or holder—

(1) has knowingly made any misrepresentation in the application for such certificate;

(2) is not the real party in interest in the application or certificate of registration and the real party in interest is a person who has been refused issuance or renewal of a certificate, has had a certificate suspended or revoked, or does not qualify under this section for a certificate;

(3) has failed to comply with this Act or any regulation under this Act;

(4) has failed to pay any court judgment obtained by the Secretary as a result of a violation of this Act or any regulation under this Act or any regulation under the Farm Labor Contractor Registration Act of 1963 or any regulation under such Act;

(5) has been convicted within the preceding five years of any crime under State or Federal law relating to gambling, or to the sale, distribution or possession of alcoholic beverages, in connection with or incident to any farm labor contracting activities; or

(b) of any felony under State or Federal law involving robbery, bribery, extortion, embezzlement, grand larceny, burglary, arson, violation of narcotics laws, murder, rape, assault with intent to kill, assault which inflicts grievous bodily injury, prostitution, peonage, or smuggling or harboring aliens who have entered the United States illegally.

Sec. 108. In accordance with an order that has been entered after an agency hearing under this section may obtain review by the United States district court for any district
in which he is located or the United States District Court for the District of Columbia by filing a notice of appeal in such court, within 30 days following the date of the order, and simultaneously sending a copy of such notice by registered mail to the Secretary. The Secretary shall promptly certify and mail a copy of such notice to the aggrieved person and to each farm labor contractor, agricultural employer, or agricultural association which the farm labor contractor relies in making the statement of the information described in subsection (a).

TRANSFER OF ASSIGNMENT; EXPISTRATION; RENEWAL

Sec. 105. During the period for which the certificate of registration is in effect, each farm labor contractor shall—

(a) provide to the Secretary within 30 days a notice of each change of permanent place of residence; and

(b) engage in another farm labor contracting activity.

PROHIBITION AGAINST EMPLOYING ILLEGAL ALIENS

Sec. 106. (a) No farm labor contractor shall recruit, hire, employ, or use, with knowledge, the services of any illegal alien for permanent residence or who has not been authorized by the Attorney General to accept employment.

(b) A farm labor contractor shall be considered to have complied with subsection (a) if the Secretary determines that the farm labor contractor relied in good faith on documentation prescribed by the Secretary, and the farm labor contractor believes the individual was an alien referred to in subsection (a).

TITLE II—MIGRANT AGRICULTURAL WORKER PROTECTIONS

INFORMATION AND RECORDKEEPING REQUIREMENTS

Sec. 201. (a) Each farm labor contractor, agricultural employer, and agricultural association which recruits any migrant agricultural worker shall ascertain and disclose in writing to each person who is recruited for employment the following information at the time of the worker's recruitment:

(1) the place of employment;

(2) the wage rates to be paid;

(3) the crops and kinds of activities on which the worker may be employed;

(4) the period of employment;

(5) the transportation, housing, and any other employee benefits to be provided, if any, and any costs to be charged for each of them;

(6) the existence of any strike or other concerted work stoppage, slowdown, or interruption of operations by employees at the place of employment; and

(7) the existence of any arrangements with any owner or agent of any establishment in the area of employment under which the worker is to be compensated, the agricultural employer, or the agricultural association is to receive a commission or any other benefit in lieu of sales by such establishment to the workers.

(b) Each farm labor contractor, agricultural employer, and agricultural association which employs any migrant agricultural worker shall, at the place of employment, post in a conspicuous place a poster provided by the Secretary setting forth the rights and protections afforded such workers under this Act, including the right of a migrant agricultural worker to have, upon request, a written statement provided by the farm labor contractor, agricultural employer, or agricultural association, of the information required under this subsection. Such employer shall provide upon request, a written statement of the information described in subsection (a).

(c) Each farm labor contractor, agricultural employer, and agricultural association which employs any migrant agricultural worker shall—

(1) with respect to each such worker, make, keep, and preserve records for three years of the following information:

(A) the basis on which wages are paid;

(B) the number of piecework units earned, if paid on a piecework basis;

(C) the number of hours worked;

(D) the total pay period earnings;

(E) the specific sums withheld and the reason for each withholding;

(F) the net pay; and

(G) the specific sums paid on account of any employer tax or other tax paid on behalf of such worker.

(2) provide the farm labor contractor for each pay period, an itemized written statement of the information required by paragraph (1) of this subsection.

(d) Each farm labor contractor, agricultural employer, and agricultural association which employs any migrant agricultural worker shall—

(1) in the case of a farm labor contractor, make, keep, and preserve records for three years of the following information:

(A) the basis on which wages are paid;

(B) the number of piecework units earned, if paid on a piecework basis;

(C) the number of hours worked;

(D) the total pay period earnings;

(E) the specific sums withheld and the reason for each withholding;

(F) the net pay; and

(G) the specific sums paid on account of any employer tax or other tax paid on behalf of such worker.

(2) provide the farm labor contractor for each pay period, an itemized written statement of the information required by paragraph (1) of this subsection.

(e) Each farm labor contractor shall provide to any other farm labor contractor, and to any other agricultural employer, or agricultural association to which such farm labor contractor has furnished migrant agricultural workers, a written report with respect to each such worker which such farm labor contractor is required to retain by subsection (d)(1). The recipient of such records shall keep them for three years from the end of the period of employment.

(f) No farm labor contractor, agricultural employer, or agricultural association shall knowingly provide false or misleading information concerning the conditions, terms, or existence of agricultural employment required to be disclosed by subsection (a), (b), (c), or (d).

(g) Each notice required to be disclosed by subsections (a) through (c) of this subsection to migrant agricultural workers shall be provided in written form. Such information shall be provided in English or, as necessary and reasonable, in Spanish or other language common to migrant agricultural workers who are not fluent in or literate in English. The Department of Labor shall make forms available in English, Spanish, and other languages, as necessary, which may be used in providing workers with information required under this section.

WAGES, SUPPLIES, AND OTHER WORKING CONDITIONS

Sec. 202. (a) Each farm labor contractor, agricultural employer, and agricultural association which employs any migrant agricultural worker shall pay the wages owed to such worker when due.

(b) No farm labor contractor, agricultural employer, or agricultural association shall require, permit or authorize a migrant agricultural worker to purchase any goods or services solely from such farm labor contractor, agricultural employer, or agricultural association.

(c) No farm labor contractor, agricultural employer, or agricultural association shall, with respect to any person who is employed under any working arrangement made by that contractor, employer, or association with any migrant agricultural worker.

SAFETY AND HEALTH OF HOUSING

Sec. 203. (a) Except as provided in subsection (c), each person who owns or controls a facility or real property which is used as housing for migrant workers shall be responsible for ensuring that the facility or real property complies with substantive Federal and State safety and health standards applicable to that housing.

(b) (1) Except as provided in subsection (c) and paragraph (2) of this subsection, no facility or real property may be occupied by any migrant agricultural worker unless either a State or local health authority or other appropriate agency has certified that the facility or property is in compliance with safety and health standards. No person who owns or controls any such facility or property shall permit it to be occupied by a migrant agricultural worker unless a copy of the certification of occupancy is posted at the site. The receipt of a pending certification of occupancy does not relieve any person of responsibilities under subsection (a). Each such person shall retain the original certification for three years and shall make it available for inspection and review in accordance with section 512.

(2) Notwithstanding paragraph (1) of this subsection, if a request for the inspection of a facility or real property is made to the appropriate State or local agency at least 45 days prior to the date on which it is occupied by migrant agricultural workers and such agency has not conducted an inspection of the facility or property, the facility or property may be so occupied.

(c) This section does not apply to any person who is the owner, lessee, or lessee of that person's business, regularly provides housing on a commercial basis to the general public and who provides housing to migrant agricultural workers which is not located at the same establishment.
Each farm labor contractor is required to retain and maintain such records for at least three years the end of the period of employment. 

(c) Each farm labor contractor, agricultural employer, or agricultural association shall provide such records to the Secretary shall, in promulgating regulations under subparagraph (A), consider, among other things, the 

(i) the type of vehicle used, 

(ii) the passenger capacity of the vehicle, 

(iii) the distance which such vehicle will be carried in the vehicle, and 

(iv) the type of roads and highways on 

which such workers are transported only under circumstances for which there is coverage under such law.

(2) An insurance policy or liability bond shall be required of the employer, if such workers are transported only under circumstances for which there is coverage under such law.
In determining the amount of any penalty to be assessed under paragraph (1), the Secretary shall take into account (A) the previous record of the person in terms of compliance with the standards and enforceable requirements of the Farm Labor Contractor Registration Act of 1963, and with regulations issued thereunder or under any other Act, and (B) the gravity of the violation.

(b)(1) The person assessed shall be afforded an opportunity, upon request made within thirty days after the date of issuance of the notice of assessment. In such hearing, all issues shall be determined on the record pursuant to section 584 of title 5, United States Code. If no hearing is requested as herein provided, the assessment shall constitute a final and unappealable order.

(b)(2) If a hearing is requested, the initial agency decision shall be made by an administrative law judge, and such decision shall become the final order unless the Secretary modifies or vacates the decision. Notice of intention to modify or vacate the decision of the administrative law judge shall be issued to the parties within thirty days after the decision of the administrative law judge. Any final order which takes effect under this paragraph shall be subject to review only as provided under subsection (c).

(b)(c) Any person against whom an order imposing a civil money penalty has been entered after an agency hearing under this section may obtain review in the United States district court for the District of Columbia by filing a notice of appeal in such court within thirty days from the date of such order, and simultaneously sending a copy of such notice to the Secretary. The Secretary shall promptly certify and file in such court the record upon which the penalty was imposed. The findings of the Secretary shall be set aside only if found to be unsupported by substantial evidence as provided by section 706 of title 5, United States Code. Any decision, order or judgment of the United States District Court shall be subject to appeal as provided in chapter 15 of title 28, United States Code.

(d) If any person fails to pay an assessment after it has become a final and unappealable order, the Secretary may, in any appropriate district court of the United States, either pursuant to a complaint or otherwise, restrain the person from committing any further violation of this Act or any regulation thereunder, and order the person to enter and inspect such places (including rehiring or reinstatement of the worker, with back pay, or damages.

WAIVER OF RIGHTS

Sec. 506. Agreements by employees purporting to waive or to modify their rights under this Act shall be void as contrary to public policy, except that a waiver or modification of rights in favor of the Secretary shall be valid for purposes of enforcement of this Act.

PART B—ADMINISTRATIVE PROVISIONS

RULES AND REGULATIONS

Sec. 511. The Secretary may issue rules and regulations as are necessary to carry out this Act, consistent with the requirements of chapter 5 of title 5, United States Code.

AUTHORITY TO OBTAIN INFORMATION

Sec. 512. (a) To carry out this Act the Secretary, either pursuant to a complaint or otherwise, shall, as may be appropriate, investigate, and in connection therewith, enter and inspect such places (including

(1) If the court finds that the respondent has intentionally violated any provision of this Act or any regulation under this Act, it may award damages up to and including an amount equal to the actual damages, statutory damages of up to $500 per plaintiff per violation, or other equitable relief. In determining the amount of damages to be awarded under paragraph (1), the court is authorized to consider whether an attempt was made to resolve the issues in dispute before the resort to litigation.

(2) In determining the amount of damages to be awarded under paragraph (1), the court may award damages up to and including an amount equal to the actual damages, statutory damages of up to $500 per plaintiff per violation, or up to $500,000 or other equitable relief.

(3) In determining the amount of damages to be awarded under paragraph (1), the court shall consider (A) the gravity of the violation; and (B) if such complaint is certified as a class action, the court shall award no more than the lesser of up to $500 per plaintiff per violation, or up to $500,000 or other equitable relief.

(4) In determining the amount of damages to be awarded under paragraph (1), the court may consider the gravity of the violation; and (B) if such complaint is certified as a class action, the court shall award no more than the lesser of up to $500 per plaintiff per violation, or up to $500,000 or other equitable relief.

(5) In determining the amount of damages to be awarded under paragraph (1), the court may consider the gravity of the violation; and (B) if such complaint is certified as a class action, the court shall award no more than the lesser of up to $500 per plaintiff per violation, or up to $500,000 or other equitable relief.

(6) In determining the amount of damages to be awarded under paragraph (1), the court may consider the gravity of the violation; and (B) if such complaint is certified as a class action, the court shall award no more than the lesser of up to $500 per plaintiff per violation, or up to $500,000 or other equitable relief.

(7) In determining the amount of damages to be awarded under paragraph (1), the court may consider the gravity of the violation; and (B) if such complaint is certified as a class action, the court shall award no more than the lesser of up to $500 per plaintiff per violation, or up to $500,000 or other equitable relief.

(8) In determining the amount of damages to be awarded under paragraph (1), the court may consider the gravity of the violation; and (B) if such complaint is certified as a class action, the court shall award no more than the lesser of up to $500 per plaintiff per violation, or up to $500,000 or other equitable relief.
housings and vehicles) and such records (and
make transcriptions thereof), question such
persons and gather such information to de-
termine compliance with this Act, or regula-
tions prescribed under this Act.
(b) The Secretary may issue subpoenas re-
quiring the attendance and testimony of
witnesses or the production of any evidence
in connection with such investigations. The
Secretary may administer oaths, examine
witnesses, and require the production of
any hearing or investigation provid-
ed for in this Act, the authority contained
in sections 9 and 10 of the Federal Trade
Commission Act (15 U.S.C. 49, 50), relating
to the advertisement of witnesses and the pro-
duction of books, papers, and documents,
shall be available to the Secretary. The Sec-
retary shall conduct investigations in a
manner which protects the confidentiality
of any complainant or other party who pro-
vides information to the Secretary in good
faith.
(c) It shall be a violation of this Act for
any person to unlawfully resist, oppose,
impede, intimidate, or interfere with any of
the official of the Department of Labor assigned
to perform an investigation, inspection, or
labor or to perform a hearing or investiga-
tion provided for in this Act during the per-
duression of such duties.

AGREEMENTS WITH FEDERAL AND STATE
AGENCIES

SEC. 513. (a) The Secretary may enter into
agreements with Federal and State agencies
(1) to use their facilities and services, (2) to
delegate, subject to subsection (b), to Federal-
ally or by the Federal Department of Labor under
rulemaking, may be as useful in carry-
ing out this Act, and (3) to allocate or trans-
fer funds to, or otherwise pay or reimburse,
Secretary under their existing grant programs;
the Secretary in connection with such investi-
gations. The Secretary shall conduct inves-
tigations in a manner which protects the confi-
dentiality of any complainant or other party
who provides information to the Secretary in

The Secretary may enter into agree-
ments with Federal and State agencies
(1) to use their facilities and services, (2) to
delegate, subject to subsection (b), to Feder-
al agencies, (3) to allocate or transfer funds
to, or otherwise pay or reimburse, any person
for expenditures incurred in de-
performing such functions, and the
resources to be devoted to the performance of
such functions; and
(2) provides assurances satisfactory to
the Secretary that the State agency will comply
with its description under paragraph (1) and
that the State agency's performance of
functions so delegated will be at least com-
parable to the performance of such func-
tions by the Department of Labor.

PART C-MISCELLANEOUS PROVISIONS
STATE LAWS AND REGULATIONS

Sec. 521. This Act is intended to supple-
tment State law, and compliance with this Act
shall not excuse any person from com-
pliance with appropriate State law and regu-
lation.

TRANSITION PROVISION

Sec. 522. The Secretary may deny a certif-
icate of registration to any farm labor con-
tractor, as defined in this Act, who has a
history of outstanding claims against him under
the Farm Labor Contractor Registration Act
of 1963 (7 U.S.C. 2041 et seq.), or is sub-
ject to a final order of the Secretary under
that Act assessing a civil money penalty
which has not been paid. Any findings
under the Farm Labor Contractor Regis-
tration Act of 1963 may also be applicable
to determinations of willful and knowing viola-
tions under this Act.
maintenance of necessary records, and provide
information concerning pay and withholding.

Third, the bill distinguishes between mi-
grants, seasonal workers, and day-haul work-
ers, including those employed by canneries,
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The Department of Labor regulations will take into account the distances traveled, the type of vehicle used, the number of passengers, the types of roads to be traveled and the extent to which any standards would impose an undue burden on the person providing the transportation, while continuing to assure the health and safety of migrant and seasonal agricultural workers.

The transportation standards will not be applied to farm equipment or machinery when used for its intended purpose, but use of such equipment or machinery purely for the transportation of workers from place-to-place will be regulated. The vehicle insurance requirement of the current FLCRA will be retained, except that no additional insurance will be required where transportation is fully covered by a State workers' compensation law and the employer provides such coverage.

The bill changes the using of services of a farm labor contractor without first taking reasonable steps to determine that a contract be properly registered. Unlike the current law, the bill would not penalize farmers who do take those reasonable steps.

The enforcement provisions of the bill require the Secretary to provide information to the public and the investigative authority of the Department of Labor. A new provision makes it a separate offense to fail to register with the Department in the performance of their duties under the bill. This section has been added after the increasing number of incidents involving threats of bodily harm to our compliance officers.

The bill would change the current Act's provisions regarding the rights of agricultural employers. It is our basic intent to encourage resolution of differences without resorting to litigation, which at times has access to the federal courts by injured private parties. Currently, however, FLCRA exposes employers to substantial monetary awards for highly technical violations, especially those related to registration status, when there may be very little actual damages. Where an intentional violation of the Act has been committed, the bill would allow courts to award up to $500 per plaintiff, per violation, as statutory damages in a private lawsuit with an upper limit of $500,000 for a class action. However, there is no limit on the amount of actual damages that can be awarded by a court.

The bill also retains the current FLCRA provision prohibiting discrimination with respect to individuals who have filed a complaint or have testified in any proceeding under the Act. The Secretary of Labor will continue to have authority to investigate complaints alleging such discrimination and make findings as such. The bill expands upon the provision of the FLCRA allowing for agreements with Federal, State, and local public bodies to conduct those functions delegated, especially to the States, are performed with adequate resources and in a manner comparable to Federal enforcement efforts.

There will, of course, be the matter of the transition from the application of the current statute to the new one. With regard to enforcement, the bill provides that for the purposes of determining appropriate action under the new law, the record of violations under the current FLCRA will be considered if that individual or entity violates this Act. Certificates of registration may be denied under this bill if the applicants under FLCRA have either failed to pay their court judgments obtained under FLCRA or failed to comply with a final order issued by the Secretary under FLCRA. Registration under the new Act will also require a phase-in. It is our intention to use a 12-month period for each certificate of registration based on the applicant's date of birth rather than the current calendar year method which creates an unnecessary administrative burden upon the Department at the close of each calendar year.

Mr. Chairman, in concluding my statement, I want to reemphasize two major points. First, the revised farm labor statute that we are proposing today greatly enhances the Labor Department's ability to protect migrant and seasonal agricultural workers. Second, the bill eliminates the unnecessary, burdensome and costly regulation of fixed-situs agricultural employers which has been so troublesome under current law. Enactment of the bill will, therefore, enable the Department to concentrate its enforcement efforts on those areas where the most egregious violations of workers' rights occur.

I also want to again thank all those persons and organizations who participated in the cooperative effort over the past 18 months to develop this legislation. Without their thoughtful assistance—not to mention their vigorous advocacy—we would not be here today.

By Mr. Gorton (for himself and Mr. Jackson):

S. 2931. A bill to provide for the disposition of funds appropriate to pay a judgment in favor of the Cowlitz Tribe of Indians in Indian Claims Commission docket No. 218 and for other purposes; to the Select Committee on Indian Affairs.

Disposition of Cowlitz Indian Judgment Funds

By Mr. Gorton, for himself and Mr. Jackson:

S. 2931. A bill to provide for the disposition of funds appropriate to pay a judgment in favor of the Cowlitz Tribe of Indians in Indian Claims Commission docket No. 218.

The bill provides for the distribution of money which was appropriated to the Cowlitz Tribe and its members more than 9 years ago. The money is in compensation for the taking by the Federal Government more than 100 years ago of the tribe's aboriginal fishing grounds which today constitute several counties in the State of Washington.

At the request of Mr. Chafeé, the name of the Senator from Wyoming (Mr. Simpson) was added as a cosponsor of S. 2906, a bill to amend the Endangered Species Act of 1973, to authorize funds for fiscal year 1983, and for other purposes.

S. 2907

At the request of Mr. Garn, the name of the Senator from Texas (Mr. Tower) was added as a cosponsor of S. 2937, a bill to unify the export administration functions of the U.S. Government within the Office of Strategic Trade, to improve the efficiency and strategic effectiveness of export regulation while minimizing interference with the ability of engage in commerce, and for other purposes.

S. 2902

At the request of Mr. Thurmond, the name of the Senator from Florida (Mrs. Hawkins) was added as a cosponsor of S. 2902, a bill to define the affirmative defense of infancy to provide a procedure for the commitment of offenders suffering from a mental disease or defect, and for other purposes.

SENATE JOINT RESOLUTION 220

At the request of Mr. Quayle, his name was added as a cosponsor 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 CONCURRENT RESOLUTION 122—CONCURRENT RESOLUTION RELATING TO AGRICULTURAL EXPORTS

Mr. Percy (for himself, Mr. BURDICK, Mr. HELMS, Mr. LUGAR, Mr. Nunn, Mr. Quayle, Mr. Grassley, Mr. Pressler, Mr. Dixon, Mr. Sasser, Mr. Huddleston, Mr. Boschwitiz and Mr. Alderson) submitted the following concurrent resolution: which was referred to the Committee on Finance:

S. Con. Res. 122

Whereas without ignoring other concerns in the trade field, the American economy urgently needs the stimulus of increased agricultural markets to create jobs, increase personal income, position our balance of payments position, and broaden and expand the tax base for needed Government revenue and

Whereas the efficient productivity of the agricultural sector provides one of the greatest opportunities for such expanded exports; and

Whereas it is in the best interest of American agriculture and economy that export expansion be made possible as unprocessed agricultural products; and

Whereas export of value-added processed agricultural products has not shared proportionately in the growth of world demand for
such products as has the export of unprocessed products, and

Whereas economic studies by the United States Department of Agriculture show export of agricultural products creates a great multiplier of economic benefits in terms of jobs and income and increased Government revenue;

Whereas expanding exports of such value-added processed agricultural products increases Government revenues from the broader-based resulting stimulated economy and increase in employment and personal income; now, therefore, be it

Resolved, by the House of Representatives concurring, That it is the sense of this Congress that the President should take every possible action to encourage increasing the processed product share of United States agricultural exports, including but not limited to:

(1) Urging our negotiators to attempt to include a quantity of value-added processed agricultural products in any further extension or renewal of trade agreements with the Soviet Union, or other non-market economy countries;

(2) Seeking the elimination of unfair trade practices that have depressed through vigorously pursuing international trade negotiations to assure fair competition for United States agricultural processors in world markets;

(3) Utilizing the authority of Public Law 480 to encourage inclusion of a greater share of raw products under both title I concessional sales and title II food aid programs; and

(4) Encouraging authorities of the Commodity Credit Corporation of the United States Department of Agriculture and the Export-Import Bank to ensure that credit for agricultural and agricultural product exports are on terms equal to those offered by other countries to assure fair competition.

Mr. PERCY. Mr. President, I send to the desk a concurrent resolution on behalf of myself and Senators BURDICK, HELMS, LOGAR, NUNN, QUAYLE, GRABLEY, PRESSLER, DIXON, SASSER, and HUDLESTON, and ask for its appropriate referral.

The PRESIDING OFFICER. Is there objection to the unanimous consent to refer the concurrent resolution?

Mr. HELMS. Mr. President, I wonder if the Senator from Illinois will yield to me.

Mr. PERCY. I yield.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. HELMS. Mr. President, I join with the Senator from Illinois in urging the distinguished majority leader to act promptly on this resolution. At the same time, I think we would all agree that it is appropriate for us to take note of the remarkable efforts by the distinguished Secretary of Agriculture, one of Senator Percy's fellow Illinoisans, who has dedicated a tremendous amount of his time to this problem. He has traveled the world over urging purchases of American products.

Mr. President, the distinguished Senator from Illinois is exactly right. For a long time, we have engaged in a bipartisan folly of not pressing the interests of the U.S. farmers and workers in terms of exports. We have, too often, as the saying in North Carolina goes, taken a "dumb pill" each morning on this question. We have let other countries ride roughshod over us. It is time for the United States to exercise some backbone. Jack Block is doing that and Bill Brock is doing that. The President of the United States, as recently as Tuesday of this week, gave absolute assurance to a group of us who went there on an identical problem relating to textiles. I commend the Senator from Illinois on his fine statement, and I join with him wholeheartedly in the legislation that he is offering. I thank him very much for allowing me to be a cosponsor.

Mr. PERCY. Mr. President, I am delighted that the chairman of the Committee on Agriculture, Senator Helms, is in the Chamber number of American businessmen in the community from which I come, labor leaders and policymakers, are concerned about increasing U.S. exports of processed agricultural products because of the sizable potential economic benefit which could be realized if a greater proportion of our agricultural exports were processed or finished at home. My colleagues, Senator Ervin, and I are submitting a Senate concurrent resolution which expresses the sense of Congress that the President should take every possible action to encourage the increase of U.S. exports of processed or value-added agricultural products.

The American food system is a mainstay of the U.S. economy, accounting for 20 percent of the gross national product (GNP), 23 percent of all U.S. employment, and 19 percent of all U.S. export earnings. America's agriculture is the largest contributing factor to the U.S. balance of payments. Its economic benefits extend far beyond the farm into farm supply industries, food processing distribution, and other activities. These processing and service activities, accompanying the flow of agriculture commodities from farm to consumer, directly raise U.S. employment and income.

Agricultural exports are vital to the economic health of this Nation. It is only appropriate that we capitalize on our abundance to insure that the maximum economic benefit is being generated to the U.S. economy.

As one of our distinguished Senators said to us yesterday, and I believe Senator Percy's colleague in the House, does not seek to decrease U.S. exports of raw materials; rather, the goal to increase value-added exports is an additional effort to enhance and expand U.S. export markets to insure that the processed food products share in the future growth of food exports.

Last year I was pleased to help launch the Export Processing Industry Coalition (EPIC). EPIC is a unique coalition uniting labor and industry to strengthen the American agricultural processing and export economies.

The cross-section of EPIC has received is an indication of the urgency of the resolution we are submitting today.

The organizations that are supporting this resolution include:
National Association of State Departments of Agriculture;
National Governors' Association;
Poultry and Egg Instructors of America;
American Farm Bureau Federation;
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Wine Institute; American Association of Port Authorities; Potato Chip/Snack Food Association; National Tobacco Association; Protein Grain Products International; Western Great Lakes Maritime Association;
North Dakota Agricultural Products Utilization Commission; National Broiler Council; Frozen Processing Machinery and Supplies Association; Rice Millers Federation; National Turkey Federation; National Farmers Organization; National Conference of State Legislatures; Independent Bankers Association; National Rural Electric Cooperative Association; and National Sunflower Association.

At a time when our markets for raw agricultural products have been reduced, we must think of innovative ways of marketing our agricultural abundance overseas.

Why not quality products that can benefit consumers in both the developed and lesser developed countries.

In the past, we have placed a low priority on the establishing of our presence in these markets and on the export of value-added food. By value-added, I simply mean improving the quality of the product as it moves from farm to market. In Illinois, for instance, value-added soybean meal has added billions of dollars to the State economy. As an example, the sugar and confectionary industry in Illinois employs 160,900 employees and generates $674 million in income, according to the latest census data. Yet candy manufacturers have to overcome a variety of tariffs and nontariff barriers, when they try to expand their markets overseas.

Let us just trade, for instance, the second industrial giant in the world, the economy of Japan, the second most powerful economic nation on Earth. Yet here they are, after we have given them a wave of protectionism and nontariff barriers because membership is only open to domestic firms in those countries. Therefore, U.S. firms are effectively excluded from the marketplace.

The list of barriers is quite long. To keep the trade lanes open, it is critical that nations that export processed food items to the United States understand that they should not try to force membership in the United States. The supermarkets of America are bulging with wine, cheeses, crackers, distilled water, and other specialty items from overseas, yet it has been pointed out that it is very difficult to locate a U.S.-origin processed product on a supermarket shelf in those countries that sell to us.

Almost two years ago, we witnessed the formation of EPIC at a Senate hearing in Urbana, Ill. Urbana is right in the heart of east central Illinois, where raw corn and soybeans are processed into high value-added products, such as high fructose corn sweeteners, ethanol, soybean meal and oil, starch, corn gluten feed, and distillers dried grains.

We must begin a well-organized program, utilizing all sectors of the economy, to export these and other products to potential buyers. There are a number of ways that the public and private sectors can work together to accomplish this. For example, I commend the actions taken by the National Soybean Processors Association in educating Soviet agricultural officials on the benefits of soybean meal. Instead of waiting for the Soviets to show interest in this value-added product, NSPA officials have traveled directly to the Soviet Union for personal briefings. This is the type of direct industry marketing effort that is required to get the message out about the benefits of value-added products. We would like to see it supplemented by the Government making the sale of soybean meal and other protein feed ingredients a part of any new grain agreement with the U.S.S.R.

I ask unanimous consent to print a statement on value-added exports that was made by Mr. Larry Werries, director of the Illinois Department of Agriculture, before the Subcommittee on Energy, Nuclear Proliferation and Government Processes, U.S. Senate, October 14, 1981.

The vital importance of American agricultural products in world trade is well-known, especially in regard to raw commodities such as wheat, feed grains, and soybeans. American agricultural exports have grown to more than $4 billion, generating new demand for farm products and income for farmers, and greatly offsetting America's negative balance of trade. In 1981, anticipated agricultural exports of $4 billion are expected to create $94 billion of activity throughout the United States economy, and jobs will be provided for 1.2 million full-time equivalent workers.

This hearing focuses on the increasingly protectionist moves of the European Economic Community (EEC) against processed agricultural products from the United States. Since the particular products in question are soybean oil and corn gluten meal, the immediate impacts of protectionist moves against these products will be felt in the Illinois economy. The Illinois Department of Agriculture is concerned about export regulations and supports open access to markets such as the EEC.

Since the particular questions in regard to soybean oil and corn gluten meal are being addressed in other testimony, I would like to discuss the importance of value-added exports in general. In spite of impressive export figures, the question can always be asked, "Are we fully exploiting our competitive advantage in production of food and agricultural products?"

It has been the posture of the Illinois Department of Agriculture for several years to support the concept that the United States has the fuller advantage of world demand for our food and agricultural products. The Illinois Department of Agriculture developed and maintained a program of services to aid farmers, agribusinesses and food processors in exporting their products. This program continues to serve large and small exporters of agricultural products from Illinois.

Illinois is a populous and industrialized state, and is also the leading agricultural export state, ranking first in exports of feed grains, soybeans, protein meals, and soybean oil. Economic activity resulting from agricultural exports greatly benefit this state's economic health.
Almost all of the agricultural products exported from the United States depend upon a series of processing steps before reaching the ultimate consumers. Economic activity resulting from these processes is substantial. The theoretical gains to be had from further processing of our agricultural products will be more farm income and industry revenue generated, and economies of scale in agricultural processing. Much of the marketing effort by state departments of agriculture, along with federal and regional groups, has been to support value added exports. While raw agricultural commodities are exported by relatively few, highly competent and efficient companies, the processing of agricultural commodities into a tremendous array of products is carried on by many concerns. The Illinois Department of Agriculture facilitates exports from any of these sources.

Few attempts have been made to quantify the domestic economic and employment benefits that are implied by adding more value to our agricultural exports. Social, political, and economic trade realities greatly affect the attainment of our potentials.

By looking at the Illinois census data from 1977, Schluter and Clayton point out that the importance of value added by manufacture of agricultural products to the state's economy. The following table summarizes some of this activity for domestic and export consumption:

<table>
<thead>
<tr>
<th>Value added by manufacture</th>
<th>Total number of establishments</th>
<th>Total value added</th>
<th>Value added per manufacturer</th>
</tr>
</thead>
<tbody>
<tr>
<td>Feed and kindred products</td>
<td>1,279</td>
<td>1,833</td>
<td>4,726</td>
</tr>
<tr>
<td>Dairy products</td>
<td>513</td>
<td>643</td>
<td>383</td>
</tr>
<tr>
<td>Processed foods and vegetable</td>
<td>130</td>
<td>12,164</td>
<td>456</td>
</tr>
<tr>
<td>Grain mill products</td>
<td>198</td>
<td>927</td>
<td>4,768</td>
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<tr>
<td>Sugar and confectionery</td>
<td>95</td>
<td>365</td>
<td>3,820</td>
</tr>
<tr>
<td>Fats and oils</td>
<td>150</td>
<td>715</td>
<td>4,033</td>
</tr>
<tr>
<td>Miscellaneous</td>
<td>209</td>
<td>174</td>
<td>82</td>
</tr>
</tbody>
</table>

*These data give an indication of the absolute size of the food products manufacturing activity in Illinois without showing any trends or analysis of its effects on exports.*

Schluter and Clayton point out that a net agricultural exports model that isolated the differential impacts of processed products from their ability to produce more income generated by net income generated have indirect impacts on the economy, seen as a sequence of economic activities in the demand chain.

Table 2 shows a summary of Schluter's and Clayton's work with examples of the effects of processing on three economic indicators.

Net increases in gross output, employment, and income reflects a range of impacts that were able to produce more income generated by net income generated have indirect impacts on the economy, seen as a sequence of economic activities in the demand chain.

External factors are not alone in holding down growth of processed agricultural product exports. Domestic considerations also influence American ability to increase the proportion of processed products in the export market. Productivity and quality, greater marketing efforts and expenditures per unit of sales than do raw materials, so that their export value can be pursued. These must be greater profit potential and long-term market consistency are necessary to our exporters. Continued expansion of processed agricultural products requires more investments in transportation and infrastructure to handle more specialized and diverse products. Small, medium, and large sized processors may need access to technical services, increased food processing and export marketing. Increased food processing means a greater need for qualified international marketing people to commit the necessary resources. United States firms must see open market opportunities that will not be constantly threatened by new restrictions, endeavors to expand international trade.

The agricultural community is concerned about declining farm prices, in the short term. A stronger dollar is reflected in higher prices overseas for our agricultural products. Perhaps it is time to reevaluate some of our strategies and policies for international agricultural trade. In the present climate, it is unlikely that any massive new supports or subsidies will be instituted for American agricultural exports.

The United States has always been at a psychological disadvantage in international trade to our competitors. We have a huge domestic market and have not been forced to acquire international trade skills or to develop a coherent, long-term agricultural trade policy. Times have changed. In the past couple of decades, the United States has taken an ever greater role in world trade and has developed a number of protectionist policies that keep our farmers, businesses, and the development of our agricultural sector.

As a first step toward realizing our potential, farmers, businesses, labor, and communities must work together to lobby for national agricultural export policies. A favorable export credit policy, providing competitive credit terms, that a precedent for anyone who will have become more vulnerable to the fluctuation of world markets and changes in trade relations.

A second step toward realizing our potential is to address the psychological disadvantage as pointed out to the principles of free trade. American agricultural policies must discourage protectionist actions overseas. If our competitors act with similar concerns, that their actions would be followed by an American reaction, perhaps the doors would open more widely to the vast array of American food and agricultural products.

Finally, marketing efforts, especially in the case of processed products, are of paramount importance. Ore not will fall in our laps without first perceiving the needs of the world's diverse customers and marketing our products to them in a way that will provide the buyers with clear benefits.

Systematic and readily available market research is necessary for up-to-date information on market potential, buyers, and trade barriers.

Export promotion is presently carried on at levels that are inadequate and usually confined to groups, commodity associations, chambers of commerce, federal, state, and municipal government programs. Each of these efforts is to a certain extent dependent on the ability of Washington to define its functions, avoid duplication of services, and develop reliable, knowledgeable. The job of the oversea buyers relationship.
Mr. PERCY. I thank my colleague very much. It would have sounded parochial if I had, once again, lauded the distinguished Secretary of Agriculture, Jack Block, who was formerly Secretary of Agriculture of Illinois under Governor Thompson. I was with him last Sunday, and with the Governor. I agree that he has been absolutely outstanding in protecting the interests of agriculture and also looking after the value that we can contribute to the economy of the world.

When I say that, I mean that, in Japan, they pay 70 percent more for food—even Japanese, on the average, pays 70 percent more than the people of New York, primarily because of the protective policies imposed upon them by 10 percent. That means the other 90 percent are paying the bill and reducing their standard of living and increasing their cost of living. Jack Block is just trying to point out the world that the great abundance of American agriculture can bring down the cost and improve the quality of life for all over the world if we just have access to markets and if they would not try to protect those markets in such a way that they protect inefficiency.

We should reward efficiency all over the world. Certainly, we are a model—agriculture is the clearest demonstration we have that the Communist system has failed in the most basic thing mankind has tried to do for itself. If we just feed itself, Communism has failed miserably in that regard. We have such an abundance that we produce for ourselves and then export more than all other countries combined and still have abundance left over. It is to get that left over out to people so that a billion people do not go to bed hungry at night, that they have access to this food, that we are trying to work together.

I appreciate very much the way in which the distinguished chairman of the Committee on Agriculture has worked so closely with the Secretary of Agriculture in working for the American farmer. Not just the farmers of North Carolina—they are really protected by my distinguished colleague. All the farmers in this country owe him a debt of gratitude for what he has done.

Mr. HELMS. I thank the Senator.

SENATE RESOLUTION 468—RESOLUTION TO PAY TRIBUTE TO EARL WEAVER

Mr. MATHIAS (for himself and Mr. SARBANES) submitted the following resolution; which was considered and agreed to:

S. RES. 468

Whereas Earl Weaver, manager of the Baltimore Orioles for the past 34 years, has led the Birds to six eastern division championships, four American League pennants and one world championship, and

Whereas Earl's intensity for inspiring Oriole fans and the rise of umpire and opponent, and

Whereas Earl has achieved distinction in alternate careers as author, Shakespeare scholar and nurturer of prize Maryland tomatoes, which in yonder bullpen groweth, and

Whereas Earl has managed the same team for a long period by any current manager: Now, therefore, be it

Resolved, That the United States Senate wishes to honor and pay tribute to Earl Weaver on the occasion of "Thanks Earl Day" Sunday, September 19, 1982, at Memorial Stadium, Baltimore, Maryland.

Sec. 2. The Secretary of the Senate shall transmit a copy of this resolution to Earl Weaver.
BENTSEN, Mr. BOREN, Mr. BOSCHWITZ, Mr. CANNON, Mr. CHILES, Mr. COCHRAN, Mr. COHEN, Mr. D’AMATO, Mr. DANFORTH, Mr. DECONCINI, Mr. DENTON, Mr. DELORE, Mr. DORENBOS, Mr. EAST, Mr. GARN, Mr. GOLDWATER, Mr. GRASSLEY, Mrs. HAWKINS, Mr. HAYAKAWA, Mr. HEFLIN, Mr. HELMS, Mr. HOLLINGS, Mr. HUMPHREY, Mr. JEPSEN, Mr. JOHNSTON, Mr. KASTEN, Mr. LAXALT, Mr. LONG, Mr. LUGAR, Mr. McCUIRE, Mr. MATTINGLY, Mr. MELCHER, Mr. MURkowski, Mr. NICKLES, Mr. NUNN, Mr. QUAYLE, Mr. PRESSLER, Mr. PYOR, Mr. RANDOLPH, Mr. RATH, Mr. ROTH, Mr. SASSER, Mr. STEVENS, Mr. THURMOND, Mr. WALLOP, Mr. WARNER, Mr. ZORINSKY, and Mr. RUDMAN) submitted an amendment intended to be proposed by them to the reported amendment to the joint resolution (H.J. Res. 520), supra.

AMENDMENT NO. 3285

(Ordered to be printed and to lie on the table.)

Mr. SYMMS (for himself, Mr. ABNOR, Mr. ANDREWS, Mr. ARMSTRONG, Mr. BENTSEN, Mr. BOREN, Mr. BOSCHWITZ, Mr. CANNON, Mr. CHILES, Mr. COCHRAN, Mr. COHEN, Mr. D’AMATO, Mr. DANFORTH, Mr. DECONCINI, Mr. DENTON, Mr. DORENBOSS, Mr. EAST, Mr. GARN, Mr. GOLDWATER, Mr. GRASSLEY, Mrs. HAWKINS, Mr. HAYAKAWA, Mr. HEFLIN, Mr. HELMS, Mr. HOLLINGS, Mr. HUMPHREY, Mr. JEPSEN, Mr. JOHNSTON, Mr. KASTEN, Mr. LAXALT, Mr. LONG, Mr. LUGAR, Mr. McCUIRE, Mr. MATTINGLY, Mr. MELCHER, Mr. MURkowski, Mr. NICKLES, Mr. NUNN, Mr. QUAYLE, Mr. PRESSLER, Mr. PYOR, Mr. RANDOLPH, Mr. RATH, Mr. ROTH, Mr. SASSER, Mr. STEVENS, Mr. THURMOND, Mr. WALLOP, Mr. WARNER, Mr. ZORINSKY, and Mr. RUDMAN) submitted an amendment intended to be proposed by them to the amendment of Mr. HELMS concerning school prayer to the reported amendment to the joint resolution (H.J. Res. 520), supra.

AMENDMENT NO. 3286

(Ordered to be printed and to lie on the table.)

Mr. SYMMS (for himself, Mr. ABNOR, Mr. ANDREWS, Mr. ARMSTRONG, Mr. BENTSEN, Mr. BOREN, Mr. BOSCHWITZ, Mr. CANNON, Mr. CHILES, Mr. COCHRAN, Mr. COHEN, Mr. D’AMATO, Mr. DANFORTH, Mr. DECONCINI, Mr. DENTON, Mr. DOLORE, Mr. DOMENICI, Mr. EAST, Mr. GARN, Mr. GOLDWATER, Mr. GRASSLEY, Mrs. HAWKINS, Mr. HAYAKAWA, Mr. HEFLIN, Mr. HELMS, Mr. HOLLINGS, Mr. HUMPHREY, Mr. JEPSEN, Mr. JOHNSTON, Mr. KASTEN, Mr. LAXALT, Mr. LONG, Mr. LUGAR, Mr. McCUIRE, Mr. MATTINGLY, Mr. MELCHER, Mr. MURkowski, Mr. NICKLES, Mr. NUNN, Mr. QUAYLE, Mr. PRESSLER, Mr. PYOR, Mr. RANDOLPH, Mr. RATH, Mr. ROTH, Mr. SASSER, Mr. STEVENS, Mr. THURMOND, Mr. WALLOP, Mr. WARNER, Mr. ZORINSKY, and Mr. RUDMAN) submitted an amendment intended to be proposed by them to the joint resolution (H.J. Res. 520), supra.

AMENDMENTS NOS. 3285 THROUGH 3287

(Ordered to be printed and to lie on the table.)

Mr. WIECKER submitted 135 amendments intended to be proposed by him to the joint resolution (H.J. Res. 520), supra.

NOTICES OF HEARINGS

COMMITTEE ON RULES AND ADMINISTRATION

Mr. MATHIAS, Mr. President. I wish to announce that the Committee on Rules and Administration will hold a meeting to consider pending legislative and administrative business on Wednesday, September 22, 1982, at 9:30 a.m., in room 301, Russell. The agenda for the meeting will include death gratuities, printing resolutions, and requests for equipment.

For further information concerning this meeting, please call Rules Committee staff at extension 40278.

COMMITTEE ON THE BUDGET

Mr. DOMENICI, Mr. President, the Senate Committee on the Budget will hold a hearing on budget act reform on Tuesday, September 21, beginning at 10 a.m. in room 6202, Dirksen Senate Office Building. Dr. Alice Rivlin, Director, Congressional Budget Office, and Mr. Charles A. Bowsher, Comptroller General of the United States will testify.

HERITAGE FOUNDATION PAPER SUPPORTS MILITARY REFORM VIEW

Mr. HART. Mr. President, I would like to bring to the attention of my colleagues an excellent paper recently published by the Heritage Foundation, “Close Air Support and the Soviet Threat,” by Dr. Jeffrey G. Barlow of the Heritage Foundation staff.

Dr. Barlow’s paper builds on a viewpoint held by many military reformers; namely, that airpower, to be effective in combat, must be closely linked to the action of ground forces. This means that the missions of close air support and battlefield interdiction take on great importance. Unfortunately, the U.S. Air Force has tended to downgrade these missions, instead focusing on deep interdiction—what was called strategic bombing in World War II—against enemy centers of infrastructure, industry, and so on.

After Vietnam, the Air Force did become interested in close air support, and procured an aircraft, the A-10, specially designed for the mission. Now, however, there are disturbing signs the Air Force is reverting to its traditional emphasis on deep interdiction, and is planning to neglect close air support. The clearest evidence was the acquiescence of the Air Force in the Congressional cancellation of the A-10 program in the fiscal year 1983 authorization bill—a cancellation done with the Air Force’s approval, even though the President’s budget request included 20 additional A-10’s.

Even more significant is the failure to move forward with a replacement for the A-10. As Dr. Barlow’s study notes, two major improvements could be made over the A-10 in a new aircraft: the size, and thus the vulnerability and cost, could be reduced, and the aircraft could be made more agile. In its VISTA 1986 study, the National Guard has called for such a craft. But the Air Force apparently has no plans to develop one.

Mr. President, the Heritage Foundation study does a good job of bringing these issues to the fore. They are important issues for the Senate, because they relate directly to the question of whether our investment in tactical aviation will prove effective in combat. I strongly urge my colleagues to read the study, and to join with me in urging the Air Force to begin development of the new close support aircraft recommended by the National Guard.

Mr. President, I ask that Dr. Barlow’s paper, “Close Air Support and the Soviet Threat,” be printed in the Record.

The paper follows:
Close Air Support and the Soviet Threat

Introduction

Close air support (CAS) is defined by the Joint Chiefs of Staff as "air attacks against hostile forces in close proximity to friendly forces and which require detailed integration of each air mission with the fire and movement of those forces." Thus, for purposes of defining close air support, it must be in direct support of engaged troops and be coordinated with the ground commander. Although the number of different names over the decades, the CAS mission has officially existed for some sixty years.1 For much of its existence, however, it had been neglected by airpower proponents, in favor of air missions that have promised to provide a more decisive or apportionment of military forces. It is a mission in direct support of one service (the Army, but it is a mission which is the responsibility of another service (the Air Force) with vastly different priorities and strategic conceptions. In a very real sense, then, it is a mission destined by circumstances to be neglected except in times of most immediate need.

Following its experiences with tactical airpower in the Second World War, Asia and its subsequent analysis of the emergency conventional force disparities in Central Europe, the Air Force, to its credit broke with tradition and proposed a new, specially designed asset designed specifically for close air support. This aircraft, the A-10 Thunderbolt II (immediately nicknamed the "Warthog"), has been operational in Europe since 1979. Moreover, the Air Force has perfected a series of low-level flying tactics that will dominate this role. Although it started as a mission during a Central Front war, even in the face of the Soviet Army's formidable air defenses.

Now, however, there are disturbing signs that budget constraints are prompting the Air Force to weaken its commitment to CAS and withdraw again along lines of little superior air superiority and interdiction as the roles for tactical airpower.2 This could be a serious mistake, since effective CAS could well make the difference in allowing NATO to maintain a viable defense on the Central Front in the first, crucial days of a Warsaw Pact invasion. The Warsaw Pact invasion. The Air Force now has an A-10 force that will peak in strength at just over 700 aircraft by the end of the year. Moreover, this specially designed CAS force will begin declining in fighting effectiveness just when it is needed more than ever.

Close Air Support: A Historical Overview

During America's participation in the First World War, air warfare was completely controlled by ground commanders, and the support of ground forces was seen as the predominant offensive mission for military aviation, once air superiority had been achieved. The close air support mission began in October 1918, during the latter stages of the Meuse-Argonne Offensive, when Brigadier General William "Billy" Mitchell, commander of the Air Service, Army Group, AEF, recognized the important role that Air Service units played. The German forces were initially on balance during the offensive (at one point disrupting German reserves poised for a counterattack) by bombing and strafing enemy troop concentrations in the battle zone.2 Accordingly, just before the hostilities ended, the Air Service, AEF, began planning for a number of designated ground attack squadrons.

Between the wars, the fate of the close air support mission was very much intertwined with the attempts by the Air Service to carve out an independent role for itself. Under General William Mitchell, the Air Service advocated the theory of General Giulio Douhet (Commander of the Air), Lord Trenchard and General Hans-Georg Pofle's - strategic bombardment theory. The early strategic bombardment of industrial centers would prove to be the decisive factor in future wars—gained increasing credence from American airpower enthusiasts. The doctrine of strategic bombardment not only offered a belief in the decisive role of airpower, but in the mid-1920's led the Air Corps as a whole a significant argument to use in favor of its eventual autonomy from the Army. On the other hand, the ground commanders were independent command and field commanders, and that the Air Corps' existing subordination to the ground army.3 The result was a diminution of the Air Force's ability to provide a more decisive or apportionment of military forces.

The mission of these attack squadrons, as defined at the time, was: "To assist the ground troops in an attack against enemy positions; to attack hostile front line troops, supports, reserves, troop concentrations, road traffic of whatever nature, tanks, air- droppers, and hostile batteries."4

During the Second World War, the close air support mission continued to suffer relative to other airpower missions in Europe. Wartime Army Air Forces trends in doctrinal support of "independence in control and operations" reached their zenith at the end of World War II, with the publication of Field Manual 100-20—Command and Employment of Air Power Which set the doctrine that "air power and air power are coequal and interdependent forces; neither is an auxiliary of the other." In the late 1950s, the Air Force began using the term "close air support" to characterize the weapons of the tactical air arm.

"Massed air action on the immediate front will pave the way for an advance. However, in the zone of contact, missions against hostile units are most difficult to control, are most expensive, and are, in general, least effective... Only at critical times are control and missions profitable."5

In operational practice, Army Air Force units in the Mediterranean, European, and Pacific Theater of Operations provided the support missions for Allied troops and some spectacular results—witness the XIX Tactical Air Command's success in protecting the exposed right flank of Patton's Third Army along the Loire River in 1944. In looking back, however, it becomes apparent that the Air Force's primary interest in strategic bombardment and secondarily in interdiction missions.

The Air Force's principal interest in strategic airpower continued to dominate the postwar Air Force, garnering much of the attention and most of the available funding. Though the Korean and Vietnam Wars demonstrated the need for adequate tactical air support, particularly CAS, in other situations were prepared at the outset with the proper mix of aircraft for tactical missions involving close air support. In the Vietnam War, the Air Force was forced, at the start of its combat deployment in South Vietnam, to use World War II-design Navy A-1E and A-1H Skyraiders in order to provide reliable close air support to the South Vietnamese troops.6

The Air Force's general lack of interest in the CAS mission was to change by the time that the war in Vietnam was winding down for the United States. One reason was perceived chemical needs on the NATO Central Front.

The Threat to NATO's Central Front

The forward edge of NATO's Central Front stretches south from the Elbe-Elbe Canal in the West German State of Lower Saxony to Germany's southern border with Austria—a line about 850 miles long. Some twenty-six NATO divisions are deployed in this area. Adding in the in-country Europe forces means that the NATO Front (including those in Great Britain) brings the total to thirty-two divisions, equipped tanks, artillery, and mortars. There are also hundreds of aircraft, fixed-wing planes, including fighter/bomber and close air support aircraft types.

The bulk of NATO's forces on the Central Front are deployed close to the intra-German border because of political necessity. Such "forward defense" serves to reassure Bonn that, if war breaks out, NATO forces will endeavor to project against the loss of any West German territory by forming a coherent defense line as far as possible, holding back the Warsaw Pact forces while awaiting the release of tactical nuclear weapons, and confining collateral damage to a minimum. NATO's supply lines, of necessity, run near and parallel to the Intra-German border, making it likely that initial Warsaw Pact penetrations of NATO's defense will disrupt or even sever the supply lines.

Warsaw Pact Strength

Of the four groups of Soviet forces deployed in Eastern Europe, two are oriented directly toward operations against the NATO Central Front.7 These are the Group of Soviet Forces, Germany (GSFG), headquartered in Zossen-Wunsdorf, near Berlin, and the Soviet Central Group of Forces (CGF), headquartered in Millow, Czechoslovakia, northeast of Prague. Together, they have twenty-six Soviet Categorv I divisions, twelve of them tank divisions.8 If the Soviet armies deployed within the USSR which would be used in direct operations against the western front, and the available Eastern European forces are included, NATO forces on the Central Front are formidable Warsaw Pact military force of about ninety divisions, about half of which are capable of an unreinf orced, standing- start attack. The tanks alone in this unreinforced front forces amount to about 3,000,10 while an additional 7,000 tanks are readily available in Soviet Central Front-committed formations, making the numbers of the tanks deployed in Eastern Europe and over one-half deployed in the USSR's Western Military Districts are modern design T-62s

Notes at end of article.
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and T-64/T-72s, while the rest are obsolescent T-54s and T-55s.

The offensive

The Soviet Army practices three primary forms of offensive action: the meeting engagement, the breakthrough attack (now primarily the breakthrough attack from the march), and the World War II-style steamroller breakthrough attack from contact), and the meeting engagement between attacking and defending forces are on the move, is considered by the Soviets to be the most important form of offensive action. As David Galula states, "The advance guard of a Soviet unit will attack upon encountering the enemy, seize the initiative, denies the enemy maneuvering forces, and pin down the enemy main body while simultaneously covering the deployment of other forces. The aim is to envelop or outflank the enemy. The Soviet will fully exploit the cross-country mobility of their vehicles and their will not settle for close to reach the enemy in a timely manner, making the best use of its own advantage and vulnerability of the enemy."

At the operational level, it is expected that Soviet doctrine would launch a series of thrusts across the length of the Central Front. NATO military responses to these thrusts, however, how each effort would be followed up. These attacks successfully contained by NATO troops would be fighting action on the battlefield, keeping just enough pressure on the engaged NATO forces to prevent their being readily shifted to other positions. However, those attacks that pushed through the initial defenses would be augmented by reinforcements as rapidly as possible.

Rapid fire is the key to the Soviet plan for a short war. Soviet military commanders estimate that under such conditions, forces of 70-100 kilometers a day in nuclear conditions and 25-35 kilometers a day in conventional warfare. The aim would be to quickly breach the NATO defenses, wedging open gaps sufficient for Soviet second echelon tank formations to penetrate, to take NATO rear areas or to carry out their outflanking or enveloping maneuvers.

The A-10 and the Central Front

When the last of the A-10 production aircraft have entered Air Force inventory in February 1984, the Service will have fully equipped six CAS wings. Only the 81st Tactical Fighter Wing at RAF Bentwaters/Woodbridge, with it six squadrons and 108 aircraft, is forward deployed in Europe. In the event of war in Europe, the 81st Tactical Fighter Wing at Davis-Monthan Air Force Base, Arizona—was completed in March 1976. The A-10 was upgraded to the A-10B in 1978. The A-10 is a low-speed, short-range attack aircraft with a top speed of approximately 550 mph, a maximum range of 1,200 miles, and a maximum ferry range of 2,500 miles. The A-10 is armed with a 30mm cannon, two 20mm cannon, and four 7.62mm machine guns. It is capable of carrying a maximum of 11,000 pounds of ordnance, including conventional and precision-guided munitions.

The A-10 is designed to operate in low-altitude, high-speed, low-altitude, and low-altitude, high-speed, environments. It is equipped with a digital cockpit, a full suite of avionics, and a robust combat management system. The A-10 is capable of delivering accurate, on-target, short-range, high-speed, high-altitude, and low-altitude, high-speed, engagements. The A-10 can provide effective, accurate, and timely support to ground forces in direct contact with the enemy. The A-10 is a versatile aircraft that can be used in a variety of roles, including ground attack, close air support, and electronic warfare.

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The 30mm gun is the key to its superior lethality against armored vehicles compared to weapons fired by faster and more sophisticated aircraft such as the F-15 and F-16. The gun is located on the centerline of the aircraft, which gives it excellent stability. Armed with the 30mm gun, the aircraft can penetrate the armor of vehicles such as the T-72 and T-54, which are considered the Soviet main battle tank. The gun is capable of firing at rates of 2,100 to 4,200 rounds per minute.

The 30mm gun produces bursts capable of killing tanks now in the Soviet arsenal at a slant range of 4,000 feet. Lightly armored vehicles can be destroyed as far away as two miles.

The A-10's high survivability rating is due to the aircraft's design and the low-level penetration tactics employed in flying it. The plane carries 4,177 pounds of survival provisions, including armor plate and foam for the fuel tank. The pilot is protected by a titanium armor plate “bathtub” weighing over 1,600 pounds, which can stop direct hits from Soviet 23mm and 57mm shell.

The A-10's low altitude tactics were developed by the 66th Fighter Weapons Squadron at Nellis Air Force Base, Nevada. Their characteristics include: very low altitude ingress to the target (1,000 feet above ground level); short exposure above terrain masking while jinking (three seconds or less exposure while flying at 300-400 feet); low altitude evasion to locate the target; short attack exposure while jinking; and very low altitude egress and maneuver for return. In a slower (lower) speed, the A-10 can turn faster than a higher-performance aircraft, making it easier for it to reacquire its target and react. Using these low altitude tactics, the A-10 is able to counteract and defeat formidable anti-aircraft missile defenses and major low-level, anti-aircraft gun threats, such as the Soviet ZSU-23-4 system, with its radar-controlled, quadruple 23mm guns. The short exposure times prevent radar lock-on, necessitating the use of manual aiming. In addition, the A-10's GAU-8/A gun outranges the ZSU-23-4.

The A-10 is designed for easy maintenance, including such things as the large doors and panels provided for ready access to the aircraft equipment and the longbow auxiliary power unit. With its short scramble time and its low ceiling and visibility flight envelope, the A-10 can be launched from short fields, close to the forward edge of the battle area.

CONCLUSION

In the short term, the Air Force should increase its efforts to acquire the A-10, which has a slant range of two miles. This is the same range that is used in the A-10, which can turn faster than a higher-performance aircraft, making it easier for it to reacquire its target and react. Using these low altitude tactics, the A-10 is able to counteract and defeat formidable anti-aircraft missile defenses and major low-level, anti-aircraft gun threats, such as the Soviet ZSU-23-4 system, with its radar-controlled, quadruple 23mm guns. The short exposure times prevent radar lock-on, necessitating the use of manual aiming. In addition, the A-10's GAU-8/A gun outranges the ZSU-23-4.

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The planned size of the force currently envisioned by the Air Force will see the United States return to its low-level, close air support capability. The A-10 is an extremely capable CAS aircraft, well-suited to the vital role of engaging and killing Soviet first and second echelon armored vehicles. The problem is that there are not nearly enough aircraft available to NATO, which like the A-10, are dedicated to the close air support and battlefield air interdiction missions and that were flown in the early stages of a possible Warsaw Pact offensive to blunt the armored advance.

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CONGRESSIONAL RECORD—S 1396

Our colleague and friend, Jacob Javits of New York, has called my attention to a study by Noel Capon, associate professor of business, Graduate School of Business, Columbia University, which deals with credit scoring practices.

In the present economic climate this is a serious subject for borrowers and lenders alike. How widely used is the process? Is there any regard for the availability of credit? It has implications for the economic future of the country.

I agree with Senator Javits that the article merits wide attention and I ask that it be inserted in the Record.

The article follows:

(From the Journal of Marketing, Spring 1982)

CREDIT SCORING SYSTEMS: A CRITICAL ANALYSIS

(By Noel Capon)

"Our society has been taught to believe that an individual's creditworthiness is primarily determined by his personal character. I feel certain that for anyone who has any regard for the concept of individuality, the perpetuation of the view that the credit score of our major national creditors would be a chilling experience."

The importance of consumer credit in the U.S. economy has been and is being marginalized through the 20th century. A combination of growth in the supply and form of credit and increased automation and computerization of credit operations has resulted in a growth in consumer credit. Many would argue that the average annualized compounded rate of growth in consumer credit outstanding in recent years is greater than 5 percent per year. However, for the period 1919-1979, the Federal Reserve figures are available, to the present, this figure is much greater than the average growth rate of GNP for the same period (Board of Governors of the Federal Reserve System 1976a, 1976b, 1980). The ever-increasing ability to offer credit has important sales and profit implications for marketers, just as the ability to obtain credit has important quality-of-life implications for consumers. However, despite the growth in credit availability, many consumers are unable to gain access to the credit that they need and believe they deserve. The need for the development of a new methodology by Congress, which in 1974 passed the Equal Credit Opportunity Act prohibiting discrimina- tion, is demonstrated by the continuing abuse of credit practices for sex and marital status (ECOA 1975). In 1976 the Act was amended to include race, color, religion, national origin, receipt of governmental assistance, and age as proscribed characteristics. Further, in 1977, the Federal Trade Commission decided to devote a significant percentage of its increased resources to the handling of all forms of credit abuse problems (Ad- vertising Age 1977).

The federal legislation was directed largely at abuses in judgmental methods of granting credit. However, at that time judgmental methods that involve the exercise of individual judgment by a credit officer on a case-by-case basis were increasingly being replaced by a new methodology of credit scoring. William Fair has recently estimated that between 20 and 30% of all consumer credit decisions are now made by credit scoring, and that most of the very large credit granters including banks, finance compa-
CREDIT DECISION METHODS

The conceptual framework for judgmental credit decisions has endured for many decades. This framework consists of the three "c's" - character, capacity and collateral, often joined by collateral and conditions, and indicated primarily by credit history and such other characteristics as personal references, length of relationship, income, rent, and credit performance. However, for such reasons as credit officer error, inconsistency in application of credit criteria, and in purchasing credit reports, innovative creditors have long sought more objective, automated credit decision-making methods.

Numerical scoring systems, first developed in the mail order industry in the 1930s and later gained national financial importance, were an attempt to address these concerns (Smalley and Sturdivant 1973, p. 229; Woodard 1966). In typical, single-attribute systems a number of predictor characteristics were chosen for their ability to discriminate between those who repaid their credit (goods) and those who did not (bads), and points were assigned to different levels of each characteristic. An individual applicant was judged on the relationship between his/her summed score across characteristics and independently set accept/reject cut-off values. 

CREDIT SCORING SYSTEMS: DEVELOPMENT

The basic procedure for developing credit scoring systems involves the selection of samples of goods and bads from the creditors' files. Uprawds of 50, and as many as 300 (Duffy 1977) potential predictor characteristics are obtained from the application blank. If characteristics are deleted from the blank, which generally involves endorsement of credit scoring systems. It will be shown that not only has their adoption led to major changes in the manner in which credit decisions are made but that these changes and the methodologies employed raise significant public policy issues.

Table 1. Major national retailer's final scoring table for application characteristics

| Zip code: | 60 |
| Bank reference: Checking only | 0 |
| Bank reference: Savings only | 0 |
| Bank reference: Checking and Savings | 15 |
| Bank reference: No reference | 7 |
| Not answered | 7 |
| Type of housing: Ovens/buying | 44 |
| Rents | 35 |
| All other | 39 |
| Not answered | 39 |
| Occupation: Clergy | 46 |
| Create | 41 |
| Driver | 33 |
| Executive | 62 |
| Guard | 40 |
| Homemaker | 50 |
| Labor | 33 |
| Manager | 46 |
| Military enlisted | 46 |
| Military officer | 42 |
| Office staff | 46 |
| Production | 41 |
| Professional | 62 |
| Sales | 46 |
| Semi-professional | 50 |

Since the early 1960s the use of credit scoring systems has expanded enormously, as journals serving practitioners have been filled with articles extolling their virtues (e.g., Churchill, Nevin and Watson 1971a; Cremer 1972; Long and McConnell 1977; Main 1977; Myers and Forgy 1963) and other reports arguing that adherence to the law would be improved if credit scoring systems were used. They contended that whereas credit decisions in judgmental systems were subject to arbitrary and capricious behavior by credit evaluators, decisions made with credit scoring systems were objective and free from such problems. Regulation B thus envisioned two categories of credit decision systems: statistically sound and empirically derived credit scoring systems, and all others not satisfying the criteria of statistical soundness and empirical derivation, which are termed judgmental systems. This distinction has practical importance. For example, although age is a prescribed characteristic under the Act, if the system is statistically sound and empirically derived, it can be used as a predictive characteristic, provided the maximum points awarded to any age category. The appropriate manner in which both types of systems are used.
systems should be used was spelled out in the
Regulations.
Presently, credit scoring systems are used extensively especially among major credit
granters. It is claimed that their use reduces bad debt losses, that more consumers are
granted credit and that greater consistency in decision making is achieved. Fur­
ther, the costs of granting credit are re­duced, since less skilled personnel are re­quested and fewer credit reports need be pur­
chased (Credit Card Redlining 1979, pp. 234­240; Fair, Isaac and Company 1977).
However, despite the torrent of words en­dorsing credit scoring systems, when they are subject to detailed analysis many trou­bling issues of consumer and public policy perspective can be identified.

ANALYSIS OF CREDIT SCORING SYSTEMS:
VARIABLES AND POINTS
The critical distinction between extant credit scoring systems and other methods of
credit evaluation is the absence, in credit scoring, of an explanatory model. While
judgmental systems are based, however im­perfectly, upon a credit evaluator’s explana­
tory model of credit performance, credit scoring systems are concerned solely with sta­tistical predictability. Since prediction is the sole criterion for acceptability, any indi­
vidual characteristic that can be scored, other than obviously illegal characteristics, has potential for entry into a credit scor­ing system. A partial list of characteristics used by creditors in the development of
their systems is presented in Table 2. Few of these variables bear an explanatory rela­tion to credit performance. At best they might be considered predictors whose rela­tion­tionship to payment performance can exist only through a complex chain of interven­
ing variables. The overwhelming concern of creditors today and a total uncon­cern for other issues was perhaps most tell­ingly demonstrated in the exchange be­tween Senator Carl Levin (D. Michigan) and William Fair, chairman of Fair, Isaac and Company, the leading developer of credit scoring systems, at the Senate hear­ings on S. 15. Senator Levin asked Mr. Fair
whether he should be allowed to use certain characteristics in the development of credit scoring systems (Credit Card Redlining 1979, p. 221):

Table 2—Partial list of factors used to
develop credit scoring systems

<table>
<thead>
<tr>
<th>Variable</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Telephone at home</td>
<td>First letter of last name</td>
</tr>
<tr>
<td>Own/rent living accommodations</td>
<td>Name</td>
</tr>
<tr>
<td>Age</td>
<td>Bank savings account</td>
</tr>
<tr>
<td>Time at home</td>
<td>Bank checking account</td>
</tr>
<tr>
<td>Industry in which employed</td>
<td>Zip code of residence</td>
</tr>
<tr>
<td>Time with employer</td>
<td>Age of automobile</td>
</tr>
<tr>
<td>Time with previous employer</td>
<td>Make and model of automobile</td>
</tr>
<tr>
<td>Type of employment</td>
<td>Geographic area of U.S.</td>
</tr>
<tr>
<td>Finance company</td>
<td>Employment reference</td>
</tr>
<tr>
<td>Reference</td>
<td>Debt to income ratio</td>
</tr>
<tr>
<td>Monthly household mortgage payment</td>
<td>Income</td>
</tr>
<tr>
<td>Family size</td>
<td>Savings and Loan reference account</td>
</tr>
<tr>
<td>Telephone area code</td>
<td>Ownership of life insurance</td>
</tr>
<tr>
<td>Location of relatives</td>
<td>Number of children</td>
</tr>
<tr>
<td>Number of dependents</td>
<td>Number of other</td>
</tr>
<tr>
<td>Type of credit reference</td>
<td>Dependent</td>
</tr>
<tr>
<td>Reference</td>
<td>Age is difference between man and wife</td>
</tr>
<tr>
<td>Employment</td>
<td>Telephone at work</td>
</tr>
<tr>
<td>Product being purchased</td>
<td>Length of product being purchased</td>
</tr>
</tbody>
</table>

Senator Levin: “You feel that you should be allowed to consider race?” (emphasis added)
Mr. Fair: “That is correct.”
Senator Levin: “Would the same thing be true with religion?”
Mr. Fair: “Yes.”
Senator Levin: “Would the same thing be true with sex?”
Mr. Fair: “Yes.”
Senator Levin: “Would the same thing be true with age?”
Mr. Fair: “Yes.”
Senator Levin: “Ethnic origin?”
Mr. Fair: “Yes.”

This exchange demonstrates very clearly that in the development of credit scoring
systems, for Fair, Isaac and Company at least, no issue other than statistical predict­ability is of any consequence. Although professing a commitment to obey the law, 
Fair, Isaac and Company, if statistical predictability were found and it were so able, could in principle construct credit scoring tables that discriminated on the basis of race, religion, sex, age, marital status and ethnic origin.

The result, for consumers, of such a focus on prediction can be seen by examining two scoring tables which, in the author’s experi­ence, are typical of those in general use today. Table 1 presents the scoring table of the major national retailer. Of particular note are the following items:

- There are no economic variables such as income, debts, living expenses and the like.
- Zip codes are very important characteris­tics, and a “bad” residential location can put the applicant at a tremendous disadvantage.
- Applicants score fewer points if they rent their accommodations than if they own or are buying their home.

The length of time the applicant has been at his/her present address or has been with his/her current employer are important characteristics. However, rather than greater residential and employment stability being worth an increasing number of points, as stability increases, the points awarded first decrease and then later increase.

An applicant’s employment is an important characteristic. However, to be gainfully em­ployed in the categories of driver, labor, or outside trade gains no more points than being unemployed.

If the applicant fills out the application honestly and admits that he/she borrowed money from a prior company, he/she is severely penalized. Whether or not the loan was satisfactorily repaid is irrelevant.

For many of the characteristics more points are awarded if the question goes un­answered than are awarded for many of the possible answers. Thus, the second most fa­vorable way to score on the zip code charac­teristic is not to provide the information.

A second system, developed and used by the finance subsidiary of a major consumer
durables manufacturer, is noted in Table 3. The following items are of interest:
- Income is an important variable. However, the nexus relationship between income and credit performance is monotonically; that is, the points fluctuate wildly as income increases.
- There are no variables for credit history.
- Applicants who own their own home score many more points than those with other ar­rangements.

Increasing residential and employment stability are worth increasing numbers of points.

This points awarded for age have a curvi­linear relationship.

Occupation is an important characteristic, and the unemployed category achieves the highest possible point score.

Honestly providing a small loan reference results in being penalized.

Many points are awarded for maintenance of either a checking or savings account, irre­

The Senate Committee report asserts that: “. . . consumers particularly should benefit from know­
ing, for example, that the reason for their denial is not because they reside in the area, or their recent change of employment . . .” (emphasis added).

The Equal Credit Opportunity Act, the key goal of the Act was to:
- Grant clear national policy that no credit applicant shall be denied the credit he or she needs and wants on the basis of characteristics that have nothing to do with creditworthiness.
- ... establish<ed> as clear national policy that no credit applicant shall be denied the credit he or she needs and wants on the basis of characteristics that have nothing to do with creditworthiness.

Although this mandate was met, other problems remain. Many points are awarded for avoid­ance action since it was concerned with the educational value of such knowledge; “. . . rejected applicants will now be able to learn where and how their credit status is deficient and this information should have a pervasive and valuable educational benefit . . .” (Equal Credit 1976, p. 4)

In identifying a set of proscribed char­acteristics (enumerated in ECOA), the clear intent of Congress was that acceptable char­acteristics are those that related to creditworthiness. While “relationship to creditworthiness” was not spelled out, many of the characteristics noted in Tables 1 and 3 do not evidence a face valid relationship, for instance, those variables whose values are fluctuating—time at present address, time with credit acceptance, marital status, age, and income (Table 3). Given the concern for consumer education, it is difficult to understand how Congress should have accepted the fact that increased income (Table 3) and greater residential and employment stability (Table 1) should be re­garded as indicators of reduced creditworthiness.

Many other problems concerning the vari­ables used and the points awarded exist with credit scoring systems. There is a real question of misleading the applicant. One might expect that provision of a financial statement would be reviewed positively, yet in both systems noted above, honesty is penal­ized. Also, there is the possibility that creditors actually use unreported data as sur­rogates for proscribed characteristics. Thus the Senate has heard testimony that a zip code acts as a surrogate for income (Credit Card Redlining 1979, pp. 241­243, 250­253; Buchanan et al. 1976, pp. 314­317). Accordingly, discrimination can result when zip code is used as a predictor charac­
demic, when different cut-off values are employed for different zip codes, or when credit scoring systems are developed at the individual level. Differences in treatment of types of income, such as that from part-time employment, alimony, child support and separate maintenance payments, discriminates against women. Furthermore, own/rent accommodation may discriminate against minorities as a result of historical discrimination in granting of mortgage loans, just as occupation and length of time with employer may discriminate against women because of historic employment practices and reduced employment stability due to pregnancy and childbearing, respectively. In the same way, age of autonomy may discriminate against the handicapped.

Since credit history information only enters credit scoring systems at a second stage, if at all, many applicants are denied credit despite the fact that they had excellent credit records (Chandler and Ewerf 1976). Credit Card Redlining 1979, p. 63-70). Their reputations are unjustly injured, and severe psychological trauma may also ensue (Congressional Record 1979, D-100-126). The use of mere statistical prediction to make decisions may violate the constitutional guarantees of the equal protection and due process clauses of the 5th and 14th Amendments (Credit Card Redlining 1979, p. 137-138). The equal protection clause additionally requires proof of making decisions on individuals on the basis of characteristics that are both "irrelevant and unchangeable," while due process states that "individual cases must be decided on their own merits." In passing ECOA, Congress proscribed characteristics that were either immutable (race, color, national origin, sex) or central to the individual's life (religion, marital status). Characteristics still frequently entered as input variables are number of dependents, age, occupation and place of residence appear to have many similarities to those proscribed characteristics, both in terms of being "irrelevant and unchangeable" and having little or nothing to do with "merit" in the case of a credit denial.

**ANALYSIS OF CREDIT SCORING SYSTEMS: DEVELOPMENT**

The focus of the previous section was on problems of the selection of predictor characteristics and the award of point values. In this section a series of methodological issues in the development of credit scoring systems is addressed. It will be shown that there are real questions as to whether credit scoring systems satisfy the legal requirements of empirical derivation and statistical soundness. The areas of concern are several and are discussed below.

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1 Whether or not such surrogate variables could legally be employed in a credit scoring system would depend upon the results of application of an "Effects Test." See Oregon v. Duke Power Co. 440 U.S. 242 (1971), and Albers Paper Co. v. Moody, 422 U.S. 408 (1975).

2 Eisenbeis (1978) present empirical support for the proposition that if characteristics correlated with proscribed characteristics were disallowed, the discriminatory ability of the model would be reduced. On the basis of an example in which "we have tried to make the assumptions realistic with respect to industry experience," (p. 102), they show that not only would the fraction of consumers finance company can earn less, fewer applicants would be awarded credit, using a restricted model. They fail to note that a predictive employee classification model is not necessarily a credit to all applicants, in which case profits would be larger, with a total profit of 0.819 "good" applicants would be granted credit.

**Biais**

The correct way to develop a credit scoring system is to sample randomly an historic applicant population. Creditors typically do not store in its entirety. However, for only data from those applicants previously awarded credit can provide samples of goods and services. The credit score of the population was historically denied credit, systems based only on a population of accepted applicants does not have a counter-responding population of denied applicants must be biased. Indeed, it has been shown that not only are biased estimates obtained, it is not possible to estimate in which direction the bias lies (Avery 1977). This problem is more severe in those systems that were originally developed before enactment of ECOA, when variables that are now illegal were used to make credit decisions. Despite revalidation, these systems are both biased and contaminated by illegal discrimination.

Developers of credit scoring systems are aware of the problems of biased samples and have developed techniques in attempts to solve it. In the augmentation method, a sample of denied applicants is separated from the bads on the basis of the relationship of their application characteristics to those of the actual goods and bads. The bads are then grouped, as are the actual and denied bads, and the credit scoring system is developed from the augmented sample. However, as Shinko (1977a, p. 60) points out, estimates of the variables are still obtained with this and alternative procedures.

**Multicollinearity**

Credit scoring systems are developed from a large group of contender characteristics. In stepwise procedures the characteristic that explains the greatest variance enters the discriminatory function first, followed by other characteristics which in turn explain the greatest residual variance. However, there is no requirement that despite their ability to explain residual variance, subsequently entered variables are not correlated with variables previously entered. Thus, if a high percentage of external variables entered early to the equation are continually modified as successive variables are entered, the final point values included are far from being a true reflection of the discriminatory power of the single variable and are contaminated by intercorrelations (Hsia 1978). A variable with good predictive ability but highly correlated to an entered variable will not enter the final equation. No great concern with multicollinearity is shown in systems where the characteristics are preselected.*

An associated problem of intercorrelation of variables arises in the development of the second stage of two-stage systems in which the potentially discriminating credit history variables are only on the residual variance. Because of the intercorrelation between credit history variables and those variables already entered, the effect of credit history is severely circumscribed.

**Sample size**

Credit scoring systems are frequently developed with insufficiently large samples to obtain reliable estimates of point values. Thus, for the occupation characteristic of a credit scoring system employing a major oil company, characteristics of occupations of farm foremen and laborers, enlisted personnel, clergymen, entertainers, farmers and ranchers, and government and public officials received few points. However, over the sample sizes on which the point scores are based were, respectively, three, twenty-three, four, four, and three. The point values are clearly unreliable. Similar patterns occur when zip code is used as a characteristic. Thus, for a regional trading area with hundreds of zip codes, the use of sample sizes of 3,000 or fewer subjects results in the point scores for many zip codes being based on very few data points. The system described in Table 3 was developed from a mere 640 data points (which may in part explain the strange income relationship).*

**Judgmental aggregation**

The empirical requirement for credit scoring systems is violated when credit scores attempt to overcome the reliability problem. This is not accomplished by any method of reducing standard deviations of scores. However, such a procedure would run into practical problems. In the system described in Table 3, the occupation categories were developed from 300 or more fine level occupations (Credit Card Redlining 1979, p. 186-168).

Not only are the occupation categories developed in an arbitrary manner, they are not a mutually exclusive set: an individual applicant could be assigned to a number of different categories. Thus, for example, a sales manager could be assigned as executive (62 points), manager (46 points), office staff (46 points), professional (46 points), or salaried (46 points). A U.S. Senator might be classified as executive (62 points), professional (62 points), manager (46 points) or other (46 points).

**Judgmental system constraints**

Since the methodology used to develop credit scoring systems is brute force empiricism, point value assignments to levels of characteristics in the final scoring table are often absurd, as indicated in the previous section. To overcome the consequent problems of credit scoring personnel ignoring the system, developers impose constraints on point assignments a priori (Churchill, Nevins and Watson 1977b; Fair, Isaac and Company 1977). While final scoring tables may thus be less absurd than otherwise, the impact of this procedure is to violate the empirical requirement of ECOA.

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* The zip code analysis for the Table 1 system was based on between 500 and 600 individual zip codes, which, at an estimated maximum sample size in the region of 30,000 and a number of categories that contained very few data points.

* For a worked example of the problems of aggregation and measurement, see Credit Card Redlining, p. 122-125. Also see p. 384-86 for a discussion of scatter diagrams and homogeneity problems in the use of zip codes.
September 17, 1982

CONGRESSIONAL RECORD—SENATE  24115

This paper redresses the balance and focuses a critical eye on credit scoring systems. After an extensive examination, a very different picture emerges from that portrayed by the multitude of credit scoring boosters.

An examination of the development of credit scoring systems reveals a host of statistical issues that may pose severe legal problems for credit users who have only recently begun to investigate these systems, yet their early findings are very troubling. It is perhaps not unlikely that 20 years of intensive study of these systems paralleling the 20 years of development just past may lead to conclusions even more serious than are justified by our present knowledge.

The more troubling aspect, however, has less to do with statistical issues than with conceptual ones. The brute force empiricism that characterizes the development of credit scoring systems leads to a treatment of the individual applicant in a manner that offends against the traditions of our society. When predictive decisions regarding individuals have to be made, they are based typically on variables that bear an explanatory rather than a statistical relation to the behavior being predicted, notably the actual historical performance of previous applicants in an area. For instance, job promotion rests heavily on job performance; selection for college is based on high school grades and aptitude tests. Yet credit scoring developers use any characteristic that discriminates as long as they can get away with it; they have even used the first letter of a person's last name.

As far as individuals not yet in the credit marketplace are concerned, who have no credit history, the characteristic of estat systems that they ignore credit history is no argument for their use. It is arbitrary and unfair to make decisions on these applicants on the basis of points awarded arbitrarily for the characteristics of those already in the market. Experience of enterprising retailers suggests that a system characterized by low initial credit limits and tight controls is a better way to treat new applicants.

What is needed, clearly, is a redirection of credit scoring research efforts toward development of explanatory models of credit performance and the isolation of variables that may provide more valid measures of credit performance. Such variables are likely related to economic factors (ability to pay) and credit history factors (demonstrated willingness to pay). In present systems, economic factors do not always enter the credit scoring tables, in part because they are highly correlated with other entering variables, for instance, zip code and income. Furthermore, since creditors are unwilling to pay the cost of credit reports, credit history factors are relegated to the second stage and their use is thus minimized, despite ample evidence that they provide the strongest relationship to future credit performance (Chandler and Ewert 1975; Credit Card Redlining 1979, p. 378; Long and McConnell 1977).

It is, of course, possible that well-developed explanatory models would be less predictive overall and more costly to implement than currently employed predictive systems. Even if this were true, and it may not...
The Constitution and Freedom—Address by Former Senator Sam J. Ervin, Jr., Mr. EAST.

Mr. EAST. Mr. President, on April 30, 1982, the Sam J. Ervin, Jr., program in public affairs was dedicated at the School of Humanities and Social Sciences at North Carolina University. The renaming of the program in public affairs at this outstanding university is a fitting tribute to North Carolina's favorite son. While he was already a scholar with civil rights and the nation's favorite...
CONGRESSIONAL RECORD—SENATE
September 17, 1982

DEFENSE SPENDING EDITORIAL
Mr. LEAHY, Mr. President, one of the leading newspapers in Vermont, the Times Argus of Montpelier, has provided an excellent analysis of the recent veto of the supplemental appropriations bill. The editorial reveals the inconsistency in President Reagan's claim that the supplemental was a budget bust and yet his seeming unconcern with waste and sky-high cost overides in the Defense Department. I urge all of my colleagues to pay careful attention to this thoughtful article written by Nicholas Monsarrat, the Times Argus. I particularly ask that the editorial be printed in the Record.

The editorial follows:

BEYOND THE VETO OVERIDE

President Reagan tried last week to tar the $14.1 billion in the supplemental appropriations bill and anyone supporting it with the labels "budget buster" and "big spender". The truth is he has been recommending more spending, with less careful investigation of what the money was spent for. The president is recommending Reagan in the area of defense spending.

The congressional decision last week to override the president's veto of the supplemental appropriations bill makes it seem a perfect time for Congress to start doing something about this gross imbalance in the Administration's budget. The president has no leg to stand on when, despite huge and mounting federal budget deficits, he continues to refuse to pare significantly his preposterous plan to spend $1.5 trillion in the next five years on new weapons systems and other defense related projects. He magnifies his credibility problems when be demands, cautions and pleads with members of Congress to kill a supplemental appropriations bill that would benefit necessary human service programs that are already reeling from earlier cuts. And members of Congress have looked like perfect palates when they have failed to deal critically, carefully or prudently with the massive defense budget proposals that keep pouring in from the White House.

You would think there had never been a cost-overrun in the history of defense spending, instead of a litany of massive and cost-overruns. Yet Congress has had to approve laws protecting federal employees from government retroactive pay cut, mismanagement and outright thievery in the defense spending area—priorities back-wards as usual.

It is one member of a family, in trying to prepare a new household budget, said to the rest of the family: "We're going to cut mom's spending for food drastically, junior's spending for gas drastically, and sis's spending for clothes, but we're going to double our spending for dad's beer budget and life insurance policy."

We would like to think that the congressional override of the president's veto of the supplemental appropriations bill was not just an election-appeal for votes by Congress, although it was surely that in part. We would like to believe that it was also a long overdue acknowledgement by Congress of two things:

1. That there is a limit to how far the federal government can go in putting federal spending for people programs.

2. That no budget, particularly for defense spending, can be above criticism. As for the charge of "budget busting," the fact remains that the bill vetoed by the president was actually $1.3 billion less than the bill that the president himself had originally asked Congress to pass. The real difference was that, once again, the president had wanted still more money spent on the military and less on people programs than the bill approved by Congress.

SOCIAL SECURITY DISABILITY
Mr. HEINZ. Mr. President, the problems surrounding the current social security disability review system has been known for a long time. The Senate Finance Committee recently held hearings on this subject. And just this week, a number of our colleagues in the House communicated to our distinc..
The goal of reviewing the disability status of individuals on the social security rolls is a sound and necessary principle. But when Congress mandated, in 1980, a 3-year review of individuals on the disability rolls, no one foresaw the high rates of termination and the poor quality of reviews that would result. The Social Security Administration has been terminating 45 percent of the beneficiaries it reviews. When Congress passed the Disability Amendments of 1980, the periodic disability reviews were not expected to produce any net savings during the first three years of operation; fiscal years 1982 through 1984. And, during the 4-year period fiscal year 1982 through fiscal year 1985, the periodic reviews were projected to save only $10 million. Yet, the President's fiscal year 1983 budget indicates that the program of periodic reviews will now have $3.25 billion in fiscal year 1982-84 or 325 times the original estimate.

On the front page of today's Los Angeles Times, there appears a troubling story relating the tales of 11 individuals who have died from disabilities which the Social Security Administration denied their having. I submit this article for the record and urge my colleagues to read it with care. It emphasizes the need to continue working with the administration to enact legislation at the earliest opportunity to remedy the periodic disability.

The article follows:

(From the Los Angeles Times, Sept. 17, 1982)

PURGED AS FIT To Work—11 Denied Social Security Disability Die of Illnesses

(By Doug Brown)

Four Californians who were cut off from or denied long-term Social Security disability benefits are among 1,100 people who died from conditions that led to the death of the individuals who had been eligible for disability benefits. After his benefits were cut off, the former supermarket manager was forced to subsist on an $80-a-week Social Security check and help support a mother, whose only income was from Social Security.

The deaths have raised angry cries from congressional critics who were already blaming the Social Security Administration for any of the deaths. But in the cases, the evidence is far less direct than those found by The Times. It involved a virtually blind Michigan man who took a ceme-tery job after his benefi- t was cut off, and was then hospitalized for gangrene. He subsequently died of a heart attack.

The Social Security Administration runs two separate disability programs: Disability Insurance, which is financed through pay-roll taxes and pays benefits to disabled workers and their families based on the worker's past earnings, and Supplemental Security Income (SSI), which is funded by general revenues and pays benefits to low-income, blind and disabled people based on proven need.

It is the operation of the Disability Insurance program that has come in for the heaviest criticism.

In the fiscal year ending last June 30, 200,000 workers, their spouses or their children were trimmed from the Disability Insurance rolls, bringing the level down to 4.2 million people. The Social Security Administration estimated this month that 772 million in fiscal 1981-82, but Torgler acknowledged that $156 million of this was saved by administrative means, lowering the net savings to $216 million.

In announcing that it will slow the pace of its disputed eligibility cuts, Social Security said the number of planned reviews in the next year is to be reduced by 20%, down to 640,000 cases from the previously announced target of 808,000 cases. However, Hammerschmidt and Synar said the new administrative changes will not prevent them from pushing to revise disability review laws. They said the changes announced last week by the Social Security Administration will not guarantee against situations in which people numbered terminal illnesses are cut off from disability benefits.

PLEADING LETTER

Caroline Jones, an Orange County Legal Aid Society attorney, has written to Social Security imploring that he not be cut off from benefits.

The letter was written to Social Security Administrator John Svahn, a Reagan appointee who was among the first of officials who designed an overhaul of welfare programs in California when Reagan was governor, refused to be interviewed about the deaths, but John Svahn, a Reagan appointee who was among the first of officials who designed an overhaul of welfare programs in California when Reagan was governor, refused to be interviewed about the deaths, but Svahn, a Reagan appointee who was among the first of officials who designed an overhaul of welfare programs in California when Reagan was governor, refused to be interviewed about the deaths.
his "chronic obstructive pulmonary disease" precluded him from returning to work.

Rejecting his evidence, Social Security sent Alvey a letter on Oct. 10 that summarized
that several factors were considered.

"Medical evidence reveals that you are post myocardial infarction (heart attack) with objective medical evidence no longer requiring you to work."

"Medical data further reflects no changes per your electrocardiogram and it is felt your pulmonary condition to be of a mild nature. Your overall condition is no longer of a severe nature to prevent you from performing your usual duties." His benefits were out.

Alvey, who had been receiving $437 a month in disability benefits based on his past earnings as a supermarket manager, appealed the ruling but was receiving no benefits pending his hearing. He died less than two months before the hearing was to be held.

"He used to call me twice a week about his case," said Legal Aid's Jones, who had been helping him with his appeal. "He was a very nice man, but the stress was getting really hard to do eight hours a day."

If everything was just right, the stress would be gone and every time he talked he would get more and more upset.

There were similar tales in the cases of three other Californians who died.

The notice denying Ernestina Orozco's request in the case of her husband, Oria, who had died four days earlier of cancer of the colon, Mrs. Orozco was the only one of the 11 recorded deaths who applied for disability benefits but had not yet received any.

She had not worked since February at her job on an assembly line making blood bags at a Covina hospital supply manufacturing company. Both Mrs. Orozco's employer of 11 years and her doctor said her mobility was limited by the cervical collar she was forced to wear because the cancer had made her neck bones brittle.

"She really tried to work," said her husband. "We had a lot of help but the chemotherapy really drained her. She had to do a lot of sitting on a stool on her job and that was really hard to do eight hours a day."

Mrs. Orozco was not the only disabled person to find that the pain of sitting for long periods of time on the job was beyond endurance.

Willie Simmons, who had been on disability for five years, was terminated in February because Social Security believed his condition would allow him to take work as a hospital record clerk. Simmons had found sitting for long periods to be extremely painful. He died in March of the multiple neurological degenerative diseases that had caused him such extreme discomfort.

Vietnam veteran and construction worker who had been on disability since December, 1978, received a letter in July from an evaluator saying a review of his medical records showed he had recovered sufficiently from his heart ailment to allow his return to work.

"The medical evidence shows that you had a heart attack in 1978 but your condition has improved," the evaluator wrote.

"He asked me to stop taking the medication and medication. You are considered able to carry out the following work activities: lift 50 pounds maximum, stand/walk six to eight hours per eight-hour workday."

Graf, said a review of Stockton cardiologist Edward Caul and heart specialists at Stanford University in Palo Alto, was confused and angered by the letter, his wife, Myrtle, recalled.

DOCTOR'S FINDINGS

On Aug. 2, Graf went to Caul's office in Stockton to try to find out if Social Security was using a medical report on the visit, Caul said, "Social Security office has totally misunderstood the significance of the patient's problem. He has marked damage of his left ventricular from cardiovascular diseases resulting in a large akinetic heart proved by echocardiographic studies. The patient gets along well in a relative sense by restricted physical activity," Caul continued. "He requires multiple medications and is constantly at risk for sudden death and determination in the future of congestive heart failure."

"In no way can the patient return to renumerative work conducive to his background, education and training."

Within six hours after leaving Caul's office, Graf died of a heart attack.

In a letter to Social Security after Graf's death, Caul labeled the decision to end Graf's benefits without attention to the facts of record.

In an ironic footnote, two weeks after Graf died and 10 days after Caul's letter, Social Security sent a letter addressed to Graf announcing that since it had received no additional medical information showing that Graf was still disabled, it was going forward with its plans to terminate benefits.

PROPOSED ARMS SALES

Mr. PERCY. Mr. President, section 36(b) of the Arms Export Control Act requires that Congress receive advance notification of proposed arms sales under that act in excess of $50 million or, in the case of major defense equipment as defined in the act, those in excess of $14 million. Upon such notification, Congress is required to react if such sale is not made in accordance with the notification requirements of Section 36(b) of the Arms Export Control Act; we are forwarding herewith Transmittal No. 82-90 and under separate cover the classified annex thereto. This Transmittal concerns the Department of Defense's proposed Letter of Offer to Pakistan for defense articles and services estimated to cost $27 million. Shortly after this letter is delivered to your office, we will also notify you of the media of the unclassified portion of this Transmittal.

The notification follows:

PROPOSED ARMS SALES

Mr. PERCY. Mr. President, section 36(b) of the Arms Export Control Act requires that Congress receive advance notification of proposed arms sales
under that act in excess of $50 million or, in the case of major defense equipment as defined in the act, those in excess of $14 million. Upon receipt of such notification, the Congress has 30 calendar days during which the sale may be prohibited by a concurrent resolution. The provision stipulates that in the Senate, the notification of proposed sales shall be sent to the chairman of the Foreign Relations Committee.

Pursuant to an informal understanding, the Department of Defense has agreed to provide the committee with a preliminary notification 20 days before transmittal of the official notification. The official notification will be printed in the record in accordance with previous practice.

I wish to inform Members of the Senate that such a notification was received on September 15, 1982.

Interested Senators may inquire as to the details of this preliminary notification at the offices of the Committee on Foreign Relations, room 4229 Dirksen Building.

The notification follows:

DEFENSE SECURITY ASSISTANCE AGENCY,
In reply refer to: I-21460/82.
Dr. Hans Burschett, C.W.
Professional Staff Member, Committee on
Foreign Relations, U.S. Senate, Washing-
ton, D.C.

Dear Dr. Burschett: By letter dated 18
February 1976, the Director, Defense Security
Assistance Agency, indicated that you would be advised of possible transmittals to Congress of information as required by Section 36(b) of the Arms Export Control Act. At the instruction of the Department of State, I wish to provide the following advance notification.

The Department of State is considering an offer to an Asian Country tentatively estimated to cost in excess of $50 million.

Sincerely,

PHILIP C. GAST,
Director.

PROPOSED ARMS SALES

Mr. PERCY, Mr. President, section 36(b) of the Arms Export Control Act requires that Congress receive advance notification of proposed arms sales under that act in excess of $50 million or, in the case of major defense equipment as defined in the act, those in excess of $14 million. Upon such notification, the Congress has 30 calendar days during which the sale may be prohibited by a concurrent resolution. The provision stipulates that in the Senate, the notification of a proposed sale shall be sent to the chairman of the Foreign Relations Committee.

In keeping with my intention to see that such information is available to the full Senate, I ask to have printed in the Record at this point the notifications which have been received.

The notifications follow:

DEFENSE SECURITY ASSISTANCE AGENCY,
Washington, D.C., September 13, 1982.
In reply refer to: I-20848/82ct.

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

DEAR MR. CHAIRMAN: Pursuant to the reporting requirements of Section 36(b) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 82-74, concerning the Department of the Air Force’s proposed Letter of Offer to France for defense articles and services estimated to cost $275 million. Shortly after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

PHILIP C. GAST,
Director.

[Transmittal No. 82-74]

NOTICE OF PROPOSED ISSUANCE OF LETTER OF OFFER PURSUANT TO SECTION 36(b) OF THE ARMS EXPORT CONTROL ACT

(i) Prospective Purchaser: France.

(ii) Total Estimated Value: $275 million

Major defense equipment: 1 ... 0

Other: $275

Total: $275

*As defined in Section 476(b) of the Arms Export Control Act.

(iii) Description of Articles or Services Offered: Incremental purchase and installation of 11 modification kits consisting of all hardware items, to include CPM-56 engines, necessary to accomplish the Class V modification of the 11 French C-135F aircraft.

(iv) Military Department: Air Force (YADI).

(v) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None.

(vi) Sensitivity of Technology Contained in the Defense Articles or Defense Services Proposed to be Sold: None.

(vii) Section 26 Report: Two of these Class V modification kits were included in the report for the quarter ending 30 June 1982.

(viii) Date Report Delivered to Congress: September 13, 1982.

POLICY JUSTIFICATION

France—Class V modification of French C-
135F aircraft

The Government of France has requested the incremental purchase and installation of 11 modification kits consisting of all hardware items, to include CPM-56 engines, necessary to accomplish the Class V modification of the 11 French C-135F aircraft at an estimated cost of $275 million.

This sale will contribute to the foreign policy and security objectives of the United States by improving the defensive capabilities of an ally. Although French forces are not now committed to NATO command, France nevertheless bases its defense on cooperation and interoperability with NATO. As a further potential benefit, this sale will contribute to the standardization and interoperability between French and U.S. equipment, as well as demonstrate the seriousness of the U.S. commitment to cooperative arms programs with alliance partners. France’s commitment to this program may well have positive effects on French willingness to participate in other multinational, cooperative arms programs.

France intends to re-engine all 11 of their C-135F tanker aircraft with CPM-56 turbofan engines. Delivery of this production line will be carried by Boeing Aircraft Company.

ny. The CPM-56 is a commercially available engine produced by CPM International, a General Electric (U.S.)/SNECMA (France) joint owned company. Re-engineing the tanker will reduce fuel consumption, improve take-off performance, lower operating and support costs, improve fuel off-load capability, enhance aircraft survivability, and reduce smoke and noise.

The sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be the Boeing Military Airplane Company of Wichita, Kansas.

Implementation of this sale will not require the assignment of any additional U.S. Government or contractor personnel to France.

There will be no adverse impact on U.S. defense readiness as a result of this sale.

DEFENSE SECURITY ASSISTANCE AGENCY,
In reply refer to: I-63191/82ct.

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

DEAR MR. CHAIRMAN: Pursuant to the reporting requirements of Section 36(b) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 82-81, concerning the Department of the Air Force’s proposed Letter of Offer to Turkey for defense articles and services estimated to cost $76 million. Shortly after this letter is delivered to your office, we plan to notify the news media.

You will also find attached a certification as required by Section 6202(d) of the Foreign Assistance Act of 1981, as amended, that this action is consistent with Section 6202(b) of that statute.

Sincerely,

PHILIP C. GAST,
Director.

[Transmittal No. 82-81]

NOTICE OF PROPOSED ISSUANCE OF LETTER OF OFFER PURSUANT TO SECTION 36(b) OF THE ARMS EXPORT CONTROL ACT

(i) Prospective Purchaser: Turkey.

(ii) Total Estimated Value: $76 million

Major defense equipment: 1 ... 0

Other: $76

Total: $76

*As defined in Section 476(b) of the Arms Export Control Act.

(iii) Description of Articles or Services Offered: Cooperative logistics supply support (PMSO II) for follow-on spares and supplies in support of C-130H, F-4E, F/H-P, T-33, T-38A, T-38C, and T-33 aircraft and other systems of U.S. manufacture.

(iv) Military Department: Air Force (KIND).

(v) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None.

(vi) Sensitivity of Technology Contained in the Defense Articles or Defense Services Proposed to be Sold: None.

(vii) Section 26 Report: Case not included in Section 26 report.

(viii) Date Report Delivered to Congress: September 15, 1982.
TEMPORARY INCREASE IN THE PUBLIC DEBT LIMIT

The PRESIDING OFFICER. The Senate will resume consideration of the unfinished business, which the clerk will state by title.

The assistant 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 consideration of the joint resolution.

AMENDMENT NO. 2040

The PRESIDING OFFICER. The pending question is the Baucus amendment No. 2040.

Under the previous order, the Senator from Montana (Mr. Baucus) is now recognized.

Mr. BAUCUS. Mr. President, I rise once again in support of the pending amendment, which declares that the Federal Courts must remain open to citizens who wish to litigate their constitutional rights.

I also rise to express my fierce opposition to the underlying Helms amendment.

Mr. President, I guess that labeling these days is a fact of life in our society. Particularly for those of us in public life labeling is something we have to learn to live with.

However, I continue to be distressed that the underlying Helms amendment and the debate here in the Chamber continue to be labeled as a school prayer amendment and a school prayer debate.

The underlying Helms amendment does not alter the Supreme Court's school prayer decisions. It simply prevents the Supreme Court from hearing future school prayer cases. This is a court stripping, not a school prayer amendment.

Mr. President, if the Senate, for example, were considering legislation that prevented the Supreme Court from hearing taxation cases, would that be considered tax reform? Absolutely not. That would be court stripping.

If the Senate were considering legislation that prevented the Supreme Court from hearing cases involving the right to bear arms, would that be considered gun control legislation? Again, no. That would be court stripping.

Mr. President, in the same vein, we do not have the school prayer legislation before us today. We have court stripping.

Mr. President, I believe that what is being missed by many who are involved or are the debate is that the Senate is being asked to totally alter the rules by which we have protected constitutional rights in this country for 200 years.

Today constitutional rights are protected by the Supreme Court, and if Congress or the people want to alter a constitutional right or the Court's interpretation of such rights, that alteration requires approval by two-thirds of the Congress and three-quarters of the States.

However, the proposal before us would permit Congress by a simple majority vote to dilute or entirely remove constitutional protections.

If this Helms revision, this provision, is passed by Congress and upheld as constitutional, each of our constitutional rights will be hanging on the slenderest of threads—that is, on a mere majority acting according to the whims of the times.

If freedom of the press is no longer the order of the day, let us pass a statute and get the President to sign it. That is all it would take, and the Supreme Court could no longer enforce the constitutional guarantee of freedom of the press.

If freedom of religion is no longer the order of the day, let us pass a statute and get the President to sign it. That is all that would take, and the Supreme Court would no longer enforce any constitutional guarantee of freedom of religion.

If the Government decides that citizens can now have the privacy of their homes invaded by Government officials operating without a warrant, let us pass a statute and get the President to sign it. That is all it would take, and the Supreme Court could no longer enforce the constitutional protection against unwarranted searches and seizures.

The pattern is clear. What is being proposed here is a fundamental change in the rules by which constitutional protections are guaranteed. What is more, this can happen here on the floor of the Senate by a simple majority vote. This is contrary to the Constitution.

If the proponents of these measures want us to begin to dismantle the Constitution by simple majority vote, then let them put together a national consensus, a two-thirds majority in both Houses and three-quarters of the States to permanently alter the rules by which constitutional protections are guaranteed. Let them propose a constitutional amendment, but let us not permit them to make the kind of fundamental change in our form of government by a simple majority vote that is being offered here as “school prayer legislation.”

Mr. President, it is important to remind this body that President Reagan and his Attorney General understand the necessity for responding to constitutional decisions of the Court by constitutional amendment. This administration has proposed a constitutional amendment involving school prayer, and the President has reiterated his support for that proposal. He did so just yesterday. That pro-
posals is pending before the Senate Judici-
ary Committee. A third day of
hearings on that proposal was held
yesterday afternoon.

I might add, Mr. President, that the
Attorney General has stated often
that he is not in favor of this ap-
proach pending today, the statutory
approach, because, as the country’s
highest legal officer, he knows that
the way to change fundamen-
tal constitutional rights, is by propos-
ing and enacting constitutional
amendments. It is not by prohibiting
Supreme Court jurisdiction over
review of such rights.

The Attorney General by letter and
in various forms has indicated that the
administration advocates the constitu-
tional rather than the statutory ap-
proach. I believe the administration
takes such a position because it knows
full well that to set the precedent of
American citizens will
fully have a constitutional
Supreme Court jurisdiction which would intrude upon the
core functions of the Supreme Court and
in our system of separation of powers.

I do not wish to discuss the merits of
the school prayer issue today. This is
another matter, but I do know the
process; it is the process by which we
assess of the serious dangers of the
court-stripping proposal pending
before us is what led to the adminis-
tration support for a constitutional
amendment—not only the
amendment itself, but the whole proc-
ress as well. I think it is important to
review that analysis, and I now wish to
read it for the benefit of my col-
leagues.

Before I read that analysis con-
tained in the letter from the Attorney
General, I would like to point out that
today, September 17, is the 185th an-
niversary of the signing of the Consti-
tution. Just think of that, 185 years
ago today on September 17, 1867, our
Constitution was signed, and I think it
is appropriate and par-
ticularly fitting for us here today to
stand up on that anniversary, the
195th anniversary, in defense of and in
support of our Constitution because it
protect our Constitution.

For nearly 200 years our Constitution
has withstood assaults of various
kinds, of various forms, and I think,
Mr. President, that we again should
stand up today on the 195th anniver-
sary to protect our Constitution.

I now have before me, Mr. President,
a letter from the Attorney General of
the United States, Attorney General
William French Smith. This letter is to
the chairman of the Senate Judici-
ary Committee, the Honorable Sam-
Thurmond, Senator from South Car-
olina. This letter concerns the court-
stripping proposal before us and, in
particular, school prayer. This letter is
dated May 6, 1982.

DEAR MR. CHAIRMAN: This letter is written
to you as Chairman of the Committee on
the Judiciary. It is written in response to a
statement of Attorney General
Smith: In a letter, dated May 6, 1982, to the chairman of the
Judiciary Committee. I want to repeat
that paragraph from Attorney Gener
William French Smith:

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 equal
branch in our system of separation of
powers.

In determining whether a given exception
would intrude upon the core functions of
the Supreme Court, it is necessary to con-
sider a number of factors, such as: whether
the exception covers constitutional or non-
constitutional 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
consideration of the exception 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 and the inferior federal courts
have not occasionally exceeded the proper
reach of the Court in our system of
Constitution. Nor does such a
conclusion imply an endorsement of the
soundness of some of the judicial decisions
that have given rise to legislative proposals
now before Congress. The
Department of Justice will continue,
therefore, to urge the courts to
intrude into areas that properly
belong to the State legislatures and to
Congress. The remedy for judicial over-
reach, 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.

To repeat:

The remedy for judicial overreach,
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
to which this letter seeks to rectify.

Those are the words of our Attorney
General, William French Smith:

With respect to other pending legis-
lation, the Department of Justice has concluded
that, as a general matter, the
agreements imposed by provisions of the Constitution
other than Article III, limit the jurisdiction or remedial authority of the inferior federal courts.

If Congress were to limit the Supreme Court's jurisdiction, the question of congressional power over lower federal courts would arise. However, the language of Article III and the Due Process Clause of the Fifth Amendment provide the only constitutional constraint on Congress in this regard.

The framers of the Constitution, aware of the potential for abuse of power by the federal courts, sought to balance the need for an independent judiciary with the need for effective and efficient administration of justice.

The Constitution provides that Congress shall have the power to determine the times, places, and manner of holding elections for senators and representatives, and to prescribe the rules and regulations for the election, qualification, and return of such senators and representatives.

The Due Process Clause restricts the actions of government actors, and thereby indirectly limits the power of the courts to impose certain legal consequences on the actions of individuals. However, the Due Process Clause does not grant Congress the authority to interfere with the Supreme Court's core functions without considerably impairing the institution's ability to perform its constitutional role.

The Constitution contains a number of provisions that are subject to congressional action. Congress has the power to establish lower courts, to regulate the jurisdiction of the Supreme Court, and to enact legislation that affects the powers of the federal courts.

The Congress is further empowered to establish the rules of procedure for the Supreme Court, to provide for the establishment of lower courts, and to prescribe the times, places, and manner of holding elections for senators and representatives.

In conclusion, the framers of the Constitution intended to create an independent judiciary that would be able to exercise its power and authority without interference from the other branches of government. Congress has limited authority to regulate the jurisdiction and powers of the federal courts, and to establish the procedures for the Supreme Court, in a manner that respects the separation of powers established by the framers.

To repeat, the committee rejected, by a 6-to-2 vote, a resolution providing that, except in a narrow class of cases under the court's original jurisdiction, "the judicial power shall be exercised in such manner as the legislature shall direct."

That resolution, rejected by a 6-to-2 vote, is what the proponents of the underlying amendment want, in effect—that Congress shall be empowered to exercise power over the Court's core constitutional functions, according to its discretion and in the manner it provides, would limit the Supreme Court's jurisdiction, effectively nullifying the Supreme Court of the United States and thereby also effectively nullifying one of the three coequal branches of Government.

To continue with the letter, Mr. President, from Attorney General William French Smith in opposition to the statutory approach of limiting the Supreme Court jurisdiction.

The Constitution thus rejected a clear statement of plenary congressional power; it rejected, in short, the core constitutional function of the Court. Nevertheless, on the same day—without any recorded debate or explanation—the Framers rejected the Exceptions Clause. The language now contained in Article III is the 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 if it is consistent with the Constitution and the Due Process Clause.

In light of these principles of constitutional interpretation, the Exceptions Clause may not be analyzed in a vacuum, but must be understood in terms of Article III as a whole, and according to the history of its framing and ratification, its place in the system of separation of powers embodied in the structure of the Constitution, and its role in the constitutional scheme. The Constitution contemplates that Congress may not be analyzed in a vacuum, but must be understood in terms of Article III as a whole, and according to the history of its framing and ratification, its place in the system of separation of powers embodied in the structure of the Constitution, and its role in the constitutional scheme.

Thus, the Congress is further empowered to establish the rules of procedure for the Supreme Court, to provide for the establishment of lower courts, and to prescribe the times, places, and manner of holding elections for senators and representatives.

The Constitution thus rejected a clear statement of plenary congressional power; it rejected, in short, the core constitutional function of the Court. Nevertheless, on the same day—without any recorded debate or explanation—the Framers rejected the Exceptions Clause. The language now contained in Article III is the 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 if it is consistent with the Constitution and the Due Process Clause.

In light of these principles of constitutional interpretation, the Exceptions Clause may not be analyzed in a vacuum, but must be understood in terms of Article III as a whole, and according to the history of its framing and ratification, its place in the system of separation of powers embodied in the structure of the Constitution, and its role in the constitutional scheme. The Constitution contemplates that Congress may not be analyzed in a vacuum, but must be understood in terms of Article III as a whole, and according to the history of its framing and ratification, its place in the system of separation of powers embodied in the structure of the Constitution, and its role in the constitutional scheme.

Thus, the Congress is further empowered to establish the rules of procedure for the Supreme Court, to provide for the establishment of lower courts, and to prescribe the times, places, and manner of holding elections for senators and representatives.

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I might add, Mr. President, parenthetically, that our framers had much experience with respect to unchecked tyrannical power.

Continuing with the letter from the Attorney General to the chairman of the Committee of the Judiciary:

Indeed, it is not an exaggeration to say that the Framers of the Constitution were afraid of government tyranny.

Essential to the principle of separation of powers was the proposition that no one branch of government should have the power to eliminate the fundamental constitutional role of either of the other branches. As Madison stated in Federalist No. 51:

"The great security against a gradual concentration of the several powers in the same department consists in giving to those who administer each department the necessary constitutional means and personal motives to resist encroachments of the others. The provision in the Constitution, as in all other cases, be made commensurate to the danger of attack."

This broad principle of the Constitution—that each branch must be given the necessary means to defend itself against the encroachments of the other branches—has specific manifestations in legislative attempts to restrict judicial authority. The Framers "applauded" the wisdom of those states which had submitted the judicial power to the federal courts, in the last resort, not to a part of the legislature, but to distinct and independent bodies. Madison stated in Federalist No. 51 (Hamilton). They believed that, by the inherent nature of their power, the legislature would tend to be the strongest and the judiciary the weakest.

This insight is reflected in the very structure of the Constitution: the provisions governing the judicial branch are placed first, in Article I; those establishing and governing the Supreme Court are placed second, in Article III. Madison recognized the great importance of the Supreme Court as the "arbiter of the Constitution," a view shared by Washington in his Farewell Address to the nation.

It was in no sense a derogation on the part of the framers to limit the power of the government; they understood that the Founders desired checks on the power of the government they were creating. The Acts of Parliament, as well as those of the King from the thirteenth century, were not universally applied. The framers believed in the concept of the common law, which provided a framework for the interpretation of statutes and the resolution of disputes.

A third reason to infer a limited construction of the Exceptions Clause from the lack of congressional power to act in areas subject to the exceptions was found in the theory of separation of powers which formed the conceptual foundation for the system of government adopted by the Framers. The theory established that each of the three branches of government would operate largely independently of the other branches and that the framers intended that the constitutional scheme of the United States would operate largely independently of the other branches. The purpose of this approach was to ensure that governmental power did not become concentrated in the hands of any individuals or groups of individuals to thereby avoid the danger of tyranny which the framers believed inevitably accompanied unchecked governmental power.

ly as the last dangerous branch. Hamilton, in a famous passage from Federalist No. 47, identified the "dangerous branch" of Government, which is inherent weakness of the Judicial Branch.

Whatever attentively considers the different departments of power must perceive that the system is incomplete, and that the errors which are separated from each other, the judiciary, from the nature of its functions, will always be the least subject to the contamination of the other branches of the Constitution; because it will be in a capacity to annoy or injure them. The executive not only dispenses the honors but holds the power of life and death, even to the highest ranks 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 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. As a consequence of these considerations, Jefferson believed that it was necessary for the judiciary to remain "truly distinct from the Legislative and the Executive. For I agree that "there is no liberty, if the power of judging be not separated from the Legislative and executive power.""..."...

Mr. President, I now ask unanimous consent that I might yield to the Senator from Vermont without losing my time. I do not mean the floor, even being gerecognized a continuation of my speech not be counted as a second speech under rule XIX, and that I be allowed to leave the Chamber while I have so yielded.

I also ask unanimous consent that the Senator from Vermont be permitted to yield the floor under the same circumstances.

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

Mr. BAUCUS. I thank the Chair.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. I thank the Chair and the distinguished Senator, my friend from Vermont, for yielding under these circumstances.

Mr. President, I stand here 195 years after the Constitution was signed. However necessary it may be, it is always a little sad when the Members of this body are compelled to rise to defend the most obvious, most fundamental features of our constitutional system of Government, and the particular riders to the debt ceiling on school prayer should bring true sadness to anyone who sees the strength of the Constitution arising from the way it disperses power among the branches of Government and the zeal with which it protects individual liberties. The debate over the school prayer rider is not only a debate over religion. We are also debating the temptation of one branch of Government...
Mr. President, I say to all my colleagues, all 99 of them, can any one of us say at what time it might or might not be for our individual rights that are protected by the independence of these courts? Is there any one of us who is willing to strip the courts of that independence and tell our constituents in each of the 50 States that someday their rights may be lost because we, in a moment of passing fancy, stripped the courts of the independence they need to protect the rights not just of the 100 men and women who serve in this body but of the 220 million Americans we represent? How many of us can vote for this knowing that someday we may have to answer honestly what we did; that someday we may have to go beyond the direct mail appeals for funds that some seek to use the exceptions clause in another. But to make this system work, no one has a vote that way, and I hope that my colleagues will not.

We favor a strong judiciary, under law, rather than a judiciary that bends fact to popular direction, then in another. But to make this system work, no one has the right to look to the courts for a quick fix. No one has a stake in courts that can be easily persuaded to follow the howls rather than the law.

The amendment before us would seek to use the exceptions clause in another manner as the legislature shall direct. The defeat of the amendment process. The process is long and arduous, and the Constitution has been amended very few times as a result.

Mr. President, I cannot do that. I cannot vote that way, and I hope that my colleagues will not.

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It is difficult to believe that the authors of the Constitution, as professionally astute as one might imagine, would have framed a careful mechanism for amendment and then would have permitted a simple statute to work as an amendment by eliminating review of that statute by the Supreme Court. If the amendment is passed, it will be impossible for a person to go beyond the direct mail appeals for funds that some seek to use the exceptions clause in another. But to make this system work, no one has a vote that way, and I hope that my colleagues will not.

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Mr. President, I say to all my colleagues, all 99 of them, can any one of us say at what time it might or might not be for our individual rights that are protected by the independence of these courts? Is there any one of us who is willing to strip the courts of that independence and tell our constituents in each of the 50 States that someday their rights may be lost because we, in a moment of passing fancy, stripped the courts of the independence they need to protect the rights not just of the 100 men and women who serve in this body but of the 220 million Americans we represent? How many of us can vote for this knowing that someday we may have to answer honestly what we did; that someday we may have to go beyond the direct mail appeals for funds that some seek to use the exceptions clause in another. But to make this system work, no one has a vote that way, and I hope that my colleagues will not.
But not even the few instances where Congress limited the jurisdiction of the Federal courts in specific subject areas did Congress ever go so far as to remove from the total protection of the Federal courts rights guaranteed under the Constitution. Through that lengthy and sometimes tumultuous history of Congress, many bills have been introduced to limit just that, and none has ever passed. Through that long history the power of Congress to establish lower Federal courts and to make exceptions to the appellate jurisdiction of the Supreme Court has been exercised to adjust the scope and authority of the judiciary to better serve the needs of the litigants, to promote efficiency, to maintain a healthy balance between the State and Federal systems.

But there should be a clear distinction in the minds of every Senator between the power of the courts and legislation to use the courts to accelerate changes in substantive constitutional law. The thrust of the courtstripping bills now before the Senate is to work around the normative processes for amending the Constitution, which are difficult and time consuming. But, they are difficult and time consuming for a reason. The Constitution should reflect the wise and the self-restraint of the people, tested over time.

In the Constitution Subcommittee hearings on court jurisdiction conducted in May and June 1981, we observed the Nation's finest legal scholars in a sincere and technically complex discussion of the constitutionality of various proposals to limit lower and appellate Federal court jurisdiction on an issue-by-issue basis. It is hard to predict the outcome of that same debate in the courts, simply because there is a scarcity of precedents truly on point. The separation of powers is perhaps the devolution of past Congresses to the principle of shared powers and an unwillingness to buy fast changes in law at a steep constitutional price.

Among the eminent law professors who appeared before the Constitution Subcommittee some believed that there were few limitations imposed by the Constitution on Congress under article III and that an underlying purpose of Congress to extinguish particular rights did not, in general, signal a violation of the Constitution. But it is interesting that most of the scholars who read article III broadly—and that includes all of those who appeared before the committee besides two and a half years of 158, the Human Life Statute, also believe that it would be a tragedy for Congress to forgo the self-restraint that has united each generation with the next.

One witness, Prof. Martin Redish of Northwestern University Law School, believed that Congress has a broad authority under article III and that the courtstripping bills may be constitutional. But he ended his visit with us on a very different note:

In past years, previous Congresses were also disturbed with many substantive decisions of the Supreme Court. They, too, considered legislation to curb that Court's jurisdiction. But, with rare exception, those Congresses declined drastic action. The reason is plain: I strongly urge you to exercise similar restraint, both for the good of the nation and for the rule of law.

The hearings and the opinions can only help us to decide if we have the authority to act. We must answer the question of whether we ought to act. It is that issue which must concern us all. The current debate on stripping the Federal court jurisdiction gives us an interesting look at how the judicial branch can be both underestimated and overestimated. The court's power and responsibility are overestimated when the court is made the repository of our unsolved social agenda. The courts do not create division in the country issues like abortion and school busing. The courts did not create the environmental and poverty problems that have resulted in statutes which have led to difficult and complex judicial decisions interpreting these laws. The courts did not create racial discrimination and did not set into motion the two-century old conflict between the Federal Government and the States, two other problems that have spawned controvertial litigation. Mr. Brink of the ABA put it well in his Law Day statement:

It must be remembered; first, that, unlike the executive and the legislative, the courts do not initiate policy on their own motion; they respond to cases and case between opposing parties that have not been resolved by the other branches. What has happened, Mr. President, is that the Court, an institution, is the last resort for those who have had their rights under the Constitution, the laws, or have left policies uncertain so that they require court interpretation. In some instances they have dumped implementation of policies in controversial areas on the courts, which have to decide the cases and which have no means to defend themselves from the attacks by the public and other branches of government that follow their decisions.

At the same time, the flexibility and resourcefulness of the institution of the Supreme Court have been underestimated. The Court is never locked into a mode of thought that ignores the development of other branches and in the public domain. The growth of law is never static, but can always evolve if the stimulus to evolution is proper and change is needed in light of the historical development of the Constitution. Professor Ratner in a recent law review article pointed out a number of ways in which the power of the courts in judicial review is overestimated. Criticism from elected officials, private citizens, and the media is not without weight. Congress can affect unpopular decisions with statutes where the Constitution speaks. The power to appoint judges has an immense role to play in the direction of future courts. Amendments and the threat of amendments to the Constitution have a part in shaping the norms that inevitably affect the courts.

If changes may be brought about through such means, it may be asked why many of us in the Senate express such intense interest in bills that simply bring about the same substantive changes, but through other means; namely, the limitation of court jurisdiction.

Nothing less than the rule of law is at stake. It may be shocking to think that not every syllable of every word necessary to protect the rights of citizens under the Constitution is located in the four corners of a document, that so much of the quality of governmental government rests with the judgment of the fallible men and women who serve in Government.

Limiting the jurisdiction of the courts as a means of reversing particular decisions or limiting their effects is a grave and potential threat to our system of checks and balances.

The separation of powers has never been absolute in our system of government. The three branches overlap. The lines of authority are at times unclear.

Underlying the success of the system over nearly 200 years is a strong notion of comity and accommodation among the branches. The self-restraint exercised by each branch is strengthened by genuine concern about destroying that sense of comity, just as one is careful to nurture a faithful relationship with a good neighbor.

The 95th Congress was faced with a dilemma not unlike our own when it considered and rejected President Roosevelt's court-packing proposal. The Senate Judiciary Committee rose to the occasion, despite the great pressure to speed along legislation that was designed to ease the pains of the Great Depression. The words of that committee could be our own today:

...Let us, of the Seventy-fifth Congress, in words that will never be disregarded by any succeeding Congress, declare that we would rather have an independent court, a fearless court that was determined to announce its honest opinions in what it believes to be the defense of liberties of the people, than a court that, out of fear or sense of obligation to the appointing power or factional pressure, approves any measure we may enact. We are not the judges of the judges. We are not above the Constitution.

Mr. President, I said earlier that each one of us has a responsibility not only to our constituents but to every American. How many of us could vote
for these court-stripping bills and then go back and look our constituents in the eye and have to tell them, "We removed some of your freedom; we removed some of those freedoms that Americans have enjoyed for all these years; we put back on your freedom?"

Mr. President, I am not going back to Vermont to say that. I will oppose every one of these court-stripping bills.

I applaud the distinguished Senator from Montana for the efforts that he has made and I applaud the rather lonely fights in this Chamber which he and the distinguished Senator from Connecticut (Mr. Weicker), have conducted. It is in the finest tradition of the Senate, but even more so, it is in the finest tradition of protecting the freedoms our country has always treasured.

CLOTURE MOTION

(The following proceedings occurred during Mr. LEAHY's remarks and are printed at this point by unanimous consent.)

Mr. BAKER. Mr. President, I send a cloture motion to the desk and ask that it be reported.

The PRESIDING OFFICER (Mr. SYMMES). The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The legislative clerk read as follows:

CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on amendment number 2031, as modified, to the committee substitute to House Joint Resolution 520, a joint resolution to provide for a temporary increase in the public debt limit.


(Note.—The above cloture motion was subsequently withdrawn and a replacement therefor filed. See later proceedings in today's Record.)

Mr. BAKER. Mr. President, this is a cloture motion against further debate on the Helms school prayer amendment which will come on Tuesday, if cloture is not invoked on Monday. There will be a vote on Monday on a cloture motion filed yesterday.

I call the attention of Senators to the fact that there is no time agreement by unanimous consent for that vote, and the vote will occur 1 hour after we convene, to follow the establishment of a quorum, under the provisions of rule XXII.

ORDER FOR RECESS UNTIL 2 P.M. ON MONDAY NEXT

Mr. BAKER. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in recess until 2 p.m. on Monday next.

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

ORDER FOR RECOGNITION OF SENATOR NUNN ON MONDAY NEXT

Mr. BAKER. Mr. President, after the recognition of the two leaders under the standing order on Monday next, I ask unanimous consent that the distinguished Senator from Georgia (Mr. NUNN) be recognized on special order for not to exceed 15 minutes.

It is anticipated that after the execution of the special order, there may be a brief period for the transaction of routine morning business; but, in any event, it will not interfere with the establishment of a quorum under the provisions of rule XXII and the cloture vote to follow thereafter.

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

Mr. BAUCUS. Mr. President, will the majority leader yield?

Mr. BAKER. I yield.

Mr. BAUCUS. Would it be in order for the Senator from Montana to request that the majority leader ask unanimous consent that when the Senator returns to the debt limit bill on Monday, after the cloture vote, the Senator from Montana be recognized?

Mr. BAKER. I am sure that will be all right, and I will be pleased to put such a request. Let me first do one check on our side as to a notation on our calendar, which I think is not a problem. But as soon as that is done, I will be happy to make that request.

Mr. BAUCUS. I thank the Senator.

(Order of conclusion of earlier proceedings.)

Mr. LEAHY. Mr. President, I ask unanimous consent that I be allowed to yield the floor at this point without this being construed as the end of a speech for the purposes of the two-speech rule and to yield back to the Senator from Montana under the unanimous-consent agreement, originally entered into.

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

Mr. BAUCUS. Mr. President, I thank the Senator from Vermont for the bottom of my heart.

The Senator from Vermont in all the time I have known him—and it has been several years—has continually and consistently stood up for basic principles of our constitutional form of government, and he has consistently stood up for honesty and got what is right. Over the long haul he has been able, I think, more than most people I have ever known, to withstand temptations that sometimes occur in political life to immediately satisfy some short-term whim where over the longer haul to do so would be more jeopardize or undermine some longer goal or gain.

I very much thank the Senator from Vermont for his efforts in these regards.

Mr. President, in that same vein, the Senator from Vermont has touched on the difference between the temptation to vote for this underlying amendment because it is sometimes characterized as a "school prayer amendment," on the one hand, and, on the other hand, need to withstand that temptation and instead protect the Constitution.

Mr. President, I might ask those who were particularly impressed by yesterday what is really more important? Is it more important to vote for a statute which at some level apparently but not in reality satisfies those who disagree with the Senator from Vermont on the school prayer, or is it more important—and I am not exaggerating this one bit—to vote against such a statute in order to protect the Constitution of the United States?

I suggest perhaps presumptuously that those who think they would be pleased with a favorable vote on this underlying statute would actually be very displeased and very unhappy with the consequences of the action taken—the jeopardizing of their own rights, as well as the rights of others, under the Constitution. That is the issue here today.

It is a matter of education. It is a matter of understanding. If Americans realize that the underlying Helms school prayer amendment is essentially a courtstripping amendment, in fact would not give what they think they are getting but rather would take away their constitutional rights, I doubt that they would vote for it. I urge my Senators and Representatives to vote today. That is the issue up here today.

Mr. President, I see the distinguished Senator from Connecticut in his seat.

I ask unanimous consent that I might yield to the Senator from Connecticut without losing my right to the floor and upon being reconvened the continuation of my speech not be counted as a second speech under rule XIX and that I be allowed to leave the Chamber while I have so yielded and that the Senator from Connecticut be permitted the floor under the same conditions.

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

Mr. BAUCUS. Mr. President, before I completely yield, I again commend the Senator from Connecticut for his yeoman efforts here. He has been a stalwart in protecting the Constitution of the United States. I admire his efforts very much.
Mr. WEICKER. I thank my distinguished colleague and good friend, the Senator from Montana. He is out there in the forefront, at the constitutional wall, and were it not for his foresight and hard work the result might be quite different than it is today, and the result today is that the Constitution is as good today as it was yesterday. How long that is going to last, I do not know. Everyone seems to be taking a pretty good run at it. There is only a handful out here who are protecting it. I would hope we would have even more of our colleagues stand up on these issues.

Let me say at the outset that I could not help but note that there was comment in the paper that possibly it might be that the record vote should be taken on the matter of school prayer so it could be used against those who are up for reelection in the sense that they are not for prayer and are standing up here and arguing in their enthusiasm for religion.

I use this occasion to point out it really should not have anything to do with religion, that most who are standing up here and arguing against the establishment of any religion are not an irreligious group. Indeed, there are many of us who are of very deep faith. But it is that very fact, the fact that we believe in all prayer and all faith, we do not want a state prayer and we do not want a state religion.

That is what is at issue, pure and simple. It has nothing to do with being religious. It has nothing to do with belief in prayer. I would hope that everyone prays mightily. I hope everyone prays his particular faith with overwhelming enthusiasm.

But all this to be done and can be done only in a free society. As soon as the society dictates as to what is going to happen in religious terms or more specifically the words that apply to that religion, then our freedom is whittled just that much and is something a good deal less than it is at present.

Mr. President, today is the 195th anniversary of the signing of the Constitution of the United States of America at the Constitutional Convention of September 17, 1787. So it has been about 200 years probably since as much attention has been paid to that document as is the case right now, as we have a flood of amendments seeking to alter or end-run it.

We are right now debating an amendment to the debt limit bill. An amendment which I understand it falls in the category of legislation. If the amendment is adopted, such adoption is concurred in by the House of Representatives and signed by the President, it then becomes law.

The first amendment to the Constitution of the United States is as follows:

Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof.

Without even getting into the substance, we are in violation of the Constitution. Nobody is going to deny that this country has done with religion. It does not have anything to do with the economy; it does not have anything to do with housing; it does not have anything to do with labor unions; it does not have anything to do with minorities; it does not have anything to do with railroads. It has to do with religion.

Do we have a copy of the amendment here on the desk? Let us just see what we are talking about. Here is the amendment:

Notwithstanding the provisions of sections 1283, 1284, and 1287 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, supervising, or administering a State statute, ordinance, rule, or regulation, which relates to voluntary prayers in public schools and public buildings.

The Senator from Montana has eloquently argued the constitutional principle involved in stripping the Supreme Court of its jurisdiction. I will leave those arguments to him because he does it very well. But is there anybody who is going to argue that this amendment deals with religion? Yet the Constitution of the United States is very precise on the point:

Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof.

I would ask the question next, what salutary result is going to stem from all this official prayer, this state prayer, this state intrusion into religion? What is going to happen? Is the interest rate going to go down 5 or 6 points? Right now small businesses are going belly-up about 600 a week; is that going to stop? Are the conflicts in the Middle East, in Northern Ireland, throughout this world, Central America, and so forth, going to cease?

Is the fact that only 3 percent of this country can buy homes right now going to stop? What is it? The problem is, in this debate, that I have yet to hear why anybody wants this amendment, and probably in the explanations you will find the best reason for its defeat.

There is nothing wrong with the Constitution of the United States. There is a lot wrong with the economy, a lot wrong with unemployment, a lot wrong with how we are getting along with the world, but there is nothing wrong with the Constitution. There is nothing wrong with my religion, nothing certain has to do with religion. I do not even know what the religion is. If there was anything wrong about it I would not know about it.

Religions—you know, they belong in another category. I do not see what we are trying to do out here when we cannot even take care of the United States in terms of its secular problems and its secular needs. All of a sudden now we have become great theologians. We cannot even be great politicians. I do not think we are needed in terms of what resides in the human spirit, in terms of that which is in each of us and in what we believe, to whom we look as being our superior and our supreme being. I do not need to help anybody on that score.

Believe me when I say that even there I have got all I can do to handle myself. I cannot even take care of probably very inadequate in the expression of my faith. So why am I going to go around and start urging somebody else as to what he should or should not do? I always take the fact that, "Well, believe me this will be innocuous, it won't offend anybody, this prayer." Well, if I were a minister or priest or rabbi or however the shep­herd of the flock happens to be, I think the last thing I would accede to would be to something that would be innocuous. At least, as I understand religion, it is not supposed to be innocuous. It is supposed to stand for something. Indeed even to a far greater extent in the ecclesiastical sense than that we are trying to do out here when we look as being our superior and our supreme being. I do not need to help anybody on that score.

But what we are going to have is an innocuous state prayer. It seems to me that is not only an insult to the Constitution but an insult to religion.

Mr. President, I ask unanimous consent that I be allowed to yield the floor to the distinguished Senator from Maryland (Mr. MATHIAS) at this point without its being construed as the end of a speech for the purposes of the two-speech rule, and I ask that upon the conclusion of his remarks that I then be recognized.

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

Mr. WEICKER. Mr. President, before the Senator from Maryland speaks, I just want to express my great admiration for all he has stood for over the years as being a man of great courage, great perception, and certainly one of those who has proven in a lifetime's work of his adherence to and his advocacy of the Constitution of this Nation, take care of...
On January 30, 1982, the Conference of State Chief Justices expressed its "serious concerns" about the court jurisdiction bills and characterized them as "a hazardous experiment with the fundamental fabric of the Nation's judicial systems ** **.

In hearings before subcommittees of both the House and Senate Judiciary Committees, the overwhelming major­

ities of legal scholars urged Congress not to enact any of these court jurisdiction proposals.

On March 17, 1982, 14 Members of this body took the floor of the Senate to express grave concern over the court-stripping bills. Among those speakers was the distinguished Senator from Arizona (Mr. Goldwater), who worried about the impact these proposals would have on the independ­
ence of the Federal judiciary and termed them "destructive of our federal system" and "contrary to the will of the Framers (of the Constitution)."

On May 6, 1982, Attorney General William French Smith suggested that S. 1742, the school prayer court jurisdiction bill, was unconstitu­tional and expressed concern over such proposals as a matter of public policy.

In July 1982, a message was sent to Congress by 25 prominent lawyers calling on Congress to reject "all efforts to remove Federal court jurisdiction over constitutional rights and reme­
dies.

And this message was signed not just by 25 rank-and-file, garden-variety members of the bar, but by four former Attorneys General, four former Solicitors General, and by a former Justice of the Supreme Court of the United States.

So clearly, I think, we who oppose amendments of this kind are gaining momentum. Nonetheless, supporters of these court jurisdiction bills continue both in their legislative efforts and in their belief that these bills are a consti­tutional and wise response to controversial Supreme Court decisions.

The supporters of the Helms amendment are quite candid about their opposition to the Supreme Court's school prayer decisions and their intention to bypass these constitutional rulings. When Senator Helms intro­
duced his school prayer jurisdiction bill, early last year, he laid his cards right on the table. After condemning the Supreme Court's school prayer decision as a distortion of "the intent and language of the (first) amend­ment," Senator Helms stated:

The limited and specific objective of this bill is, then, to restore to the American people the fundamental right of voluntary prayer in the public schools.

The proponents of the amendment of the Senator from North Carolina do not question its legitimacy under the Court's legal rulings. But, they argue, the amendment is a valid exercise of con-
The Constitution's division of power among the three branches of Government is hardly a product of happenstance. Rather, it is the keystone to the Founding Fathers' deliberate development of a theory of government. The authors of the Constitution were worldly men. They were scholars steeped in the history of civilization. Having no television to watch, they read history books. They knew how the human race had dealt in the past with problems of government, authority, power, and conflict. They knew what had been successful and what had failed. And they distilled this knowledge of the history of mankind into the Constitution. I feel confident that a majority of them had read Montesquieu's *The Spirit of the Laws* and adopted his conception of the appropriate division of governmental powers to fit their own ideas, to fit this climate, this geography. Thus the Founding Fathers constructed strong and independent branches of Government specifically to prevent the concentration of too much power in one branch, and in the words of Justice Louis Brandeis, "to save the people from autocracy." Then, to make sure that no one branch would dominate the others, they added some institutional checks and balances. One was judicial review—the power given to the Supreme Court to void State and Federal laws that it judged as violating the Constitution.

Alexander Hamilton pointed out the fundamental importance of this power in Federalist #78. "Without this," he wrote, "all the reservations of particular rights or privileges would amount to nothing." Yet it is precisely this check—the power of judicial review—that this amendment would emasculate.

Of all the concepts that we should conserve, that we should be conservative about, this is surely one.

Moreover, this diminution of the scope of judicial review would undermine both the uniformity in constitutional interpretations provided by the Supreme Court and the constitutional requirement of the supremacy of the Constitution and laws of the United States. There would no longer be a single tribunal to act as the final arbiter as to the meaning of certain provisions let us say, of the first amendment. Each State would be able to determine the meaning of this constitutional language in its own way.

I would predict that we would soon have 50 interpretations.

The result, as a distinguished Marylander, a former Secretary of State, a former Attorney General, William Rogers warned over 20 years ago would be that a person's constitutional rights would vary according to where the person lived, in which State he happened to have his residence.

Enactment of this amendment would also make a mockery of the supremacy clause set forth in article VI, clause 2, of the Constitution:

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 of every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.

This constitutional command would be, as Prof. Leonard G. Ratner told the Senate Judiciary Subcommittee on the Constitution, "no more than an exhortation," if there were no tribunal with nationwide authority to interpret and apply the supreme law, over a century ago, Chief Justice Roger Taney, of Frederick, Md., made this very point:

He began his historic career as a member of the bar in Frederick County, Md., the bar to which I also belong. When he was Chief Justice, he made this same point. He said:

But the supremacy thus conferred on this Government could not be maintained, unless it was clothed with judicial power, equally paramount in authority to carry it into execution, to make sure that no one branch would dominate the others, they added some institutional checks and balances. One was judicial review—the power given to the Supreme Court to void State and Federal laws that it judged as violating the Constitution.

But the danger is not limited to this. These bills also undermine the doctrine of judicial independence, which is a principle worth preserving. It is not a new principle; it is an ancient one. Its origin can be traced back long before the Constitution of the United States was written. Herodotus, the historian of ancient Greece, has passed down to us this description of the Persian legal system of his day:

These royal judges are specially chosen men, who hold office either for life or until they are found guilty of some misconduct. Their duties are to determine suits and to interpret the ancient laws of the land, and all points of dispute are referred to them.

I am sure our Founding Fathers had read Herodotus. They were aware that by grafting judicial independence into the Constitution they were embodying the wisdom of the ages into our organization of law. In this area, they were not creating a new experiment in government.

In addition, they were all too familiar personally with the abuses associated with a dependent judiciary, and they were determined to avoid them. In fact, one of the principal grievances listed against the British in the Declaration of Independence was that the judges were "dependent on his will alone, for the tenure of their offices, and the
Guards equally against that extreme facility, which would render that Constitution too mutable; and the extreme difficulty, which might perpetuate its discovered faults.

This amendatory procedure set forth in article V of the Constitution was designed specifically to deal with the rare types of constitutional change sought by the proponents of this amendment. But they want no part of the constitutionally prescribed procedures. They prefer, I regret to say, to substitute other inferior legislation for the carefully crafted procedures set forth in article V. With all due respect to my colleagues in the Senate, I side with our Founding Fathers on how to go about changing our organic law. Their approach has stood the test of time and has served us well. It should be preserved.

It is inconceivable to me that the authors of the Constitution, who took such pains to construct a delicate balance between the coordinate branches of Government, who conferred on Federal judges a degree of independence unparalleled in the annals of history, and who devoted so much time and care to devising a method of amending the Constitution, would today endorse a method of amending constitutional rulings by a simple majority vote of both Houses of Congress. The fact is, they would not.

Constitutional considerations aside, there are many equally salient side effects to this amendment. It is advertised as a simple and easy way of undoing the effect of controversial Supreme Court decisions. It is suggested that a cure for "judicial tyranny" has been discovered. A discovery—eureka! But, I think that, in the end, these expectations will surely be dashed for one or more good reasons.

First, no one is certain that, if enacted, could be ruled unconstitutional—and I believe it would be. That, of course, would end the issue for once and for all. Courts opponents would be back at square one with no option but to follow the route they should have used in the first place: the constitutional amendment process.

Second, even if sustained by the courts, there is no certainty that this amendment would achieve the desired result. The Supreme Court's interpretations of the Constitution are the law of the land. As the Supreme Court stated in Cooper against Aaron:

Article VI of the Constitution makes the Constitution the "supreme Law of the land"... (Marbury v. Madison) declared the basic principle that the federal judiciary is supreme in the exposition of the law of the Constitution, and that principle has ever since been respected by this Court and the Country as a permanent and indispensable feature of our constitutional system. It follows that the interpretation of the Fourteenth Amendment enunciated by this Court in the Brown case is the supreme law of the land, and Art. VI of the Constitution makes it of binding effect on the States "any Thing in the Constitution or Laws of any State to the contrary notwithstanding."

Thus, Madam President, for this amendment to achieve the ends which its proponents seek, State judges would have to ignore their oath to support the Constitution and render decisions counter to the prevailing Supreme Court rulings on school prayer. Understandably, this very point was made to me by the Conference of State Chief Justices:

First these proposed statutes give the appearance of proceeding from the premise that state court judges will not honor their oaths to obey the United States Constitution, nor their obligation to follow Supreme Court decisions interpreting and applying that Constitution, thus breaking with a 200 year practice and tradition. So viewed, these efforts to transfer jurisdiction to the state courts for these purposes neither enhance the image of those institutions, nor demonstrate confidence that state court judges will do their duty.

I think that the Senator from North Carolina and other advocates of this amendment might misjudge the entire situation. As the American Bar Association has noted, State jurisdictions feel to the Constitution. I am certain that these judges would observe the supremacy clause and continue to follow Supreme Court precedent. Thus, the net effect of this entire venture might be to perpetuate the very decisions that prompted all the fuss in the first place.

Even though State judges are surely loyal to the Constitution, this amendment would work a great—indeed, a cruel—hardship on the exercise of that loyalty because it would shift the legal battleground for a controversial social issue from the Federal to the State courts. Unlike their colleagues on the Federal bench, state judges are elected to office. They do not have the security of life tenure, and are free from political pressures. They are, in fact, very vulnerable to the public mood and the tyranny of the majority. Thus, as the American Bar Association has noted, most bar association members believe that "subject State judges to often hard choices between oath and career."

Last September, we saw a strenuous attempt in the Senate Judiciary Committee to force a Supreme Court nominee to commit heresy, prior to confirmation, to voting to overturn the Court's 1973 decision on abortion. It does not take much imagination to picture the pressures that would be brought to bear to force the same from State judges during election campaigns.

One of the great strengths of the American system is that we have not allowed our Constitution to be pulled and hauled with each ebb and flow of the tide of public opinion. Today, however, the tug-of-war in Congress over these court-curbing bills threatens to reverse the fabric of our Constitution that "the most wonderful work ever struck..."
off at a given time by the brain and purpose of man."

We must not let that happen.

Madam President, at the time he announced his retirement from the Supreme Court, former Justice Potter Stewart had the following conversation with a reporter:

He was asked the question:

"(T)here are numerous proposals in Congress that would strip the Supreme Court of jurisdiction in subject matter areas. Without asking you about the constitutionality of this, does that concern you as a process and as a prospect?"

Justice Stewart. Yes; it does concern me.

There is nothing new about having such bills in Congress. I think there have been such bills in Congress ever since I've been here, in fact long before that. The reason that people are concerned about it nowadays is that there seems to be considerably more of a possibility that one or more of such bills might be enacted. If they were enacted, if any such bill were enacted, it would present immediately very difficult constitutional questions. I'm glad I am not going to be here to wrestle with those, and I hope this Court will never have to wrestle with such questions because I hope that no such legislation will be enacted. So yes, I am concerned.

Madam President, I share Justice Stewart's concern. I do not share his sense of relief that he is not there to wrestle with it, because his service on the Court was of great distinction and of great value to the country, I do share with him the hope that the Court will never have to rule on the constitutionality of one of these Court jurisdiction bills. Obviously we in the Senate have much to say about whether or not the Court will ever have to render such a decision. And, by defeating the amendment now before us decisively and overwhelmingly, we can send out a clear signal that there are no proposals in Congress that would strip the Supreme Court of jurisdiction to hear cases and in schools as an issue itself, but, rather, deals with the denial of the court's jurisdiction to hear cases pertaining to that particular subject.

If you can open the door, if you can take the lock off the gate depriving the courts' jurisdiction in one area there is no question that you have opened a Pandora's box, and probably totally destroyed the Constitution of the United States.

Take other subjects: unreasonable searches and seizures; the question of slavery, involuntary servitude; the right of citizens to vote. Should we take away jurisdiction in any of those areas? If we enact this particular measure, have we not truly then said that the Constitution may be deprived of jurisdiction in any area in which we disagree with that particular part of the Constitution of the United States?

The issue here is the integrity of the court system and our constitutional government. Would you believe in that constitutional way of government, either you believe in the integrity of the court systems, or you do not. If you believe in the integrity of the system, it is in the Constitution of the United States, then this proposal cannot be supported.

This proposal goes further than the language of the proposal itself, and the implications of this proposal are totally unlimited. The implications are that the Constitution can be broken indirectly when the people of the country would not be willing to undo any of the constitutional provisions by the normal procedures as provided in that document, and that is by amending the Constitution.

The issue before the people of the country on these measures which would deny the courts jurisdiction is not an issue having to do with the matter of abortion or busing or school prayer or any of the other very fashionable these days to deal with through court-stripping legislation.
But, stripping the Federal courts of jurisdiction because transient political majorities do not like the court’s constitutionally imposed limitations on our society’s democratic framework. It is bad public policy, and it is shortsighted. Simply stated, if you do not like the court’s decisions, then use the procedures in the constitution to change them. Do not do it by an amendment depriving the court of jurisdiction.

Madam President, such court-stripping amendments do not make sense. I find it hard to believe that the Members of this body support that approach. That simply cannot be the position of any person who believes that our constitutional system of Government is a sacred system and is one that we all want to protect.

Let me read what the Attorney General of the United States himself said on this subject:

Congress may not, however, consistent with the Constitution, make “exceptions” to Supreme Court jurisdiction which would deprive the court of its core competencies, especially where those cases which are central to the core functions of the Court in our system of government. This remedy would in many ways create a problem equally or more severe than those which the measure seeks to rectify.

Essential to the principle of separation of powers was the proposition that no one branch of government should have the power to eliminate the fundamental constitutional role of either of the other branches.

It is appropriate to note, however, that even if it were concluded that legislation in this area could be enacted consistent with the Constitution, the Department would have concerns as a policy matter about the withdrawal of a class of cases from the appellate jurisdiction of the Supreme Court. History counsels against depriving that Court of its role as a final arbiter over Federal questions. Proposals of this kind have been advanced periodically, but have not been adopted since the Civil War. There are sound reasons that explain why Congress has exercised restraint in this area and not tested the limits of constitutional authority under the exception clause.

Madam President, I ask unanimous consent that I be allowed to yield the floor at this point without this being construed as the end of the speech for the purposes of this two-speech rule, and I yield to the Senator from Oregon.

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

Mr. HATFIELD. Madam President, I wish to share with our colleagues my impression of one of the real issues in this debate, which I fear has been overlooked. That is, as it relates to the first amendment to the Constitution and the way in which the first amendment today is being applied that infringes upon the rights of stu-
dents to free speech and which discriminates against them because of the religious content of their speech. I am introducing statutory language which will accomplish this goal without utilizing the ill-advised method of stripping the Federal court jurisdiction over school prayer.

In Wiener v. Vincent, the Supreme Court held that, absent a compelling purpose, a public university may not deny the use of its facilities to student groups which wish to meet and speak on religious subjects if it makes its facilities generally available to student groups for meetings on non-religious subjects. The Court based this holding not on the free exercise of religion clause but on the freedom of speech clause of the first amendment as made applicable to the States through the 14th amendment, for once the university “created a forum generally open to all lawful student groups,” the Court said the university could not “discriminate against student groups and speakers based on their desire to engage in religious worship and discourse.” I recall that while I was Governor of my State a well-known Communist speaker by the name of Gus Hall was making a round of college and university campuses across the country. There was a great outcry by many in my State for me to prevent Gus Hall from the use of the public universities from which to make these statements relating to Karl Marx. I could not and would not, due to the constitutional guarantee of free speech, in any way attempt to intervene to prohibit Gus Hall from making these speeches.

However, that being the case, not only in Oregon but other States to have had Billy Graham come to the campus or any other prominent religious speaker, the same forum about Jesus Christ would have been interpreted to violate the establishment of religion clause and there by a violation of separation of church and state.

Madam President, I find this ridiculous in a free society dedicated to the principles of free thought.

The denial of opportunities to exercise free speech because of its religious content is now occurring throughout the country.

Let me cite a few examples:

At Guiderian High School in New York, Christian students sought and have been denied the right to meet before classes for prayer and Bible study. The meetings were strictly volun-
tary, unauthorized, student announce-
ments, no school sponsorship, but a Federal district court and appeals court have upheld the school board’s refusal to allow the group to meet.

And yet students can voluntarily associate themselves in that school for other purposes, philosophical societies, camera-photography societies or clubs, all the kinds of clubs in which they voluntarily associate themselves there because of mutual interest and have open and freedom of discussion, but they cannot meet to study the Bible.

I do not support the school prayer amendment. I oppose the idea of any kind of mandated prayer in school. I do not believe that is in line with our constitutional separation of church and state.

Frankly, I do not have time to write all the prayers, and I do not trust anyone else to. So consequently I have to oppose the whole concept.

But I am speaking today not on the right of religious exercise but I am speaking on the freedom of speech, the first amendment of the Constitution, that is being denied under this ridicul ous interpretation by the courts relating to freedom of religious activity.

In Lubbock, Texas, the school board drafted a careful policy that accommodated student initiated religious activity on an equal basis with other student groups in the use of school facilities for meetings at an after-school club. The U.S. Court of Appeals for the Fifth Circuit struck down this school board policy and forced a total ban of voluntary, student-initiated religious activity. Lubbock Civil Liberties Union v. Lubbock Independent School District, 660 F.2d 1308 (5th Cir. 1982) is the citation of that case.

And yet in that same school district they could meet and probably have a political discussion on any part of political philosophy they wanted to. They could have a meeting on economic philosophy. They could have a meeting on social philosophy, but not on religion.

Madam President, once a school board establishes the forum for the pursuit of information or knowledge these forums cannot be truncated over the content of that association or voluntary organization. That is what the Supreme Court ruled as it related to universities and colleges.

What I want to do with this bill is to apply that same constitutional principle the Court applied to the colleges and universities to the elementary and secondary school systems of this country.

Let me cite a third example.

In Williamsport, Pa., the public high school allows students to participate in student clubs and groups such as Student Government, Key Club, Language Clubs, Future Homemakers, music and publication groups. The clubs allow students to exchange ideas and personal opinions on a broad range of topics, subjects, and issues, and no one attempts to intervene to determine the content of those discussions. The clubs meet from 7:23 a.m. to 8:23 a.m. each Tuesday and Thursday.

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mornings during a regularly scheduled activity period. The clubs may also meet before and after school hours.

In September 1981, a group of students at Williamsport High School requested permission to form a student club to be called Petros which would meet voluntarily during the regularly scheduled activity period on Tuesday and Thursday mornings. The purpose of this student club was for students to aid one another in their personal, social, emotional, and intellectual growth and development by studying the Bible, discussing religious subjects, praying together, and sharing personal experiences. The principal of the high school and the superintendent of the district denied the request on the ground that the meetings would be religious in content. In January 1982, at a meeting of the school board, the request by the students was denied on the same ground.

Hopefully, the students will prevail in this case for that they are being denied their first amendment rights of free speech simply because of the religious content of the proposed meetings. However, if the Brandon and Lubbock decisions are followed by the courts, a further unfortunate precedent would be set.

The bill I introduce today extends the principle of the Widmar decision to the public secondary school. When a school generally allows groups of students to meet during a noninstructional part of the school day, that school cannot discriminate against any meeting because of the religious content of the speech at the meeting.

What would it be if we had a political club meeting and the students decided they wanted to discuss Karl Marx and communism? I would defend anyone’s right but I also say I would defend the right of that student group to engage in that discussion as I would defend anyone’s right but I also say I would defend their right to have a meeting on the Bible and discuss the person of Jesus Christ, or Buddha, or Mohammed, or any other religious leader.

School boards and school administrations have no right to abridge the first amendment, freedom of speech, by declaring what the contents of those meetings are or will be only in the case of religion.

The legislation that I introduce also insures that school officials will continue to have discretion to insure that the meetings are voluntary, orderly, lawful, do not in any way engage in licit or illegal or inappropriate activity. That is the right of administering any school organization. But it should be applied across the board.

Most importantly, this language specifies that students can be forced to participate in prayer or any religious activity. It has to be strictly voluntary.

Moreover, State or school officials will have no authority to influence the form or content of any prayer or other religious activity that such clubs may engage in. This language is similar to the amendment suggested by the National Association of Evangelicals in testimony with respect to the President’s prayer amendment to the Constitution.

What needs to be addressed is the recent series of lower court decisions that have singled out religious speech as the one form of speech unworthy of protection in the schools. It is even more alarming to see school officials throughout the country deciding to ban all religious speech from public schools. By protecting the free speech rights of students in public high schools the bill is consistent with the Widmar decision.

In prohibiting State sponsorship or influence in formulating the content of prayer or religious activity, this legislation is consistent with the original Supreme Court decisions of Engel against Vitale and Abington against Schempp.

In my judgment, I ask unanimous consent to have printed in the Record a copy of my testimony before the Senate Judiciary Committee on this issue and the memorandum mentioned in the statement.

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

**Statement of Senator Mark Hatfield**

In 1982 the Supreme Court invalidated a non-denominational prayer that had been written by the New York Board of Regents and approved by local school boards. By imposing a “watered down” prayer on all students, the New York Regents adopted a useless gesture that was neither “spiritual” nor “prayer.”

Since that decision, the Supreme Court’s ruling has been blamed for the deteriorating quality of public education, for the breakdown of the American family, for the decay in moral principles and abdication of governmental institutions to the norm of secular humanism. The school prayer decision has served as a symbol for all that is useless and self-defeating.


In Lubbock, Texas the school board drafted a policy that accommodated student initiated religious activity on an equal basis with other student groups in the use of school facilities for meetings before and after school. The United States Court of Appeals struck down the policy and ruled that a school may not allow the formation of a student-initiated religious activity. Lubbock Civil Liberties Union v. Independent School District, 866 F.2d 1308 (5th Cir. 1982).

Mr. Chairman, it is unduly restrictive actions like those in Lubbock and Guilderland and others which the Congress should devise its attention. By chilling sincere efforts to pray for God’s grace, and forbidding voluntary religious meetings that do not disrupt the academic functions of a public school, we do far more damage to the nation’s moral fiber than through any Supreme Court decision that invalidates a routine, formalistic, and spiritually bankrupt prayer that the New York Regents drafted in the 1960s.

Because of these concerns, I asked the Christian Legal Society to provide me with a legal memorandum outlining the problems that have developed in restricting religious freedom which may be enjoyed by students on public campuses. CLS has done some extraordinary work in researching, litigating and advocating on behalf of religious freedom. I would like to have the Committee consider the CLS memorandum and recommendations for legislative initiatives as a realistic alternative to the School Prayer Amendment.

**Memorandum of July 12, 1982**

Ty: Samuel E. Erleeson.

From: Stephen H. Gablebach and Lowell V. Sturgill, Jr.

Question Presented: What is the best legislative means to apply the principles of the Widmar v. Vincent decision to the context of public schools?

President Reagan recently introduced an amendment to the Congress to minimize the Supreme Court’s controversial decisions of the early 1960’s against state-initiated prayer and Bible reading in public schools. Some of the most serious obstacles to religious activity by students in public schools, however, have received little public attention. In recent years many of the school administrators, and some lower courts, have begun to prohibit even those forms of religious speech by high school students initiated voluntarily and initiated by students with no sponsor-ship by the state. Administrators and judges have barred student clubs that are religious in nature, and have banned after and after school small-group meetings—thus
the Court has ruled unconstitutional state policies that initiated student recitation of the Lord’s Prayer in class, Engel v. Vitale, 370 U.S. 421 (1962); reading from the Bible over a morning announcement, Abington Township v. Schempp, 374 U.S. 203 (1963); bringing a religious teacher on campus to instruct students, McDaniel v. Board of Education, 333 U.S. 203 (1948); and posting of the Ten Commandments on school walls, Stone v. Graham, 449 U.S. 39 (1980). The Supreme Court thought that the Student Recitation Act did not comprise state action, because it was enacted by the legislature and did not involve the state’s use of its facilities. In Dixon, Illinois (the hometown of President Reagan), a local school board has voted to ban all voluntary religious activities on school grounds. Also, the same school board has removed from its curriculum groups only four opportunities per year to rent or reserve school facilities for meetings of a school interdenominational student club which plans to hold religious meetings, with no appearance of state sponsorship. The basic question is whether Congress can legislate to apply the Widmar principle of content-neutrality to public schools, without violating the Establishment Clause. The Widmar decision held that a content-neutral policy of equal access to state universities facilities did not violate the Establishment Clause, because any religious meetings would be student-initiated and would therefore only involve the state on the same basis as non-religious meetings, with no appearance of state sponsorship.

In a footnote, however, the Widmar Court carefully reserved the question whether the Establishment Clause prevents application of the content-neutral concept as applied in Dixon to public schools. The Court suggested, however, that the neutrality of such a policy will turn at least partly on the “impressionability” of students in the public schools. In S. Ct. cert. denied, 97 S. Ct. 701 (2d Cir. 1980). The Court thought that the immaturity of younger students might cause those students who have not yet mastered the concept of religion from an open forum policy, even though the same policy would not constitute state action if applied in public schools.

Therefore, the application of the Establishment Clause to public schools will turn at least partly on the fact question of whether the students involved are significantly less mature than college students.
further important question will be, given the maturity level of the students, will they be likely to perceive equal protection as state favoritism or sponsorship toward religion, or will they be likely to perceive discrimination against non-religious content as a form of state hostility toward religion?

B. The Appropriate Role for Public Schools

The maturity level of the students and the relationship of maturity to the impression of state sponsorship of religion are factual questions that Congress is well-advised to resolve through its investigatory and factfinding powers. Congress is well-suited to exercise its legislative fact-finding capacity to solve the problem at hand by investigating relevant facts and deciding at what grade level students are mature enough to choose to engage in extracurricular activities. Both religious and non-religious activities. both religious and non-religious, without danger of student perception of state sponsorship of religion. Congress might very well decide that secondary school students are mature enough to choose to engage in extracurricular student activities in which they will participate, while elementary students are not sufficiently mature.

IV. CONGRESS HAS AUTHORITY TO PROVIDE A SOLUTION TO THE PROBLEM

A. Congressional Power Under Section Five of the Fourteenth Amendment

The Fourteenth Amendment's due process and equal protection clauses incorporate several individual constitutional rights as binding on the states, including the freedom of speech. See e.g. Palko v. Connecticut, 302 U.S. 319 (1937), and the freedom of assembly. See De Jonge v. Oregon, 229 U.S. 535 (1913). Section Five of the Fourteenth Amendment provides that the Congress shall have power to enforce, by appropriate legislation, the provisions of this article. Therefore Congress has power to enact legislation requiring states to respect constitutional rights of free speech and free association.

The content-neutrality requirement, a fundamental component of the First Amendment, is not involved. The protection of freedom of speech, also falls within the due process and equal protection obligations imposed on the states by the Fourteenth Amendment. See Widmar v. Vincent, 103 S. Ct. 269 (1981). Therefore, Congress has authority under Section Five of the Fourteenth Amendment to enforce the content-neutrality principle upon state administered public schools, by appropriate legislation.


Thus, Congress could supply clarity where the lower courts have created confusion.

B. Congressional Power Under Section Five of the Appropriations of the Federal Government

A bill applying the Widmar principle to public schools in particular by Congressional authority over federal government appropriations. Congress has broad power to attach conditions to its grants-in-aid programs. Such conditions are themselves constitutional. See e.g. Falbo v. Kutztnick, 448 U.S. 448 (1980); Widmar v. Vincent, 454 U.S. 263 (1973); cf. Harris v. McRae, 444 U.S. 297, reh. den. 448 U.S. 917 (1980).

Again, the absence of any definitive statement by the Supreme Court on whether content-neutrality at the public secondary school level violates the Establishment Clause as applied to religious speech has led the Congressional Research Service to conclude that this "proposed condition cannot at this time be said to impose an unconstitutional condition on federal assistance to such schools." See Congressional Research Service memorandum at 6. In sum, Supreme Court silence on the Establishment Clause question in the public secondary school context leaves the Congress free to enact a statute that would apply the Widmar principle of content-neutrality to public schools in a manner consistent with the Establishment Clause accord of Congress.

V. WHAT WOULD BE THE RELATIONSHIP OF A BILL EXTENDING THE WIDMAR PRINCIPLE TO PUBLIC SCHOOLS WITH THE PRESIDENT'S PROPOSED MODIFICATION AMENDMENT?

The President's Prayer Amendment, under its most likely interpretation, would solve the problem addressed by a bill extending Widmar to public schools, that is, the failure of lower courts and school boards to so apply the Widmar free speech principle of content-neutrality.

The President's proposed Prayer Amendment reads as follows:

"Nothing in this Constitution shall be construed to prohibit individual or group prayer in public schools or other public institutions. No persons shall be required by the United States or by any State to participate in prayer."

The proposed amendment would seem to address the lower court decisions and school officials to allow voluntary, student-initiated religious group meetings on the same basis as non-religious groups as required by the Widmar content-neutrality principle.

The essence of the prayer amendment is to continue the judicial and public misconception that the First Amendment Establishment Clause bars religion from any influence on public life in general, and public schools in particular. The effect of the amendment's reaffirmation of an earlier understanding would be to allow reinstatement of non-coerced individual and group prayer in public institutions insofar as the First Amendment has been considered a bar. But, it would not allow reinstatement, if states construed such a bar from state laws or constitutions.

As a result of the prayer amendment, Congress would have the power to reintroduce the Establishment Clause as a justification for discriminating against meetings and speech of public school students of any nature. Thus, the prayer amendment in part pursues the same objective as would a bill applying the Widmar principle of content-neutrality to public secondary schools.

In addition to being compatible with the prayer amendment, a bill applying content-neutrality to public secondary schools enhances the cause of that amendment in several ways. First, Administration and Congressional support of a bill extending the Widmar principle to public secondary schools and Congress's recent consideration of those branches to deal with the loss of voluntary religious activity from public schools. Second, while the President's prayer amendment would take at least seven years to enact, a statute could correct relatively quickly the most recent and perhaps the most offensive of the judicial distortions at which the amendment is aimed. Third, a Widmar bill, within its sphere of impact, could make an affirmative requirement of neutrality, rather than just removing the federal Constitution as the asserted reason for discrimination against religious activity.

Furthermore, a statute extending Widmar to public schools focuses attention on those violations of freedom of speech and association that are most offensive to the overwhelming majority of American people. This has been indicated in informal conversations between Christian Legal Society attorneys and several groups which normally express reservations about state-sponsored prayer, but which endorse content-neutrality.

Congressional hearings on this bill could easily be consolidated with hearings on the President's Prayer Amendment. They are two mutually exclusive proposals to the same problems. A bill would be only a temporary solution to a part of the problem; thus, one would at least eliminate the need for an amendment.

VI. PROPOSED LANGUAGE FOR A BILL EXTENDING THE WIDMAR PRINCIPLE TO THE PUBLIC SCHOOLS

Several good proposals have already been offered for such a bill, including proposals by Senator Jepson, Senator Helms, and the law firm of Ball and Skelly. The only question is which is best. Copies of each proposal are attached to this memorandum for references as appendices.

A. Christian Legal Society Also Has Drafted Language for a Widmar Bill in Public Schools. It Reads As Follows:

"No public secondary school receiving federal financial assistance, which generally allows groups of students to meet during non-instructional periods, should be required by any meeting of students on the basis of the content of the speech at the meeting, provided that the meeting shall be voluntary and orderly and that no activity which is in and of itself unlawful need be permitted."

B. Explanation of Terms of Christian Legal Society Proposal

1. The proposed statute limits the application of Widmar content-neutrality to secondary schools. The statute omits reference to primary schools. This is in recognition that Congress, and perhaps the Supreme Court as well, might consider the danger of perceiving state sponsorship from equal treatment of religious activity too great for primary-age children.

2. The statute applies only against those schools that receive federal financial assistance. This self-limitation should satisfy those who defend the public schools that do not accept federal funds to administer their programs free from federal interference. Regarding the time period during which the act would be in effect, a period of three to five years would be appropriate.
which a school must have accepted federal funds to come within the requirements of this statute, the statute leaves this matter open as the subject of reasonable and appropriate regulation by proper federal or state administrative officials, in light of legislative history that should be clearly established after hearings.

3. The statute applies to schools that "generally" allow student meetings. Use of the term "generally" conforms to the decision of the Supreme Court in Widmar v. Vincent, 102 S. Ct. 269, 277 (1981). The significance of the term is that by its use, the statute applies not to schools which have allowed one or two groups to meet on a one-time basis, but to schools that allow many student groups to meet in general. Cf. Congressional Research Service memorandum (arguing that Senator Jepson's proposal has a weakness in its omission of the term "generally").

4. Use of the term "groups" of students also comports with the Supreme Court's decision in Widmar, See 102 S. Ct. at 273. The statute by its terms does not require content-neutrality regarding the isolated religious speech of one student absent a listener. (Supreme Court has already allowed to pray silently by themselves.)

5. The statute limits application of content-neutrality to public schools by noting that the statute does not address whether faculty, staff, or school administrators may engage in religious group meetings on a public school campus. It seems unlikely that a limitation on public schools in this context incorporates the Widmar Court's implicit proposition that the public forum need not remain open to existing users simply because a new user asks to use the forum.

6. The statute demands that the state not discriminate against any student "meetings" on the basis of speech. Use of the limited term "meeting" mirrors the holding in Widmar, which precluded content-based discriminations only against student "meetings" in public schools. See 102 S. Ct. at 272 n.5.

7. By use of the term "non-instructional periods", the statute intends to mean any period of time, either before, during, or after the school day, during which the school is not in session. The statute incorporates the Widmar Court's implicit proposition that the public forum need not remain open to existing users simply because a new user asks to use the forum.

8. The statute uses the term "discrimination" instead of the word "exclusion" as used in Widmar v. Vincent for several reasons. First, "discrimination" better represents the hostility toward religion that a school board shows by denying meeting privilege to religious groups on an equal basis with non-religious groups. Second, "discrimination" is a broader term than "exclusion". The term "discrimination" is less precisely defined by proper federal or state administrative officials. Total refusal of access to meeting facilities was the case in Widmar, as well as after-the-fact denial of use. A school board may "discriminate" against a religious group by initially choosing to attend a religious meeting, and subterfuge forms of discrimination against student religious groups falling short of a total exclusion from meeting privileges.

9. "Content of the speech at the meeting" is a broad phrase precluding school officials from discriminating against many forms of speech, including educational, ethical, religious and political speech. To the exclusion of speech of other subject matter. Any speech "at the meeting" is subject to regulation by the state. The statute gives no indication whether the discrimination would occur before the meeting would be held, during the pendency of the meeting, or after the meeting had ended.

10. The statute's requirement that student meetings must be "voluntary" ensures that a public school will neither use student meetings as a means of infringing the free exercise of religion rights or freedom of speech "right to hear" rights of students, nor as a vehicle for state initiated religious or non-religious activity of the sort that would violate the Establishment Clause.

11. The statute requires that student meetings must be "orderly". The term "orderly" is intended to summarize and represent the right and duty of school officials to administer an educational program without material disruption by students, as established in Independent School District v. Creative Acts Unlimited, 28 Cal. 2d 536, 171 P.2d 885 (1946).

12. The statute used the phrase "in and of itself unlawful" to designate those types of speech that are not normally protected forms of speech under the First Amendment to the United States Constitution. A school may generally prevent students from meeting to discuss illegal narcotics deals.

13. Finally, it is important to note that the proposed language of this statute, in contrast to the language of other similar proposed statutes, does not use the word "religious", or purport to "guarantee the rights of religious speech on the same basis as non-religious speech" for several reasons. First and foremost, a statute drawn in strictly neutral terms should draw the support of a number of groups engaged in many different forms of speech better than would a statute drawn on religious terms. Second, the Fifth Circuit seized upon the religious focus of a school board's equal access policy in Lubbock Civil Liberties Union v. Lubbock Independent School District, 669 F.2d 1308 (5th Cir. 1982) to strike down that policy as imposing an impermissible religious purpose condemned by the Establishment Clause.

14. On the other hand, there are good reasons for drafting the statute to ban discriminations against student speech, rather than banning all content-based discriminations. Banning all content-based discriminations might be objectionable if it precludes school officials from protecting students against influence from witchcraft or other harmful activities and ideas.

15. One possible miscellaneous objection to the proposed bill is that, by requiring public secondary schools to treat speech in a content neutral fashion, the bill extends the influence of unsavory groups such as religious cults or the communist party. The proposed bill should not fail to this objection, however, for two reasons. First, the fear of undue influence by unpopular groups in the public schools is large and real. Second, the statute's requirement that meetings must be "orderly" is too broad, as it includes a prior restraint policy of school officials, in light of legislative history that should be clearly established after hearings.

16. The statute's requirement that student meetings be "voluntary" ensur...
4. To what degree will public school teachers be involved in student religious activities guaranteed by the content-neutrality principle?

To begin, the proposed bill does not purport to guarantee the rights of teachers to engage in religious activity in public schools. It refers only to student rights. Therefore, parents or teachers in student religious meetings will remain subject to the discretion of local school officials.

Consequently, many public schools may require faculty supervision of student religious meetings. Other schools may allow parents to provide the necessary supervision, or may require no supervision at all. In any event, faculty or parent supervision of student religious groups is perfectly proper under the Establishment Clause as long as the school is not undertaking the shaping of the religious content of the meeting through the supervision process.

5. Does the proposed content-neutrality bill mean that school officials will have to let students engage in religious discussions whenever and wherever they please?

No. The Supreme Court has said that public schools, other than grade schools, always have discretion to limit the expression of protected forms of free speech by reason of time, place, and manner restrictions. See, e.g., \textit{ISKCON, Inc. v. Cal.}, 101 S. Ct. 2559 (1981). The proposed bill would have this discretion intact in public schools, as long as school officials promulgate reasonable time, place and manner restrictions in content-neutral terms. See id at 2564.

6. Does the bill apply to public schools that allow student clubs to use school facilities for club meetings?

The bill would allow any public school to adopt a policy allowing no student group, religious or non-religious, to use school facilities. Schools would simply have to treat religious and non-religious groups the same.

7. What are the “non-instructional periods” during which the content-neutrality principle limits state regulation of student speech?

A non-instructional period is any time, either before or after classroom hours or during the school day, during which students are not scheduled for classroom instruction. Non-instructional periods might include non-instructional lunch time, after-school club periods, or any other time when a public school allows students clubs or groups to meet. By contrast, the principle of content-neutrality would not apply during periods when students are undergoing instruction in or out of the classroom.

8. Why does the proposed bill apply the content-neutrality principle only to public secondary schools, and not to elementary schools?

The proposed bill applies the content-neutrality requirement only to secondary schools in recognition that the immaturity of elementary students may cause them to misperceive a public school’s accommodation of religious discussion on an equal basis as non-religious speech as state sponsorship of religion. See \textit{Widmar v. Vincent}, 102 S. Ct. 269, 276 n.14. Students in secondary schools normally are accustomed to choosing among a variety of student groups in which to participate; elementary school students generally are not.

Mr. HATFIELD. Now, Madam President, although I have no intention of offering this language as a substitute or as an amendment to the court-stripped version of the bill that I oppose, I believe it is a sound approach to protecting the first amendment free speech rights of public high school students.

Madam President, I only hope some of my good liberal friends, such as in the American Civil Liberties Union, who are always so anxious to protect people's rights of freedom of speech when it comes out of the mouth of the Communist organizations and everything else that they are always anxious to jump up and protect that freedom of speech, will demonstrate a little interest in protecting the freedom of speech of people who want to speak on religious subjects. I see no consistency in all this pious outpourings of protecting the rights of speech when it comes out of the left of the political spectrum, but little interest demonstrated once in a while when the same abridgement of constitutional rights happens to come out of conservative areas.

If such a group as the ACLU and other liberal groups, that I associate with and consider as my friends, would have been just as concerned about the rights, constitutional rights, of the people in the area of speech on religious subjects, we would not be having this issue here today. We would not have all of these efforts to strip the Supreme Court and other courts of their rightful jurisdiction. We would not have these efforts to amend the Constitution to require a kind of balkanization of the prayer issue, to provide mandatory prayer in States like Alabama, that are at least efforts being made in States like Alabama.

I just do not feel that we can any more ignore the abridgement of the right of freedom of speech when it happens to be a religious subject than we can when it happens to be a political subject.

I want to reemphasize that I put my own political future on the line, put it at stake, when I defended the right of Gus Hall to speak as an American Communist on the campuses of my State universities when, at the same time, people who wanted to speak about Jesus Christ or have a Bible study could not even meet on some of these campuses in this country. That is why we had the Widmar decision of the Supreme Court saying that once those fora are established in any school for the pursuit of information or knowledge on a voluntary basis, the school boards have no right to limit it to nonreligious subjects. The first amendment does not exempt religious subjects from the right of free speech. That is why I offered the amendment because of some of the efforts made by these same school administrators to limit the right of speech on religious subjects, and they have provided forums for nonreligious subjects.
touched upon by the substance of the amendment we have before us.

It is not the contention of the Senator from Oregon, is it, that a voluntary prayer or rather a prayer in the public schools is something that would be beneficial to the children and it relates to the Constitution? I am finding a little difficulty. I agree with all the Senator says, and I am a very dear friend of his, and I think most of the time we see exactly alike, and I agree with him as to the matter of association and discussion and total freedom in this area of religion.

But really the issue before us is whether or not you are going to have a State prayer in our schools and, of course, I believe anything like that cannot be voluntary because merely the nature of having to attend school makes this case.

Mr. HATFIELD. No; I would respond I am sorry the Senator was not on the floor at the beginning of my remarks. I am making the case under the first amendment based upon the Widmar case handled by the Supreme Court recently, that whenever an institution of education establishes a forum by association to arise among the students, political societies, fraternal organizations, whatever they might be, music societies, publication societies, that there is no right to say any voluntary association will be permitted outside of a religious one. They cannot use the facilities of that campus for a religious club. I am not talking about volunteering offered at the beginning of class or anything like that.

So when the Supreme Court recently ruled that the universities and colleges of this Nation cannot discriminate under the first amendment by determining the content of those organizations, I am trying to apply this to the secondary school programs where in a secondary school establishing an activity hour where students are permitted to voluntarily organize political clubs, music clubs, drama clubs, and so forth.

I cited three specific cases and two court opinions that have said these forums can be organized for anything but a religious club. They are verboten. I am saying that under the Widmar decision of the Supreme Court that is a violation of the freedom of speech right for those students who want to voluntarily associate themselves in an orderly way under the existing regulations govern any other club, but in which the school association or board or administration has determined the content and said, "We do not permit that kind of association that has a religious commitment or a religious purpose."

Mr. HATFIELD. That is restriction and not expansion.

Mr. President, I ask unanimous consent that I may be allowed to yield the floor to the Senator from Montana at this point without this being construed as the end of a speech for the purposes of the two-speech rule.

Mr. BAUCUS. Mr. President, I wish to thank the Senator from Oregon for his recounting of the pressures to this subject. I find the latest proposal by the Senator from Oregon very attractive.

I, too, have been bothered by the trend and direction of Supreme Court decisions which go so far in protecting the establishment clause in the first amendment that it is beginning to impinge upon the free exercise clause as well as the free speech provisions of that amendment. I see nothing wrong with activity periods or after school periods when students can come together to exercise their religious prerogatives. I want to commend the Senator from Oregon for taking that approach. I think it is a very salutary and very valuable contribution to resolving some of these dilemmas. I thank the Senator from Oregon.

Mr. HATFIELD. I thank the Senator from Montana.

Mr. BAUCUS. Mr. President, when I last spoke this morning, I was reading into the Record portions of a letter from Mr. Attorney General William French Smith written to the chairman of the Senate Judiciary Committee on May 6, 1982. I was referring to those portions of the letter which argue against statutes which limit Supreme Court jurisdiction over Federal constitutional questions. The letter pointed out the branches of Government, the executive and the legislative. The Attorney General was pointing out that, as a matter of essential functions, the judicial branch is probably inherently more weak than the other two branches; that it has less to protect the separation of power between the branches; that our public schools in the first instance, the overreaction by a lot of local authorities, the overreaction by a lot of local authorities.

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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 holds the sword of the community. The executive not only dispenses the honors but rights of every citizen are to be regulated. Direction either of the strength or of the judicial branch have neither Force nor Will but merely resolution whatever.

It is significant that while the Framers understood the Constitution; because it will be least in holds the sword of the community. The executive not only dispenses the honors but rights of every citizen are to be regulated. Direction either of the strength or of the judicial branch have neither Force nor Will but merely resolution whatever.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. BAKER. Mr. President, the Senator had indicated to me earlier that he would like to have a unanimous-consent request that he be next recognized. I regret to advise him that we cannot clear the floor, but I urge the Senator to be on the floor. I expect he probably would not have trouble being recognized. I know of no effort to deprive him of recognition, which, of course, no Senator could do in any event.

Mr. BAUCUS. I thank the Senator for making the inquiry and informing the Senator. Yes; I will be on the floor and will be seeking recognition as soon as we return to this bill.

Mr. BAKER. I thank the Senator.

WITHDRAWAL OF CLOTURE MOTION

Mr. BAKER. Mr. President, earlier there was a technical mixup in the cloture motion that was filed. I have cleared this with the majority leader.

I ask unanimous consent that the cloture motion filed earlier today on the Helms amendment, 2031, as modified, be withdrawn.

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

CLOTURE MOTION

Mr. BAKER. Mr. President, I send a new cloture motion to the desk and ask the clerk to report.

The PRESIDING OFFICER. The clerk will report the motion.

The legislative clerk read as follows:

CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on amendment number 2031, as modified, to the committee substitute to House Joint Resolution S20, a joint resolution to provide for a temporary increase in the public debt limit.

Jesse Helms, John F. East, Roger W. Jepsen, Jeremiah Denton, Paul Laxalt,

Government, is inherently more weak than the other two branches of Government, I quoted, as did the Attorney General, a portion of the Federalist Papers where Alexander Hamilton pointed out this essential weakness. At this point, I would like to continue with the letter.

Mr. BAKER. Mr. President, will the Senator yield to me without losing his right to the floor and without counting this as a second speech?

Mr. BAUCUS. Yes, Mr. President.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. BAKER. Mr. President, I am prepared to go off this bill shortly and go into a period for the transaction of routine morning business if the Senator is agreeable.

Mr. BAUCUS. That will be fine, Mr. President, as far as this Senator is concerned.

Mr. BAKER. Mr. President, the Senator had indicated to me earlier that he would like to have a unanimous-consent request that he be next recognized. I regret to advise him that we cannot clear the floor, but I urge the Senator to be on the floor. I expect he probably would not have trouble being recognized. I know of no effort to deprive him of recognition, which, of course, no Senator could do in any event.

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CONGRESSIONAL RECORD—SENATE 24141

September 17, 1982


ROUTINE MORNING BUSINESS

Mr. BAKER. Mr. President, I now ask unanimous consent that there be a period for the transaction of routine morning business to extend not past 2 p.m. in which Senators may speak.

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

Mr. BAKER. Mr. President, before we do the wrapup, I understand that the distinguished Senator from Maryland may seek recognition for the introduction of a matter.

TRIBUTE TO EARL WEAVER

Mr. MATHIAS. Mr. President, I send a resolution to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The resolution will be stated by title.

The legislative clerk read as follows:

A resolution (S. Res. 468) to pay tribute to Earl Weaver.

The PRESIDING OFFICER. Is there objection to the present consideration of the resolution?

Mr. ROBERT C. BYRD. Mr. President, there is no objection to the request to proceed to the immediate consideration of the resolution as far as this side is concerned.

There being no objection, the Senate proceeded to consider the resolution, which was submitted by Mr. MATHIAS, for Mr. NICHOLSON.

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

The resolution (S. Res. 468) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. Res. 468

Whereas, Earl Weaver, manager of the Baltimore Orioles for the past 13 years, has led the Birds to six eastern division championships, four American League pennants and one world championship, and

Whereas, Earl's won-lost percentage ranks third on the all time list, and he is tied with the Yankees' great Joe McCarthy and trails only the immortal Connie Mack in winning 100 games or more per season, and

Whereas, Earl's intensity for inspiring Oriole victories by feisty finagling and limitless legerdemain has won the unfailing support of Orioles fans and the ire of umpire and opponent, and

Whereas, Earl has achieved distinction in alternate careers as author, Shakespeare scholar and nurturer of prize Maryland tomatoes, which in yonder bullpen growth, and

Whereas, Earl has managed the same team for a longer period than any current manager; now, therefore, be it

Resolved That the United States Senate wishes to honor and pay tribute to Earl Weaver on the occasion of "Thanks Earl Day" Sunday September 19, 1982 at Memorial Stadium, Baltimore, Maryland.

Sec. 2 The Secretary of the Senate shall transmit a copy of this Resolution to Earl Weaver.

Mr. MATHIAS. Mr. President, are we now in routine morning business?

The PRESIDING OFFICER. We are now in routine morning business.

TRIBUTE TO JOSEPH MEYERHOFF

Mr. MATHIAS. Mr. President, in the Book of Genesis we are told the story of Joseph, and one of the first things that we learn about Joseph is that he was resplendent in a coat of many colors, a coat so famous that its description has lasted for 5,000 years. During that period of time, people have talked and read about Joseph and his coat of many colors.

We have in Maryland, in the city of Baltimore, another Joseph who also wears a coat of many colors, a coat not of wool or cotton or linen but a coat fashioned by himself out of the fabric of life and consisting of the many contributions that he has made during a long and fruitful life. The colors of this coat consist of philanthropy in many parts of the world, charities in the United States, schools and hospitals in the State of Israel. They include the homes that he has helped to construct where families now gather and community facilities that serve daily neighborhood needs.

Most recently, they include a great symphony hall which was dedicated last night in the city of Baltimore. The Baltimore Symphony acquired its own hall largely as a result of the personal efforts of Joseph Meyerhoff.

His is a coat of many colors, more glorious than that of the original Joseph. I suspect that the reason that Joseph of the Bible is remembered is not solely because of his coat but because of the kind of man who wore the coat. Mr. President, Joseph Meyerhoff will be remembered, because of the kind of man that he is, a man of dedication and vision and commitment. He is in many ways a Biblical figure.

He and his wife Rebecca, who have worked so hard together for the Baltimore Symphony and for the arts, are patriarchal in the Biblical sense; they lead a large family of children and grandchildren and nieces and nephews, each of whom makes a personal and varied contribution to the community.

Like the Joseph in Genesis, we will long remember Joseph Meyerhoff.

Mr. President, I ask unanimous consent that an editorial which appeared in the Baltimore Sun this morning be included in the Record at the conclusion of my remarks.

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

"From the Baltimore Sun, Sept. 17, 1982"

The Joseph Meyerhoff Symphony Hall that had its gala opening last night enlarges and enriches Baltimore. It is a better -- and makes an ideal -- home for the symphony music. It will improve the dynamic between players and audience. The result should be finer music from a better orchestra enjoying greater public support.

The departure of the Baltimore Symphony in turn frees the Lyric Theater to fulfill its destiny as a fully equipped large musical theater for opera, musical comedy and dance. That is a function no other house in Baltimore can provide. The Lyric's reopening later in the season, delayed by a strike at the seat manufacturer, will make clear that Baltimore is getting two large performance halls, each better than the old Lyric.

Together, they will present an array of performing arts in coming years that could not have been contemplated earlier. More world class companies and more people will attend. Baltimore will grow in amenities and in reputation. Too, a more balanced musical theatre for Baltimore will rise in some cultural pecking order, however. Other cities are also adding to cultural plant. For Baltimoreans, the absolute improvement here is what matters most.

Meyerhoff Hall is a tribute to the relentless determination of Joseph Meyerhoff to see it built, as well as to his boundless generosity. The large state contribution resulted from the statement of many legislators from every part of Maryland who understood the value of the Baltimore Symphony to their communities.

The hall is one more proof of which is in the hearing. Both planners and architects got the priorities right. Other halls have most impressed on the side, grandeur in their lobbies. Meyerhoff Hall does not overwhelm its neighbors. It complements their rectangularity with its oval. From a distance, it seems almost small.

Inside, in the great room designed for performances and hearing symphony music, Meyerhoff Hall seeks greatness. This building was designed for one purpose and from the inside out. Acoustics dictated the shape of that room, the size and shape of the balconies as well as the clouds. Its pleasing, somewhat Art Deco style is a happy byproduct.

The interior is radiant; it is more than an occult art. The day is past when a fabled conductor could say, "I don't understand acoustics; neither do architects." Meyerhoff Hall is built for sound in ways that the halls of Lincoln Center in New York and Kennedy Center in Washington were not. Baltimore is a greater city than it was yesterday.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

The Senator from Alabama.
A METHODIST DAY OF PRAYER FOR THE WORLD

Mr. HEFLIN. Mr. President, on Sunday the 19th of September, this very weekend, millions of people from all corners of the globe will be praying that the walls of division which stand between countless peoples of the world will fall.

The World Methodist Council and the religious publication, "The Upper Room," have called for Sunday to be a day of "Prayer for the World." More than a quarter of a million Methodist congregations spanning the world are expected to answer the call by observing special prayer services on this day.

In places which are particularly symbolic of the tragedy caused by divisions among people, such as Berlin and Belfast, special prayer events have been planned. In West Berlin, the site of the prayer service will be the "Churh of the Wall, the 'Kreuz-Kirche.'" This church itself is particularly symbolic for this purpose, for it was formed and built by Methodists in East Berlin by the infamous Berlin Wall.

According to Rev. Eddie Fox, North American Regional Secretary for World Evangelism for the World Methodist Council, millions of Methodists observing the day of prayer will be joined by more than 8 million readers of "The Upper Room.

This daily devotional guide is published in many languages around the world, and has chosen to focus on the theme of "Prayer for the World" during the time leading up to the ceremonies on Sunday in an attempt to fully express the world's needs in prayer.

The day of "Prayer for the World" will focus on four specific issues which serve to divide mankind. These four issues—poverty, racism, war, and spiritual darkness—belong to the four corners of the globe who are suffering, and are all in need of help through prayer.

As the son of a Methodist minister, I have long been a believer in the positive power of prayer.

I hope that on this coming Sunday millions will answer the call of the World Methodist Council, and remember the millions of tragically divided people around the world—and remember them not only in their thoughts but also in their prayers.

Mr. BAKER. Mr. President, I have a few routine matters to take care of unless somebody is seeking recognition.

Mr. President, both of these items I believe have been cleared by the minority leader, and I make the request now for the benefit of the Senate and the acting minority leader and others.

CORRECTIONS IN ENROLLMENT OF H.R. 3517

Mr. BAKER. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of House Concurrent Resolution 408.

The PRESIDING OFFICER. The bill will be stated by title.

The legislative clerk read as follows:

There being no objection, the concurrent resolution was agreed to.

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

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

The motion to lay on the table was agreed to.

BOUNDARY OF CIBOLA NATIONAL FOREST

Mr. BAKER. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 778, S. 2405.

The PRESIDING OFFICER. The bill will be stated by title.

The legislative clerk read as follows:

A bill (S. 2405) to further amend the boundary of the Cibola National Forest to allow an exchange of lands within the city of Albuquerque, N. Mex.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Energy and Natural Resources with an amendment to strike out all after the enacting clause and insert the following:

That, in order to expedite the acquisition of land authorized by the Act of November 8, 1978 (92 Stat. 2422), that Act is hereby amended as follows:

(two sections of text)
corner being a point on the northerly boundary of the Elena Gallegos Grant; thence continuing along said Grant boundary, south 81 degrees 06 minutes 04 seconds east, 1,983.01 feet to a point; thence south 81 degrees 06 minutes 04 seconds east, 431.56 feet to the 7-mile centerline of the north boundary of said Grant; thence south 81 degrees 06 minutes 04 seconds east, 213.00 feet, the northwest corner of the Sandia Pueblo Grant; consisting of 7,935.84 acres, more or less; 

(b) Add a new section 5 to read as follows: 

"Sec. 5. (a) Notwithstanding any other provision of law, the Secretary of Agriculture, in cooperation with the Secretary of the Interior, is authorized and directed to acquire the lands described in section 1 in lieu of purchase as authorized by section 4 of this Act by exchanging with the city of Albuquerque so much of the Federal lands administered by the Forest Service and Bureau of Land Management in the State of New Mexico and consisting of approximately 32,800 acres, more or less, as the Secretary of Agriculture and the Secretary of the Interior determine are needed to equal the value of the land conveyed by the city of Albuquerque. Such lands to be conveyed are subject to valid existing rights. 

"(c) Transactions necessary to effect the exchange authorized by this section shall be made pursuant to the provisions of the Federal Land Policy and Management Act of 1976 (90 Stat. 2743) and other applicable law except to the extent necessary to effect the duly carry out the provision of the section and shall be made within 90 days of enactment of this Act. Provided, That the rights and responsibilities of the respective owners shall remain with such owners until such time as the conveyances are executed."

The PRESIDING OFFICER. The question is on agreeing to the committee amendment.

The committee amendment was agreed to.

AMENDMENT NO. 1263
(Purpose: Technical amendment to S. 2405, as reported)

Mr. BAKER. Mr. President, I have a technical amendment which I send to the desk.

Mr. LONG. Mr. President, will the Senator explain the nature of the committee amendment? Is it similar to the Amendment No. 1263?

Mr. BAKER. Mr. President, will the Senator explain the nature of the committee amendment? Is it similar to the Amendment No. 1263?

The PRESIDING OFFICER. The committee amendment struck the language of the original bill and inserted new committee language.

Mr. LONG. Mr. President, will the majority leader give me some idea what the new language to be inserted is?

Mr. BAKER. Mr. President, the Senator from Louisiana has me at a disadvantage, because this was cleared for action on both sides by unanimous consent.

I withdraw my request for consideration of this matter.

Mr. LONG. Does the Senator have a memorandum which would show what this is?

Mr. BAKER. Mr. President, I suggest that we return to this in a few minutes.
Parcel 2—A certain tract of land situated within the boundaries of the parcel being conveyed, depicted on the Summary Plat as “Tract C, Tijeras Canyon Scenic Area,” and being more particularly described by New Mexico State plane grid bearings and distances as follows: Beginning at the southwest corner of the tract herein described, the TRUE POINT OF BEGINNING, containing 270 acres, more or less.

To the northwesterly corner of the tract herein described, thence continuing along the northwesterly boundary of the tract herein described, the TRUE POINT OF BEGINNING, containing 640 acres, more or less.
to provide public access to the 640-acre parcel identified as Excepted Parcel 1, described preceding, within and along the roadway depicted on the Summary Plat as the Bedroom Road Easement, as previously reserved by the Albuquerque Academy.

An easement, outstanding in the City of Albuquerque, for the existing Empeñado Canyon training dike, as recorded on September 26, 1978, Misc. Bk. 641, pages 101-104, records of the County Clerk of Bernalillo County.

An easement, outstanding in the Albuquerque Metropolitan Arroyo Flood Control Authority, for construction and maintenance of the Upper Bear Canyon Training Dike, as recorded on April 25, 1978, Misc. Bk. 684, pages 789-792, records of the County Clerk of Bernalillo County, together with rights of access along the Access Road Easement to the training dike as depicted on the Summary Plat.

6. Reservation by the City of Albuquerque, Grantor, of an easement for a City water intakes site, depicted on the Summary Plat as Tract F, a twenty (20) foot easement for an associated water line, and a fifty (50) foot easement for an associated service road, both as depicted on the Summary Plat.

7. Rights of the United States and third persons, if any, under the following reservations contained in the patent for the Elena Gallegos Grant:

a. ** title to any gold, silver, or quicksilver mines or minerals of the same, but all such mines and minerals shall remain the property of the United States with the right of working the same.

b. ** limitations and terms of the act of Congress of March 3, 1891.

c. ** Rights if any, of claimants under mineral mining claims.

Mr. DOMENICI. Mr. President, the purpose of S. 2405 as reported, with the technical amendment, is to expedite the acquisition of a 7,935.84 acre portion of the Elena Gallegos grant so that a portion may be added to the Sandia Mountain Wilderness in the Cibola National Forest, N. Mex. The bill corrects the acreage figure and the forest boundary as established in Public Law 95-614; and it directs the Secretary of Agriculture in cooperation with the Secretary of the Interior to exchange approximately 32,800 acres of Federal lands in New Mexico with the city of Albuquerque for the 7,935.84 acre area to be added to the Cibola National Forest. This is to be accomplished within 90 days of the date of enactment of this act.

I should like to compliment the city of Albuquerque, including both the city officials and the citizens of the Duke City, for the numerous actions they have taken during the last year to insure that this acquisition takes place. This bill is the product of their continuing efforts, and for their help on this bill which I believe will have longlasting significance far beyond the borders of New Mexico.

In closing, I thank Senator MALCOLM WALLOP of Wyoming, chairman of the Public Lands and Reserve Water Subcommittee of the Energy and Natural Resources Committee. His assistance in this Wilderness System has been invaluable.

I also thank the chairman of the Energy and Natural Resources Committee, James McClure, as well as continuing support for their help on this bill which I believe will have longlasting significance far beyond the borders of New Mexico.
ORDER FOR RECOGNITION OF SENATOR BRADLEY ON MONDAY NEXT

Mr. BAKER. Mr. President, I believe there is a special order in favor of the Senator from Georgia (Mr. Nunn) for Monday next. Is that correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. BAKER. I add to that a unanimous-consent request that the distinguished Senator from New Jersey (Mr. Bradley) be recognized after the Senator from Georgia, and make a statement, for not to exceed 15 minutes.

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

PROGRAM

Mr. BAKER. Mr. President, the Senate will convene at 2 p.m. on Monday next.

Under the provisions of rule XXII, 1 hour after convening there will be an automatic quorum call. As soon as a quorum is established, the vote on cloture will occur, pursuant to the cloture motion that has been filed against further debate on the Heims amendment.

RECESS UNTIL 2 P.M. ON MONDAY, SEPTEMBER 20, 1982

Mr. BAKER. Mr. President, I inquire of the acting minority leader if he has any further matter he wishes to address to the Senate.

Mr. BAUCUS. Mr. President, so far as I know, we have no other business on this side at this time.

Mr. BAKER. Thank the Senator.

Mr. BAKER. Mr. President, as I have indicated previously, it is desirable that the Senate stand in recess early today because of the religious observance which requires that certain Members leave the Senate prior to sundown, to travel to their hometowns.

At this time, I move, in accordance with the order previously entered, that the Senate stand in recess until 2 p.m. on Monday, September 20, 1982.

The motion was agreed to, and at 1:54 p.m. the Senate recessed until Monday, September 20, 1982, at 2 p.m.

NOMINATIONS

Executive nominations received by the Senate September 17, 1982:

DEPARTMENT OF AGRICULTURE

Orville G. Bentley, of Illinois, to be an Assistant Secretary of Agriculture, new position.

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

L. Clair Nelson, of Virginia, to be a Member of the Federal Mine Safety and Health Review Commission for a term of 6 years expiring August 30, 1988, vice Marian Pearlman Nease, resigned.

DEPARTMENT OF STATE

David Joseph Fischer, of Texas, a Career Member of the Senior Foreign Service, class of Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Seychelles.

DEPARTMENT OF JUSTICE

James K. Stewart, of California, to be Director of the National Institute of Justice, new position.

COMMODITY FUTURES TRADING COMMISSION

Fowler C. West, of Texas, to be Commissioner of the Commodity Futures Trading Commission for the term expiring April 13, 1987, vice David Gay Gartner, term expired.

NATIONAL MEDIATION BOARD

Walter C. Wallace, of New York, to be a Member of the National Mediation Board for the term expiring July 1, 1984, vice George S. Ives, term expired.

FOREIGN SERVICE

The following-named Career Members of the Senior Foreign Service for promotion in the Senior Foreign Service to the classes indicated:

Career Members of the Senior Foreign Service of the United States of America, class of Career Minister:

Robert L. Barry, of New Hampshire.
Frederic L. Chapman, of New Jersey.
Joan M. Clark, of New York.
Peter Dalton Constable, of New York.
Norris Draper, of the District of Columbia.

Henry Allen Holmes, of the District of Columbia.

Robert V. Keeley, of Florida.

George W. Landau, of Maryland.

Loren E. Lawrence, of Maryland.

Thomas P. Shoup, of Pennsylvania.

Career Members of the Senior Foreign Service of the United States of America, class of Minister-Counselor:

Donald Milton Anderson, of the District of Columbia.

George M. Barbot, of California.

Robert D. Blackwell, of Maryland.

Donald J. Bouchard, of Maine.

M. Lyall Breckon, of Oregon.

Elmor Greer Constable, of New York.

John R. Countryman, of Florida.

Edmund DeJarnette, of Virginia.

Thadeus J. Figura, of Ohio.

James Wellman Freeman, Jr., of Rhode Island.

Frank M. Pulgash, of Maryland.

Charles Wyman Grover, of New Hampshire.

Robert Gordon Houdéck, of Illinois.

George Fleming Jones, of Texas.

William E. Knepper, of California.

George E. Knight, of Pennsylvania.

Shepard Cherry Lowman, of Virginia.

Robert W. Maulne, of Washington.

Sherrod McColl, of Illinois.

Richard L. McCormack, of Florida.

James M. Montgomery, of New Jersey.

Ernest Andrew Macy, of California.

Chester E. Norris, Jr., of Maine.

Nancy Ostrander, of Indiana.

William Thornton Payne, of Pennsylvania.

Alexander L. Rattray, of Washington.

Elmore Francis Rigamer, M.D., of Louisiana.

Fernando Enrique Rondón, of Virginia.

Charles A. Schmitz, of Missouri.

Roger C. Schrader, of Arizona.

William T. Shinn, of Maryland.

N. Shav Smith, of Virginia.

Walter Edward Stadtler, of New York.

Paul K. Stahnke, of Illinois.

States of America to the Republic of Seychelles.

Department of Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Seychelles.
The following-named Career Members of the Foreign Service for promotion into the Senior Foreign Service, and Consular Officer and Secretary in the Diplomatic Service appointments, as indicated:

**Career Members of the Senior Foreign Service of the United States of America, class of Counselor:**

- Alvin P. Adams, Jr., of Virginia.
- Frank C. Bennett, Jr., of California.
- John A. Boyle, of New York.
- Charles F. Brown, of Nevada.
- Anthony S. Dalsimer, of Florida.
- Charles F. Dunbar, Jr., of Maine.
- John Eignus Clark, of Maryland.
- Larry Craig Johnstone, of Washington.
- Robert R. Rappe, of California.
- John Todd Stewart, of California.

**IN THE ARMY**

- The following-named officer to be placed on the retired list in grade indicated under the provisions of title 10, United States Code, section 1370:

  To be lieutenant general

  The following-named officer under the provisions of title 10, United States Code, section 601, to be assigned to a position of importance and responsibility designated by the President under title 10, United States Code, section 601:

  To be lieutenant general
CONFERENCE REPORT ON H.R. 6133

Pursuant to the order of September 16, 1982, Mr. Jones of North Carolina submitted the following conference report and statement on the bill (H.R. 6133) to carry out the provisions of the Endangered Species Act of 1973 for fiscal years 1983, 1984, and 1985, and for other purposes.

CONFERENCE REPORT (H. Rept. No. 97-635)

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 6133) to authorize appropriations to carry out the provisions of the Endangered Species Act of 1973 for fiscal years 1983, 1984, and 1985, and for other purposes.

SEC. 1. LISTING PROCESS.

(a) Section 4 of the Endangered Species Act of 1973 (16 U.S.C. 1533) is amended as follows:

(1) Subsection (a) is amended—

(A) by redesignating subparagraphs (1) through (5) of paragraph (1) as subparagraphs (A) through (E), respectively;

(B) by amending that part of paragraph (1) which precedes subparagraph (A) as so redesignated by inserting "promulgated in accordance with subsection (b)" immediately after "shall by regulation";

(C) by striking out "spouting," in paragraph (1)(B) as so redesignated and inserting in lieu thereof "recreational;";

(D) by striking out the last two sentences in paragraph (1)(E) as so redesignated and inserting in lieu thereof: "B) may, from time-to-time thereafter as appropriate, revise such designation.

(2) Subsection (b) is amended to read as follows:

"(B) Basis for determinations.—(1) The Secretary shall make determinations required by subsection (a)(1)(A) solely on the basis of the best scientific and commercial data available to him after conducting a review of the status of the species and after taking into account those efforts, if any, being made by any State or foreign nation, or any political subdivision of a State or foreign nation, to protect such species, whether by control, protection of habitat and food supply, or other conservation practices, within any area under its jurisdiction, or on the high seas.

(2) In carrying out this section, the Secretary shall give consideration to species which have been—

"(i) designated as requiring protection from unrestricted commerce by any foreign nation, or pursuant to any international agreement;

"(ii) identified as in danger of extinction, or likely to become so within the foreseeable future, by any State agency or by any agency of a foreign nation that is responsible for the conservation of fish or wildlife or plants.

(3) The Secretary shall designate critical habitat, and make revisions thereto, under subsection (a)(1) on the basis of the best scientific data available and after taking into consideration, the economic impact, and any other relevant impact, of specifying any particular area as critical habitat.

(4) The Secretary may designate from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying a particular area as critical habitat, unless he determines, based on the best scientific and commercial data available, that the failure to designate such area as critical habitat will result in the extinction of the species concerned.

(b) To the maximum extent practicable, within 90 days after receiving the petition that is found under clause (i) to present substantial information indicating that the requested revision may be warranted, the Secretary shall determine how he intends to proceed with the requested revision, and shall promptly publish notice of such intention in the Federal Register.

(c) Except as provided in paragraphs (5) and (6) of this subsection, the provisions of section 533(i) of title 5, United States Code, to revise a critical habitat designation, the Secretary shall make a finding as to whether the petition presents substantial scientific information indicating that the revision may be warranted. The Secretary shall promptly publish such finding in the Federal Register.

(d) Within 12 months after receiving a petition that is found under subparagraph (A) to present substantial information indicating that the requested revision may be warranted, the Secretary shall determine how he intends to proceed with the requested revision, and shall promptly publish notice of such intention in the Federal Register.

(e) Not less than 30 days before the effective date of the regulation promulgated to carry out the purposes of this Act, the Secretary shall publish a general notice and the complete text of the proposed regulation in the Federal Register, and give actual notice of the proposed regulation (including the complete text of the regulations to the State agency in each State in which the species is believed to occur, and to each county or equivalent jurisdiction in which the species is believed to occur, and invite the comment of such agency, and each such jurisdiction, thereon;

(f) Insofar as practical, and in cooperation with the Secretary of State, give notice of the proposed regulation to each foreign nation in which the species is believed to occur or whose citizens harvest the species.
on the high seas, and invite the comment of such nation thereon.

(C) A final regulation designating critical habitat of an endangered species or a threatened species shall be published concurrently with the final regulation implement-
ing the determination that such species is endangered or threatened, unless the Secre-
tary determines that such species is not endangered or threatened, in which case
the final regulation shall be published.

(D) A final regulation implementing such a determination shall be published in the
Federal Register not later than the end of such one-year period.

(E) The Secretary may extend the one-year period, if necessary, if the Secretary
finds that there is substantial evidence that such species is not endangered or
threatened.

(F) (1) If a determination is made that such a species is endangered or threatened,
the Secretary shall publish a notice of the determination or revision concerned
in the Federal Register.

(2) A final determination or revision thereof is to be made on the date of the
enactment of this Act; and any regulation proposed before that date shall be
made on the date of the enactment of this Act.

(3) A final determination or revision thereof shall be made on the date of the
enactment of this Act.

(G) The Secretary may extend the one-year period, if necessary, if the Secretary
finds that there is substantial evidence that such species is not endangered or
threatened.

(H) A final determination or revision thereof is to be made on the date of the
enactment of this Act; and any regulation proposed before that date shall be
made on the date of the enactment of this Act.

(I) A final determination or revision thereof is to be made on the date of the
enactment of this Act; and any regulation proposed before that date shall be
made on the date of the enactment of this Act.

(J) A final determination or revision thereof is to be made on the date of the
enactment of this Act; and any regulation proposed before that date shall be
made on the date of the enactment of this Act.

(K) A final determination or revision thereof is to be made on the date of the
enactment of this Act; and any regulation proposed before that date shall be
made on the date of the enactment of this Act.

(L) A final determination or revision thereof is to be made on the date of the
enactment of this Act; and any regulation proposed before that date shall be
made on the date of the enactment of this Act.
with respect to any species which was listed as an endangered species or a threatened species before November 10, 1978.

SEC. 3. with respect to any species which was listed as an endangered species or a threatened species under subsection (d)(2)(i) thereof and inserting in lieu thereof "90 percent"; and

SEC. 4. INTERAGENCY COOPERATION AND COMMITTEE EXEMPTIONS.

(a) Section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1536) is amended—

(f) The second sentence of paragraph (6) is redesignated as paragraph (7) and is further amended to read as follows:

(b) Section 7(1) of the Endangered Species Act of 1973 (16 U.S.C. 1536) is amended as follows:

(i) by striking paragraph (3) as a part of the Act and inserting in place thereof—

The denial of an application under this subsection may not be processed in any way prior to the conclusion of the consultation and evaluation process required by this subsection.
SEC. 5. CONVENTION IMPLEMENTATION.

Section 8A of the Endangered Species Act of 1973 (16 U.S.C. 1537a) is amended—

(1) by amending subsection (c) by inserting "(1) immediately after "SCIENTIFIC APPROPRIATENESS FUNCTIONS—", and by adding at the end thereof the following:

"(2) The Secretary shall base the determinations and advice given by him under Article IV of the Convention with respect to making, estimates of population size in making such determinations or giving such advice;"

(2) by amending subsection (d) to read as follows:

"(d) RESERVATIONS BY THE UNITED STATES UNDER CONVENTION.—If the United States makes any reservation under Article IV of the Convention, it does not enter a reservation pursuant to paragraph (3) of Article XV of the Convention with respect to the Secretary of State before the 90th day after the last day on which such a reservation could be entered, the United States shall submit to the Committee on Commerce, and the heads of other agencies with respect to that species, the Secretary and the Secretary of the Interior, or (hereinafter in this subsection referred to as the 'Secretary'), in cooperation with the Secretary of State, shall act on behalf of, and represent, the United States in all respects required by the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere (58 Stat. 1344, T.S. 982), hereinafter in this subsection referred to as the 'Western Convention'). In the discharge of these responsibilities, the Secretary and the Secretary of the Interior shall consult with the Secretary of Agriculture, the Secretary of Commerce, and the heads of other agencies with respect to matters relating to or affecting their areas of responsibility.

(2) The Secretary and the Secretary of the Interior shall, in cooperation with the contracting parties to the Western Convention and, to the extent feasible and appropriate, with the participation of State agencies, take such steps as are necessary to implement the Western Convention. Such steps shall include, but not be limited to—

(A) cooperation with contracting parties and international organizations for the purpose of developing personnel resources and programs that are necessary for public comment, with respect to a particular action to the extent practicable, minimize and mitigate the impacts of such action;

(B) the measures, if any, required under paragraphs (f) and (g) of section 3 of the Endangered Species Act of 1973 (16 U.S.C. 1533(a)(2)) or any other applicable law or regulation; and

(C) the measures, if any, required under subsection (a) of section 10 of the Endangered Species Act of 1973 (16 U.S.C. 1539(a)) or any other applicable law or regulation.

(3) Subsection (a) is amended to read as follows:

"(a) PERMITS.—(1) The Secretary may permit, under such terms and conditions as he may prescribe—

(A) any act otherwise prohibited by section 9 for scientific purposes or to enhance the survival of such species, including, but not limited to, actions necessary for the establishment and maintenance of experimental populations pursuant to section 9(a)(1) or 9(a)(2); and

(B) any taking otherwise prohibited by section 9A(1)(B) if such taking is incidental to the carrying out of an otherwise lawful activity.

(2)(A) No permit may be issued by the Secretary authorizing any taking referred to in paragraph (1)(B) unless the applicant therefor submits to the Secretary a conservation plan that specifies—

(i) the impact which will likely result from such taking;

(ii) what steps the applicant will take to minimize and mitigate such impacts, and the funding that will be available to implement such steps;

(iii) what alternative actions to such taking may be considered, the applicant's reasons why such alternatives are not being utilized; and

(iv) such other measures that the Secretary may require as being necessary or appropriate for purposes of the plan.

(B) If the Secretary finds, after opportunity for public comment of the related conservation plan, that—

(i) the taking will be incidental to the purposes of this subsection,

(ii) the applicant will, to the maximum extent practicable, minimize and mitigate the impacts of such taking;

(iii) the applicant will ensure that adequate funding for the plan will be provided;

(iv) the taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and

(v) the measures, if any, required under subparagraph (a)(iv) will be met;

and he has received such other assurances as he may require that the plan will be implemented, the Secretary shall issue the permit.

The permit shall contain such terms and conditions as the Secretary deems necessary to carry out the purposes of this paragraph, including, but not limited to, such reporting requirements as the Secretary may designate; and

(C) Subsection (a) is amended by striking out "subsections (a)(2) and (a)(3)" and inserting in lieu thereof "subsections (a)(1) and (a)(4)".

(3) Subsection (f) is amended—

(A) by amending paragraph (1)(B) by inserting "substantially" immediately before "etching" and before "carving", and by adding after the comma at the end thereof the following:

"for purposes of this subsection, polishing or the adding of minor superficial decoration to scrimshaw products, or the raw materials for such products, have been adequately ac-
counted for and not disposed of contrary to the provisions of this Act; and

(5) in the commission of unlawfully imported or acquired marine mammal products with such exempted products either by persons to whom certificates of importation have been issued under subpara-

graph (4) of this subsection or by subsequent purchasers from such persons.

(4) In conducting the review required under subparagraph (A), the Secretary shall consider, but not be limited to-

(i) the adequacy of the reporting and records required of exemption holders;

(ii) the extent to which such reports and records are subject to verification;

(iii) methods for identifying individual pieces of scrimshaw products and raw mate-

rials and for preventing commingling of exempted materials from those not subject to such exemption; and

(iv) the retention of unworked materials in controlled-access storage.

The Secretary shall submit a report to the Committee on Merchant Marine and Fisheries of the House of Repre-

sentatives and the Committee on the Envi-

ronment and Public Works of the Senate on such findings and make it available to the general public.

Based on such review, the Secretary shall, on or before October 1, 1985, propose and adopt such revisions to such regulations as he deems necessary and appropriate to carry out this paragraph. Upon publication of such regulations, the Secretary may renew for a further period of not to exceed three years any certificate of exemption prev-

iously renewed under paragraph (4) of this subsection, subject to such new terms and conditions as are necessary and appropriate under the revised regulations, except that any certificate of exemption that would, but for this clause, expire on or after the date of enactment of this paragraph and before the date of the adoption of such regulations may be extended until such time after the date of adoption as may be necessary for purposes of applying such regulations to the certificate. Notwithstanding the foregoing, however, no person may, after January 31, 1984, sell or offer for sale in interstate or for-

eign commerce any pre-Act finished prod-

ucts not made in the course of a commercial activity, be an importation not in violation of any provision of this Act or any regulation issued thereunder to: such fish or wildlife remains in the control of the United States Customs Service.

(5) At the end thereof insert the following new subsection:

"(ii) EXPERIMENTAL POPULATIONS.—(1) For purposes of this subsection, the term 'experimental population' means any population (including any offspring arising solely therefrom) authorized by the Secretary for release under paragraph (2), but only when, and at such times as, the population is a wholly separate geographically from nonex-

perimental populations of the same species. (2) The Secretary may authorize the release (and the related transportation) of any population (including eggs, propagules, or any other stage of a species) as a threatened species outside the current range of such species if the Secretary deter-

mines that such release will further the con-

servation of such species ."

(6) Before authorizing the release of any population under subparagraph (A), the Sec-

retary shall determine, on the basis of the best available information, whether or not such population is essential to the continued existence of an endangered species or a threatened species.

(7) For the purposes of this Act, each member of an experimental population shall be treated as a threatened species; except that:

(i) solely for purposes of section 7 (other than subsection (a)(1) thereof), an experi-

mental population determined under sub-

paragraph (b) to be not essential to the con-

tinued existence of an endangered species or a threatened species."

(2) The Secretary, with respect to popula-

tions of endangered species or threatened species that the Secretary authorized, before the date of adoption of this subsection, for release in geographical areas separate from the other populations of such species, shall determine by regulation which of such populations are an experimental population determined under subparagraph (b), to be not essential to the continued existence of a species.

(3) The Secretary shall determine, by regulation, which of any endangered species or threatened species shall be treated as an experimental population determined under subparagraph (b), to be not essential to the continued existence of a species.

(4) Section 15 of the Endangered Species Act of 1973 (16 U.S.C. 1542) is amended to read as follows:

"AUTHORIZATION OF APPROPRIATIONS.

"SEC. 15. (a) GEN/ERAL.—Except as pro-

vided in subsections (b), (c), and (d), there are authorized to be appropriated-

ed for each of fiscal years 1983, 1984, and 1985 to enable the Department of the Interior to carry out such functions and responsibilities as it may have been given under this Act:

"(1) not to exceed $6,000,000 for each of fiscal years 1983, 1984, and 1985 to enable the Department of Agriculture to carry out its functions and responsibilities with re-

spect to the Experimental Population Act of 1983 and the Convention which pertain to the importa-

tion or exportation of plants.

"(b) REPEAL.-—For the purposes of subsec-

tion 6, there are authorized to be appropriated not to exceed $6,000,000 for each of fiscal years 1983, 1984, and 1985.

"(c) CONVENTION IMPLEMENTATION.—There are au-

thorized to be appropriated to the Secretary to assist him and the Endangered Species Committee in carrying out such functions under section 7(e), (g), and (h) not to exceed $600,000 for each of fiscal years 1983, 1984, and 1985.

"(d) CONVENTION IMPLEMENTATION.—There are au-

thorized to be appropriated to the Secretary to assist him and the Endangered Species Committee in carrying out such functions under section 7(e), (g), and (h) not to exceed $600,000 for each of fiscal years 1983, 1984, and 1985.

"(e) CONVENTION IMPLEMENTATION.—There are au-

thorized to be appropriated to the Secretary to assist him and the Endangered Species Committee in carrying out such functions under section 7(e), (g), and (h) not to exceed $600,000 for each of fiscal years 1983, 1984, and 1985.

"(f) CONVENTION IMPLEMENTATION.—There are au-

thorized to be appropriated to the Secretary to assist him and the Endangered Species Committee in carrying out such functions under section 7(e), (g), and (h) not to exceed $600,000 for each of fiscal years 1983, 1984, and 1985.

"(g) CONVENTION IMPLEMENTATION.—There are au-

thorized to be appropriated to the Secretary to assist him and the Endangered Species Committee in carrying out such functions under section 7(e), (g), and (h) not to exceed $600,000 for each of fiscal years 1983, 1984, and 1985.

"(h) CONVENTION IMPLEMENTATION.—There are au-

thorized to be appropriated to the Secretary to assist him and the Endangered Species Committee in carrying out such functions under section 7(e), (g), and (h) not to exceed $600,000 for each of fiscal years 1983, 1984, and 1985.

"(i) CONVENTION IMPLEMENTATION.—There are au-

thorized to be appropriated to the Secretary to assist him and the Endangered Species Committee in carrying out such functions under section 7(e), (g), and (h) not to exceed $600,000 for each of fiscal years 1983, 1984, and 1985.

"(j) CONVENTION IMPLEMENTATION.—There are au-

thorized to be appropriated to the Secretary to assist him and the Endangered Species Committee in carrying out such functions under section 7(e), (g), and (h) not to exceed $600,000 for each of fiscal years 1983, 1984, and 1985.

"(k) CONVENTION IMPLEMENTATION.—There are au-

thorized to be appropriated to the Secretary to assist him and the Endangered Species Committee in carrying out such functions under section 7(e), (g), and (h) not to exceed $600,000 for each of fiscal years 1983, 1984, and 1985.

"(l) CONVENTION IMPLEMENTATION.—There are au-

thorized to be appropriated to the Secretary to assist him and the Endangered Species Committee in carrying out such functions under section 7(e), (g), and (h) not to exceed $600,000 for each of fiscal years 1983, 1984, and 1985.

"(m) CONVENTION IMPLEMENTATION.—There are au-

thorized to be appropriated to the Secretary to assist him and the Endangered Species Committee in carrying out such functions under section 7(e), (g), and (h) not to exceed $600,000 for each of fiscal years 1983, 1984, and 1985.

"(n) CONVENTION IMPLEMENTATION.—There are au-

thorized to be appropriated to the Secretary to assist him and the Endangered Species Committee in carrying out such functions under section 7(e), (g), and (h) not to exceed $600,000 for each of fiscal years 1983, 1984, and 1985.

"(o) CONVENTION IMPLEMENTATION.—There are au-

thorized to be appropriated to the Secretary to assist him and the Endangered Species Committee in carrying out such functions under section 7(e), (g), and (h) not to exceed $600,000 for each of fiscal years 1983, 1984, and 1985.

"(p) CONVENTION IMPLEMENTATION.—There are au-

thorized to be appropriated to the Secretary to assist him and the Endangered Species Committee in carrying out such functions under section 7(e), (g), and (h) not to exceed $600,000 for each of fiscal years 1983, 1984, and 1985.

"(q) CONVENTION IMPLEMENTATION.—There are au-

thorized to be appropriated to the Secretary to assist him and the Endangered Species Committee in carrying out such functions under section 7(e), (g), and (h) not to exceed $600,000 for each of fiscal years 1983, 1984, and 1985.
September 17, 1982

CONGRESSIONAL RECORD—HOUSE

C O M M I T T E E O F C O N F E R E N C E

The managers on the part of the House and the Senate at the conference on the disagreeing votes in the two Houses, respectively, and by inserting the following new subparagraph immediately after subparagraph (A) thereof:

"(B) in place and to reduce to possession any such species from areas under Federal jurisdiction;"

(2) by amending subsection (b)(1) to read as follows:

"(b)(1) SPECIES HELD IN CAPTIVITY OR
C O N T R O L L E D ENVIRONMENT.—The provisions of subsections (a)(1)(A) and (a)(1)(G) of this section shall not apply to any fish or wildlife which was held in captivity or in a controlled environment on (A) December 28, 1972, or (B) the date of publication in the Federal Register of a final regulation adopting such fish or wildlife species to any list published pursuant to subsection (c) of section 4 of this Act. Provided, That such holding and any subsequent holding or use of the fish or wildlife species in the course of a commercial activity with respect to any act prohibited by subsections (a)(1)(A) and (a)(1)(G) of this section which occurs after a period of time, from (A) December 28, 1972, or (B) the date of publication in the Federal Register of a final regulation adopting such fish or wildlife species to any list published pursuant to subsection (c) of section 4 of this Act, there shall be a rebuttable presumption that the fish or wildlife involved in such act is not entitled to the exemption contained in this subsection.", and

(3) by amending subsection (b)(2)(A) by striking out "this section shall not apply to" and inserting in lieu thereof "The provisions of subsection (a)(1) shall not apply to".

(c) Section 11(a)(11) and (b)(1) of such Act of 1973 are each amended by striking out "or (C)" immediately after "(b)(2)(A), (B)," and inserting in lieu thereof "(C) or (D)".

And to the Senate agree to the same.

That the House recede from its disagreement in the amendment to the Senate in the title of the Act and as amended to the Senate agree with the Senate in the title of the Act and as amended with an amendment as follows:

In lieu of the matter proposed to be inserted in the Senate amendment to the title of the bill, insert the following: "An Act to authorize appropriations to carry out the provisions of the Endangered Species Act of 1973 for fiscal years 1983, 1984, and 1985, and for other purposes."

And the Senate agree to the same.

WALTER J. JONES, JOHN BREAUX, GERRY E. STUDDS, DAVID R. BOWEN, GENE CORDER, EDDIE B. BRYANT, DAVE EMBRY, SOLELY for consideration of section 4 of the House bill and modification committed to conference:

DON BONKER, JIM LEACH, MANAGERS ON THE PART OF THE HOUSE.

ROBERT T. STAFFORD, JOHN H. CHAFEE, SLADE GORTON, JENINGS RANDOLPH, OZARK MITCHELL, MANAGERS ON THE PART OF THE SENATE.
delay commencing the rulemaking process for any reason other than that the existence of an imperilment or imminent threat would make allocation of resources to such a petition unreasonable, the Secretary must utilize a scientifically based priority system to list and delist species, subspecies, and populations based on the degree of threat. Specific species must be dealt with in an efficient and timely manner. Distinctions based on whether the species is a higher or lower life form are not to be considered.

If a petition presents substantial information indicating that the petitioned listing or delisting may be warranted, the Secretary must, within 12 months after receiving the petition, make one of three findings and, depending upon which finding is made, promptly publish in the Federal Register certain items. Specifically, the Secretary must find:

(a) That the petitioned action is not warranted; or
(b) That the petitioned action is warranted; or
(c) That the petitioned action is warranted but that ongoing work on other listings and delisting actions precludes the proposal of a rule to implement the petitioned action at that time.

The Secretary is required to publish notice of all such findings in the Federal Register. If he finds that a listing or delisting is warranted, the Secretary must also publish the text of the proposed regulation to implement the action or a determination of the reasons why he is precluded from proceeding with the proposal.

If the Secretary determines (a) that a petition does not present substantial information indicating that the petitioned action may be warranted, or (b) that the petitioned action is not warranted, such determinations shall be subject to judicial review.

The object of such review is to determine whether the Secretary's action was arbitrary or capricious in light of the scientific and commercial information available concerning the petitioned action.

Within 12 months of receiving a petition that warrants the publication of a proposed regulation, the Secretary must determine and present evidence that he is, in fact, making expeditious progress in the process of listing and delisting species. These determinations are subject to judicial review under the same standard discussed above. In cases challenging the Secretary's claim of inability to make a final determination, the court will, in essence, be called on to separate justifications grounded in the purity of the action from the foot-dragging efforts of a delinquent agency.

If the Secretary's excuse from publishing a proposed regulation to implement a petitioned action is not found to be a valid one or from publishing the petition, the Secretary must continue to consider the petition and shall publish the proposed regulation as soon as possible. For the purposes of the 12-month deadline referred to above, in which implementation of a proposed action is delayed shall be deemed to have been resubmitted and reevaluated if the delay is extended to one year. If a petition presents substantial information indicating that the petitioned action may be warranted, the Secretary must publish a proposed regulation to implement the petitioned action, or (b) make a finding that the petitioned action is not warranted, or (c) make a new finding that he is unable to propose such action at that time or to make a final determination within the statutorily specified time frame and evidence that he is continuing to make progress in the process of listing and delisting other species. Petitions to revise critical habitat designations may be treated differently. As with petitions to list or delist species, the Secretary shall, to the maximum extent practicable, within 90 days after receiving the petition, determine, and promptly publish, a finding whether the petition presents substantial information indicating that the petitioned action may be warranted. Petitioners are not required to present economic information relevant to the proposed revision. If such substantial information is found to be present, the Secretary shall, within 12 months of receiving the petition, determine, and promptly publish a notice indicating how he intends to proceed with respect to the petitioned action.

New section 4(b)(5) sets forth the procedures that must be followed concerning determinations of any species' status as endangered or threatened. If a petition indicates that a listing or delisting is warranted, the Secretary must promptly publish a notice indicating whether he determines that the species should be listed or delisted, or that the proposal for listing or delisting should not be promulgated. A final determination to withdraw a proposal shall be subject to judicial review to determine whether the Secretary's decision was arbitrary or capricious in light of the information available concerning the proposed action. If the Secretary determines that a final regulation is warranted, he must publish a final regulation.

Section 4, as amended, requires that the Secretary make various findings within specified periods of time. Such mandatory findings are usually to be followed by "prompt" publication of such findings, a proposed regulation, or a final regulation. The Secretary must promptly publish a notice that the exact timing of Federal Register notices is not within the control of the Secretary.

New section 4(a)(3) provides that the Secretary must, to the maximum extent prudent and determinable, designate critical habitat at the time a species is listed. If a critical habitat designation accompanies the listing, or if the Secretary determines that the designation of critical habitat would not be prudent, the listing may be made final, in accordance with new section 4(b)(5), at any time within the first 18 months (or 18 month period) provided for in new section 4(b)(6). New section 4(b)(5)(c) restates the general requirement of concurrent listing and designation but authorizes the Secretary to make a listing proposal final without the concurrent designation of critical habitat.

The first such circumstance is when the designation of critical habitat would not be prudent due to a scientific or commercial finding that identifies the location of the species. The second is where the scientific and commercial information indicates that it is essential for the Secretary to delay listing to develop a proposal that maximizes the protection of the species. Section 4(b)(5)(c) provides that such extension is permissible only if the Secretary finds that there is substantial disagreement among specialists regarding the sufficiency or accuracy of the information received concerning the designation or revision of critical habitat. A similar determination must be made with respect to proposals to revise critical habitat designations. If the Secretary determines that a final regulation is warranted, he must publish a final regulation.

Within such one-year period (or 18 month period, if an extension occurs), the Secretary must make a final determination with respect to proposals to list or delist a species or to revise critical habitat. He must determine, on the basis of the information then available, whether the species should be listed or delisted, or that the proposal for listing or delisting should not be promulgated. A final determination to withdraw a proposal shall be subject to judicial review to determine whether the Secretary's decision was arbitrary or capricious in light of the information available concerning the proposed action. If the Secretary determines that a final regulation is warranted, he must publish a final regulation.
Section 2(b) of the Conference substitute contains provisions regarding the transition effect of the amendments made by section 2 of the Conference substitute to section 4 of the Act. Paragraph (1) of section 2(b) provides that all pending petitions and proposals to revise critical habitat or to designate critical habitat under sections 4(c)(3)(A), 4(c)(4) of the Act or to designate or revise designations of critical habitat shall be treated as having become effective as of the date of enactment of the Conference substitute. The procedural requirements that are set forth in Section 4(b) as amended by the Conference substitute shall be deemed to be complied with to the extent that similar requirements set forth in section 4 of the Act were complied with before the date of enactment of the Conference substitute. All such petitions and proposals shall be subject to the standards and the mandatory, judicially enforceable time periods contained in the Conference substitute.

Section 3. Cooperation with the States

This section follows the analogous provisions of the House bill. The Senate amendment to increase the maximum share of grants to States from 65 percent to 75 percent for single state projects and from 75 percent to 90 percent for multi-state projects.

Section 4. Interagency cooperation and the exemption process

Section 4 of the Conference substitute makes several amendments to the consultation and exemption provisions of Section 7 of the Act.

Section 4(a)(1) of the Conference substitute adopts the House amendment to Section 7(a) of the Act to authorize the Secretary to require a permit prior to the applicant filing for such permit. However, where the House bill provided for direct consultation between the Secretary and the permit applicant, the Committee agreed to an amendment requiring that the consultation be between the State agency and the Federal agency that issues the permit. This consultation will be initiated at the request of the permit applicant and it is the Secretary, at the Secretary's discretion, that will determine whether to initiate such consultation. The consultation will be conducted in accordance with the existing consultation process.

Section 4(a)(2) of the Conference substitute adopts a technical and conforming amendment to the existing Section 7(b)(1) to the extent that it conflicts with the provisions of section 7(b)(2) of the Act.

Section 4(a)(3) of the Conference substitute adopts a technical amendment to conform to changes made in section 7(b)(2) of the Act to correct a drafting error in the Senate bill.

Section 4(a)(4) of the Conference substitute makes several amendments to the section 4(c) exemption provisions of the Act. Paragraph (D) of section 2(a)(4) modifies and applies to the Secretary the provisions of section 4(b)(6) of the Act to the extent that the provisions of section 7(a)(3) of the Act conflict with the provisions of section 4(b)(6) of the Act.

Section 4(a)(5) of the Conference substitute makes several amendments to the section 4(c) provisions of the Act. Paragraph (E)(1) of section 2(a)(4) modifies and applies to a prospective permit applicant the section 4(b)(6) of the Act to the extent that the section 4(c) provisions of the Act conflict with the provisions of section 4(b)(6) of the Act.

Section 4(a)(6) of the Conference substitute makes several amendments to the section 4(c) provisions of the Act. Paragraph (F) of section 2(a)(4) modifies and applies to a prospective permit applicant the section 4(b)(6) of the Act to the extent that the section 4(c) provisions of the Act conflict with the provisions of section 4(b)(6) of the Act.

Section 4(a)(7) of the Conference substitute makes several amendments to the section 4(c) provisions of the Act. Paragraph (G) of section 2(a)(4) modifies and applies to a prospective permit applicant the section 4(b)(6) of the Act to the extent that the section 4(c) provisions of the Act conflict with the provisions of section 4(b)(6) of the Act.

Section 4(a)(8) of the Conference substitute makes several amendments to the section 4(c) provisions of the Act. Paragraph (H) of section 2(a)(4) modifies and applies to a prospective permit applicant the section 4(b)(6) of the Act to the extent that the section 4(c) provisions of the Act conflict with the provisions of section 4(b)(6) of the Act.

These limitations on the consultation period will only apply to consultations undertaken pursuant to section 7(a)(2), as amended. Consultation involving Federal agencies is not subject to the limitations since under the existing law, consultation is not required for such consultations.

Under the existing provisions of the Act, Federal agencies that receive favorable biological opinions which conclude that the agency action would not violate section 7(a)(2) remain subject to the section 9 prohibition against taking individual specimens of endangered or threatened species of fish or wildlife. Should a taking occur, the Federal agency would be subject to citizen suits or civil or criminal penalties for violating section 9 of the Act. The Senate amendment directs the Senate Committee on Appropriations to report legislation in the future with similar language to address this problem. New section 7(b)(4) and section 7(e), as amended, adopt the House provisions.

Section 4(a)(9) of the Conference substitute adopts the Senate amendment to Section 7(c) of the Act which provides that the 1983 date shall not be extended except by the Secretary of the Interior, in consultation with the Federal agencies, if and only if it is determined that new, significant and direct threats to species or populations defined in section 7(a)(2) exist.

The term "state agency" is defined in section 3(18) of the Act.
reason for the extension and the length of the extension.

Sections 4(a)(5) and (6) of the Conference substitute adopt the Senate amendment to section 7(e)(x10) to delete the requirement that representatives of members of the Endangered Species Committee be Presidential appointees subject to Senate confirmation. Both the House bill and the Senate amendment required the Secretary to provide the Senate Committee with an opportunity to make final decisions. Sections 4(a)(5) and (6) of the Conference substitute reflect this basic consensus and contain a series of provisions to resolve the areas where inconsistencies existed.

Whereas the House bill allowed permit applicants access to the exemption process when the permitting agency informed them they were likely to be denied a permit for reasons related to endangered species, the Senate amendment required final action on the permit before an application for an exemption was to be filed. Permit applicants were to be afforded an opportunity to seek an administrative review of the denial prior to applying for an exemption. However, the permit applicant need not exhaust all administrative remedies prior to applying for an exemption, but is eligible to seek an exemption after a permit denial. The Senate amendment also made the one permit application process only after being denied a permit. However, the permit applicant need not exhaust all administrative remedies prior to applying for an exemption, but is eligible to seek an exemption after a permit denial. The Senate amendment also made the one permit application process only after being denied a permit.

The Conference substitute also provides that the Secretary of the Interior must adopt provisions of the House bill to continue, subject to certain important qualifications, the experiment plan for the incidental taking of such species, that the taking would be incidental, that the Secretary must submit to the Secretary a written report specifying the reasons why a reservation was not entered; and amend Section 6 of the Convention and that other alternatives that would not result in the takings were analyzed, and why those alternatives were not selected and the Secretary will base his determination as to whether or not to grant the permit, in part, by using the same standard as found in section 7(a)(2). To issue the permit, it is exempted from the Secretary to implementation section 7(a)(2) of the Act. Therefore, the Act of the Interior to implement section 7(a)(2) rather than the language of the provision itself eliminates the implication that other permit applications issued under section 10 do not require certification. The language and biological opinions issued pursuant to section 7. To issue the permit, the Secretary would also have to find that the taking would be incidental, that the applicant will minimize and mitigate the impact of the taking, and that the applicant will ensure that there will be adequate funding for the conservation of the species in the wild. Use of the regulatory language adopted by the Secretary of the Interior to implement section 7(a)(2) rather than the language of the provision itself eliminates the implication that other permit applications issued under section 10 do not require certification. The language and biological opinions issued pursuant to section 7. To issue the permit, the Secretary would also have to find that the taking would be incidental, that the applicant will minimize and mitigate the impact of the taking, and that the applicant will ensure that there will be adequate funding for the conservation of the species in the wild. Use of the regulatory language adopted by the Secretary of the Interior to implement section 7(a)(2) rather than the language of the provision itself eliminates the implication that other permit applications issued under section 10 do not require certification. The language and biological opinions issued pursuant to section 7.

As with all section 10 permits, the legislation provides that the Secretary shall prescribe terms and conditions to ensure that appropriate measures are taken by the applicant and shall revoke the permit if the permittee is not complying with the terms and conditions. Because this provision contains its own explicit and detailed standards for the issuance of permits, it is exempted from the general permit conditions specified in section 10(d) of the Act.

Although the conservation plan is key to the permit provisions of the Act which only apply to listed species, the Committee intends that conservation plans may be subject to refelction. The Conference substitute adds section 6 of the Act to the Conference substitute adopts section 10 of the Act. Sections 6(1) and (2) give the Secretary more flexibility in regulating the incidental taking of endangered and threatened species. This provision establishes a procedure whereby those permittees who are attempting to regulate the incidental taking of such species, or merging or threatened species may receive permits for the incidental taking of such species, or merging or threatened species may receive permits for the incidental taking of such species, or merging or threatened species may receive permits for the incidental taking of such species, or merging or threatened species may receive permits for the incidental taking of such species.

As amended, section 10(a)(4) of the Act will authorize the Secretary to permit any taking otherwise prohibited by section 9 by effect of the Act. The Committee agreed to language requiring the Secretary to adopt regulations to give effect to the Act. The Conference substitute adopts provisions of the House bill to continue the experiment plan for the incidental taking of such species, that the taking would be incidental, that the Secretary must submit to the Secretary a written report specifying the reasons why a reservation was not entered; and amend Section 6 of the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere. With respect to new Section 8(a)<c>(2), if population estimates are available for a particular species, such information shall be considered by the Committee when making export decisions.

Section 8. Experimental populations and other exemptions.

Section 8 of the Conference substitute amends section 10 of the Act. Sections 6(1) and (2) give the Secretary more flexibility in regulating the incidental taking of endangered and threatened species. Sections 4(a)(5) and (6) of the Conference substitute adopt a compromise time frame for the initial findings or determination of the biological opinion adopted by the Secretary of the Interior to implement section 7(a)(2) of the Act. Although the act of the Secretary establishes a procedure whereby those permittees who are attempting to regulate the incidental taking of such species, the Act provides that the Secretary will base his determination as to whether or not to grant the permit, in part, by using the same standard as found in section 7(a)(2) of the Act.

Sections 6(1) and (2) adopt, with amendments, a provision appearing in the House bill to give the Secretary more flexibility in regulating the incidental taking of endangered and threatened species. This provision establishes a procedure whereby those permittees who are attempting to regulate the incidental taking of such species, or merging or threatened species may receive permits for the incidental taking of such species, or merging or threatened species may receive permits for the incidental taking of such species.
and Wildlife Act of 1956, Fish and Wildlife Coordination Act) which are intended to au-
thorize the Secretary to cooperate with the
states and private entities on matters re-
garding conservation of all fish and wildlife
resources of this nation. The conservation
plan will implement the broader purposes of
all of those statutes and allow unlimited spe-
cies to be addressed in the plan.

The Committee notes that the Secre-
tary may utilize this provision to approve
conservation plans which provide long-term
commitments regarding the conservation of
listed as well as unlimited species and long-
term assurances to the proponent of the
conservation plan that the terms of the
plan will be adhered to and that further
mitigation requirements will only be im-
posed in accordance with the terms of the
plan. It is recognized that an unlimited species
addressed in an approved conservation plan
is subsequently listed pursuant to the Act,
no further mitigation requirements should
be imposed if the conservation plan ad-
dressed the conservation of the species and
its habitat, as if the species were listed pur-
suant to Section 4 of the Act.

To the maximum extent possible, the Secre-
tary should utilize this authority under this
section to cooperate with the private and
public sectors and among governmental agencies in the in-
terest of species and habitat conservation.

A conservation plan approved pursuant to
section 10(a) would be developed jointly between the appropriate Federal agencies and the private or local or state government
agencies. This provision is modeled after a habi-
tat conservation plan that has been devel-
oped by three Northern California cities,
the County of San Mateo, and private land-
owners and developers to provide for the conservation of the threatened species of an
other unlimited species of concern within the San Bruno Mountain area (30)(a)(1)13.

This provision will measurably reduce con-
licts under the Act and will provide the in-
stitutional framework to permit cooperation
between the public and private sectors in the interest of endangered species and habi-
tat conservation.

The intention of this provision require a
unique partnership between the public and
private sectors in the interest of species and
habitat conservation. However, the Commit-
tee has recognized that significant development projects often take many years to complete
and permit applicants may need long-term per-
mits. In this situation, and in order to pro-
vide sufficient incentives for the private sector to participate in the development of
such long-term conservation plans, plans which may involve the expenditure of hun-
dreds of thousands if not millions of dollars,
adequate assurances must be made to the fi-
nancial and development communities that
a section 10(a) permit can be made available
for the life of the project. Thus, the Secre-
tary should be authorized to issue section
10(a) permits that run for periods sig-
nificantly longer than are commonly provid-
ed for federal permits. In this regard the Commit-
tee notes that the existing permit regulations of the
Secrecy are contained in 50 C.F.R. Parts 13 and 17, do not recognize the need for a
limit on the acceptable duration of section
10(a) permits. No particular time limit should
be imposed.

The Secretary is vested with broad discre-
cion in carrying out the conservation plan
provision to determine the appropriate
length of any section 10(a) permit issued
pursuant to this provision in light of all of
the factors. The Committee believes that the
Secretary should be authorized to commit to long-term funding for conserva-
tion activities or long-term commitments to
restrictions on the use of land. It is recog-
nized that in issuing section 10(a) permits the Sec-
retary will, by necessity, consider the possi-
ble positive and negative effects associated
with permits of such duration.

The Secretary, in determining whether to
issue a long-term permit to carry out a con-
ervation plan should consider the extent to
which the conservation plan is likely to en-
large the habitat of the listed species or in-
crease the long-term survivability of the species or its ecosystem.

It is also recognized that circumstances
and information may change over time so
that the original plan might need to be re-
vised. To address this situation the Commit-
tee expects that any plan approved for a
long-term permit will contain a procedure
by which the parties will deal with unfor-
seen circumstances.

Because the San Bruno Mountain plan is
the model for this long-term permit and be-
cause the adequacy of similar conservation
plans such as the San Bruno plan, the Commit-
tee believes that the elements of this plan should be clearly
understood. Large portions of the habitat
on San Bruno Mountain were privately
owned. Prior to the discovery of two species of
endangered butterflies, the landowner planned to develop the land. The butterflies face threats to their existence,
however, even in the absence of any devel-
oment. The primary threats to the species
consist of insufficient regulation of recrea-
tional activities and encroachment on the
species habitat by brush and exotic species.

Prior to developing the conservation plan,
the County of San Mateo conducted an in-
dependent, exhaustive biological study
which determined the location of the but-
terflies, and the location of their food
plants. The biological study also developed
field personnel.

The San Bruno Mountain Conservation Plan is based on this extensive biological
study. The basic elements of the plan are the
following:

1. The Conservation Plan addresses the
habitats throughout the area and preserves
sufficient habitat to allow for enhancement
of the survival of the species. The plan pro-
jects in perpetuity at least 87 percent of the
habitat of the listed butterflies.

2. The establishment of a funding pro-
gram which will provide permanent on-
going funding for important habitat man-
gement and enhancement activities. Fund-
ing is to be provided through direct interim
payments from landowners and developers
and through permanent assessment on de-
velopment units within the area;

3. The establishment of a permanent insti-
tutional structure to insure uniform protec-
tion and conservation of the habitat
throughout the area despite the division of
the habitat among various governmental agencies and the complex pattern of private and public own-
ship of the area;

4. A formal agreement between the parties
to the plan which ensures that all elements of
the plan will be implemented.

Section 8(5) adopts provisions appearing
in both the House bill and the Senate amend-
ment. This section gives the Secretary the
ability to the Secretary in the treatment of
populations of endangered or threatened
species that are introduced into areas out-
side the current range of the species.

Section 8(6) adds a new subsection (j) to
section 10 of the Act. Paragraph (1) of new
section 10(j) defines the term "experimental
population." To qualify for the special
treatment afforded experimental popula-
tions, a population must be authorized
by the Secretary and must be confined to the
current range of the species. Populations re-
sulting from releases not authorized by the
Secretary are not considered "experimental
sessions of this subsection.

To protect natural populations and to avoid potentially complicated problems of law enforcement, the definition is limited to those introduced populations that are wholly separate geographically from nonexperimental populations of the same species. If an introduced population overlaps with natural populations of the same species during a portion of the year, but is wholly separate at other times, the introduced population is to be treated as an experimental population at such times as it is wholly separate. Such a population shall be treated as experimental only when the times of geographic separation are reasonably predictable and not when total separation occurs as a result of random and unpredictable events.

Under paragraph (2) of new section 10(j) the Secretary may authorize the release of populations of endangered or threatened species outside their current range if he determines by regulation that doing so will further the conservation of the species. Before authorizing the release of an experimental population, the Secretary must also determine by regulation whether the population is essential to the continued existence of an endangered or threatened species. In making the determination, the Secretary shall consider whether the loss of the experimental population would be likely to appreciably reduce the likelihood of survival of that species in the wild. If the Secretary determines that it would, the population will be considered essential to the continued existence of the species. The level of reduction necessary to constitute "essentiality" is expected to vary among listed species and, in most cases, experimental populations will not be essential.

The purpose of requiring the Secretary to proceed by regulation, apart from ensuring that he will receive the benefit of public comment on such determinations, is to provide a vehicle for the development of special regulations for each experimental population that will address the particular needs of that population. Among the regulations that must be promulgated are regulations to provide for the identification of experimental populations. Such regulations may identify a population on the basis of location, migration pattern, or any other criteria that would provide notice as to which populations of endangered or threatened species are experimental.

The Secretary, acting through the Fish and Wildlife Service of the National Marine Fisheries Service, as appropriate, may adopt provisions appearing in both the House bill and the Senate amendment. Section 8 adopts the authorization levels and duration recommended by both the House and the Senate. A separate authorization for implementation of the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere is also adopted. The authorization provisions appearing in Sections 6, 7, and 15 of the Act are consolidated and will now appear in Section 15, as amended.

Section 9. Miscellaneous

Section 9 of the Conference substitute adopts provisions of the Senate amendment. Section 9 adds a new paragraph to subsection 2(c) of the Act, the statement of Congressional policy; amends Section 9 of the Act by adding a provision to prohibit the removal and reduction to possession of any endangered plant that is on Federal land; resolves a conflict between two Federal circuit court opinions regarding the applicability of the prohibitions of Section 9 of the Act to pre-Act wildlife held in the course of a commercial activity after December 28, 1973; and clarifies the scope of the Section 9(b)(2) exception to the prohibition contained in Section 9 of the Act.

WALTER B. JONES, JOHN BREAUX, GERRY E. STUDDS, DAVID R. BOWEN, GENE SAYER, EDWIN B. FORSYTHE, DAVE EMMER.

Solely for consideration of section 4 of the House bill and modification committed to conference:

DON BONKER, MANAGERS ON THE PART OF THE HOUSE.
ROBERT T. STAFFORD, JOHN H. CHAFEE, BLAKE GORSTON, JENNINGS RANDOLPH, GEORGE J. MITCHELL, MANAGERS ON THE PART OF THE SENATE.

amending Section 11 of the Act. Section 7 explicitly provides to the Attorney General the authority to seek injunctive relief. Section 7 also amends the citizen suit provision of the Act to authorize actions against the Secretary for failure to perform the acts and duties that are imposed by Section 4, as amended.

Section 8. Authorization

Section 8 of the Conference substitute adopts provisions appearing in both the House bill and the Senate amendment. Section 8 adopts the authorization levels and duration recommended by both the House and the Senate. A separate authorization for implementation of the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere is also adopted. The authorization provisions appearing in Sections 6, 7, and 15 of the Act are consolidated and will now appear in Section 15, as amended.

Section 9. Miscellaneous

Section 9 of the Conference substitute adopts provisions of the Senate amendment. Section 9 adds a new paragraph to subsection 2(c) of the Act, the statement of Congressional policy; amends Section 9 of the Act by adding a provision to prohibit the removal and reduction to possession of any endangered plant that is on Federal land; resolves a conflict between two Federal circuit court opinions regarding the applicability of the prohibitions of Section 9 of the Act to pre-Act wildlife held in the course of a commercial activity after December 28, 1973; and clarifies the scope of the Section 9(b)(2) exception to the prohibition contained in Section 9 of the Act.

WALTER B. JONES, JOHN BREAUX, GERRY E. STUDDS, DAVID R. BOWEN, GENE SAYER, EDWIN B. FORSYTHE, DAVE EMMER.

Solely for consideration of section 4 of the House bill and modification committed to conference:

DON BONKER, MANAGERS ON THE PART OF THE HOUSE.
ROBERT T. STAFFORD, JOHN H. CHAFEE, BLAKE GORSTON, JENNINGS RANDOLPH, GEORGE J. MITCHELL, MANAGERS ON THE PART OF THE SENATE.